

Dated

2020

CHELTENHAM BOROUGH COUNCIL

AND

**THE COUNCIL FOR THE BOROUGH OF
TEWKESBURY**

AND

THE COUNCIL FOR THE CITY OF GLOUCESTER

AND

GLOUCESTERSHIRE COUNTY COUNCIL

DRAFT PARTNERSHIP AGREEMENT

in relation to the Joint Core Strategy

THIS AGREEMENT is made on

day of

2020

BETWEEN:

- (1) **CHELTENHAM BOROUGH COUNCIL** of Municipal Office, Promenade, Cheltenham, GL50 9SA ("**Cheltenham**")
- (2) **THE COUNCIL OF THE BOROUGH OF TEWKESBURY** of Public Services Centre, Gloucester Road, Tewkesbury, Gloucestershire, GL20 5TT ("**Tewkesbury**")
- (3) **THE COUNCIL FOR THE CITY OF GLOUCESTER** of Shire Hall Westgate Street, Gloucester GL1 2TG ("**Gloucester**")
- (4) **GLOUCESTERSHIRE COUNTY COUNCIL** of Shire Hall Westgate Street, Gloucester GL1 2TG ("**County**")

(together known as the "Participating Councils" and each as "the Council").

BACKGROUND

- (A) The Participating Councils have agreed to work together in a partnership arrangement as set out in this Agreement to support Cheltenham, Tewkesbury and Gloucester's coordinated strategic development plan for the period 2011 to 2031 (the "Joint Core Strategy" or "JCS") including a review of the JCS.
- (B) This Agreement sets out the terms and conditions for the operation of the partnership arrangement for the delivery of the Services.
- (C) This Agreement is entered into pursuant to Section 1 Local Authorities (Goods and Services) Act 1970 and Section 1 Localism Act 2011.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

Agreement means this Agreement (including all Schedules)

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

Commencement Date means 1 April 2020

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

Contribution means the annual sum agreed to be paid by each Participating Council in accordance with Clause 8.1.1 and in subsequent years in accordance with Clause 8.1.3

Default means any breach of the Agreement which does not amount to a Fundamental Breach

Direct Losses means all damages, losses, liabilities, claims, actions, costs, expenses, proceedings, demands and charges whether arising under statute, contract or at common law

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

Data Protection Legislation means (i) The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679),(ii) the LED and any applicable national implementing Laws as amended from time to time, (iii) The Data Protection Act 2018 to the extent that it relates to Processing of Personal Data and privacy, (iv) all applicable Laws relating to Personal Data and privacy

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

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

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

Fundamental Breach means a default which is not capable of remedy in accordance with Clause 11 (Defaults)

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

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

Joint Controller The Participating Councils shall act as Controllers and make joint decision over the Personal Data

Lead Council means Tewkesbury Borough Council unless otherwise agreed by the Participating Councils

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

New Supplier means any person, firm or company or other entity who is engaged to provide the Services which are the same or similar to the Services or any part of them after the Termination Date

Personal Data has the meaning set out in the Data Protection Legislation

Processing has the meaning set out in the Data Protection Legislation

Processing of Personal Data Obligations means the obligations between the Lead Council and the other Councils as set out in **Error! Reference source not found.**

Services means the services described in the Schedule 1

Service Agreement means any contractual arrangement for the delivery of the Services made between the Lead Council and any third party

Service Provider the company, organisation or person contracted under a Service Agreement to provide the Services to the Lead Council on behalf of the Participating Councils

Staff means those employees engaged by or seconded to the Lead Council on behalf of the Participating Councils to provide the Services

Steering Group means the group described in Schedule 2

Strategic Programme Board means the group described in Schedule 2

Task Group means the group described in Schedule 2

Termination Employees means the staff who it is determined in accordance with the procedure as set out in Paragraph 2 of Schedule 4 will transfer to any Council and/or a New Supplier on the Termination Date

Termination Date means the date on which this Agreement terminates

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time

Term means the term of this Agreement as set out in Clause 2

Working Day(s) means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

1.2 In this Agreement, unless the context requires otherwise:

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

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

(a) the statute or statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and

(b) any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement),

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

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

1.2.4 references to writing or written shall include any mode of reproducing words in a legible and non-transitory form;

in construing this Agreement, the rule known as ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word(s) **other** or **including** or **in particular** shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words; and

1.2.5 where in this Agreement an individual is referred to by name or by the post they hold within their organisation, such reference shall be deemed to mean either that individual or the person from time to time holding that appointment or post or such suitably qualified person as may from time to time be nominated by that organisation.

2 TERM

2.1 Subject to Clause 2.2 this Agreement will start on the Commencement Date and shall continue for a period of three (3) years ("the Initial Term") unless terminated earlier in accordance with Clause 12 of this Agreement.

2.2 Upon the expiration of the Initial Term this Agreement may be extended for a further period or periods up to three (3) years by agreement of all of the Participating Councils

3 PRINCIPLES AND AIMS

3.1 The Participating Councils agree to co-operate fully with each other in relation to the provision of the Services and to act at all times in such a way as to safeguard and further the common interests of the Participating Councils in respect of the JCS.

4 DATA PROCESSING

4.1 The Parties are Processing Personal Data for a common purpose and agree that they are acting as Joint Controllers.

4.2 The Participating Councils shall comply with the Processing of Personal Data Obligations set out in Schedule 3.

5 THE SERVICES

5.1 Tewkesbury will act as the Lead Council from the Commencement Date in respect of the Services.

5.2 The Lead Council shall provide and/or procure the Services with all the skill, care and diligence to be expected of a competent local authority carrying out the Services and such provision and/or procurement may be from one of the other Participating Councils.

5.3 The Lead Council shall not delegate any duties or obligations arising under this Agreement otherwise than expressly permitted under its terms

6 STAFF

6.1 The Participating Councils shall jointly agree the staffing structure to support this partnership arrangement.

6.2 The Participating Councils agree that the provisions of Schedule 4 shall apply to the Staff on termination of this Agreement.

7 GOVERNANCE

7.1 The Participating Councils agree that oversight and performance management in respect of the delivery of the Services and any other issues in respect of this Agreement shall be undertaken by the groups set out in Schedule 3 whose membership will be agreed or varied by the Participating Councils as required.

8 FINANCIAL ARRANGEMENTS

8.1 The financial arrangements for the Services :

8.1.1 For the Financial Year 2020 to 2021 the Participating Councils shall each pay £60,000 (Sixty Thousand Pounds) to the Lead Council;

8.1.2 Additional costs in excess of the total Contributions for that Financial Year shall not be incurred without the prior written approval of the Participating Councils **PROVIDED THAT** the Participating Councils agree that in the event of additional costs being incurred by the Lead Council in respect of the Staff such additional costs shall be shared equally by the Councils; and

8.1.3 For subsequent Financial Years the Lead Council shall provide each Council with details of the financial arrangements by no later than the end of October in each year.

8.2 Each Council shall notify the Lead Council whether they approve the financial arrangements for each subsequent year as described in Clause 8.1.3 above by the end of February of each year in readiness for the start of each financial year. If any Council does not approve the financial arrangements (Exiting Council) the remaining Councils (Remaining Councils) shall decide whether to continue or terminate this Agreement and the Exiting Council shall exit this Agreement on the 31st March of the following year.

8.3 Each Council agrees to pay its Contribution to the Lead Council within 30 days of receipt of invoice.

9 MONITORING OF THE SERVICES

9.1 The Lead Council shall provide and share such information (in such format as is agreed between the Participating Councils) as is reasonably necessary to enable the other Councils to review the overall delivery and operation of the Services.

10 INTELLECTUAL PROPERTY

10.1 Each Council grants to the other or shall procure the grant to the other of a non-exclusive, royalty-free, worldwide, irrevocable, freely assignable, perpetual licence of any Intellectual Property owned by that Council or licensed to it which is necessary or desirable for the effective and efficient operation of the Services. Ownership of such Intellectual Property shall not be affected by this Agreement and accordingly, to the extent that such Intellectual Property exists at the Commencement Date, ownership of it shall remain with the Council which owns it at that date.

10.2 All Intellectual Property created after the Commencement Date and during the term of this Agreement which is wholly or substantially connected with the Services shall be owned by the Participating Councils jointly and each Council undertakes that it will, at its own cost, execute such further documents and do such acts as may be necessary for securing, confirming or vesting right, title and interest in such Intellectual Property in the other Councils.

11 DEFAULTS

- 11.1 If any of the Participating Councils commit a Default then it shall as soon as reasonably practicable notify the other Councils in writing and take such steps as are necessary to rectify the Default.
- 11.2 If the Default has not been rectified within thirty (30) Working Days to the reasonable satisfaction of the Councils not in default then the matter shall be referred to the Task Group.
- 11.3 If the Participating Councils cannot resolve the Default within a reasonable time any Council may escalate the matter for resolution through the governance arrangements set out in Schedule 3 and in accordance with Clause 16 (Disputes).

12 TERMINATION OR CONTINUANCE OF THIS AGREEMENT

- 12.1 This Agreement shall terminate on the expiry of three years unless extended by prior agreement between all of the Participating Councils.
- 12.2 Any Council may terminate this Agreement by serving notice immediately at any time upon another Council committing a Fundamental Breach of this Agreement. Such a notice can only be served when the process set out in Clause 16 has been exhausted.
- 12.3 Notwithstanding Clause 12.1, this Agreement may be terminated upon the mutual consent of all of the Participating Councils on a date mutually agreed between the Participating Councils.
- 12.4 In the event that any Council does not approve the financial arrangement for a subsequent financial year as set out in Clause 8.2 the Councils that have approved the financial arrangement shall agree whether to terminate this Agreement or to continue with this Agreement.
- 12.5 Where by reason of any change in law or other reason not attributable to the fault of the Participating Councils prohibits or prevents one of the Councils from giving effect to their obligations under this Agreement, any of Participating Councils may terminate this Agreement so as to avoid the Councils from breaching legislative or otherwise binding obligations upon it by written notice effective upon receipt by the other Councils, specifying the date upon which the termination should take effect, provided that the terminating Council has first entered into discussion in good faith with the other Councils and used all reasonable endeavours to negotiate a solution with the other Councils, whereby the intent and purpose of this Agreement may be fulfilled by another mechanism.

12.6 Upon termination the Participating Councils shall cooperate in good faith to agree a plan setting out how the arrangements considered in this Agreement will be ended and which shall be in accordance with the agreed principles:

12.6.1 that continuation and quality of service delivery and the options available for the continuation of the delivery of the Services;

12.6.2 the minimising of the costs to the Participating Councils terminating this Agreement;

12.6.3 the identification of critical timescales and issues as appropriate with proposals to address them;

12.6.4 liabilities relating to the Services shall be, in the absence of specific agreed alternatives or provision in this Agreement, shared and/or borne by the Participating Councils equally.

13 CONSEQUENCES OF TERMINATION OR CONTINUANCE

13.1 All liabilities under Clause 15 shall survive the termination of this Agreement.

13.2 In the event of termination of this Agreement under Clause 12.2 any Direct Losses of the Councils arising out of such termination shall be borne by the Council that has committed the Fundamental Breach of this Agreement.

13.3 In the event of termination of this Agreement under Clause 12.3 each Council shall bear its own losses as a result of such termination

13.4 In the event of continuance of this Agreement under Clause 12.4 any Direct Losses of the Councils shall be borne by the Exiting Council.

13.5 In the event of termination of this Agreement under Clause 12.4 any Direct Losses of the Councils shall be borne by the Exiting Council..

13.6 In the event of termination of this Agreement under Clause 12.5 each Council shall bear its own losses as a result of such termination.

14 INSURANCE

14.1 The Lead Council shall take out and maintain or procure the taking out and maintenance of the following insurances and any other insurance as may be required by law to cover the activities of the Services:

- 14.1.1 Public liability insurance in the sum of £25 million;
- 14.1.2 Employers liability insurance in the sum of £25 million; and
- 14.1.3 Professional indemnity insurance in the sum of £5 million.

14.2 No Council shall take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) allow anything to occur (including a failure to disclose any fact) which would entitle any insurer to refuse to pay any claim under an insurance policy in which that Council is assured, a co-insured or an additional person or which may make such a claim wholly or partly repayable.

15 INDEMNITIES AND LIABILITIES

15.1 Any loss or costs suffered by any Council arising from or relating to the delivery of the Services and the terms of this Agreement shall be shared between the Participating Councils equally unless and to the extent that alternative arrangements are agreed in writing by the Participating Councils. The Participating Councils acknowledge that the governance arrangements provided for in this Agreement will be the primary means by which the Participating Councils will monitor and manage the risk of liability arising from or relating to the operation of the Services.

15.2 The Lead Council shall not limit liability for:

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

16 DISPUTES

16.1 The Participating Councils shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

- 16.1.1 the Dispute shall be first referred to the Task Group to resolve;

- 16.1.2 if the Dispute cannot be resolved by the Task Group within fourteen (14) days after the Dispute has been referred in writing to it, the Dispute may be referred, by any Council, to the Steering Group for resolution;
- 16.1.3 if the Dispute cannot be resolved by the Steering Group within fourteen (14) days after the Dispute has been referred in writing to it, the Dispute may be referred, by any Council, to the Strategic Programme Board for resolution;
- 16.1.4 if the Dispute cannot be resolved by the Strategic Programme Board within fourteen (14) days after the Dispute has been referred to in writing to it, any Council may give notice to the other Council in writing ("Dispute Notice") that a Dispute has arisen.
- 16.2 Within twenty-one (21) days of receipt of the Dispute Notice the Participating Councils may attempt to resolve the Dispute by mediation in accordance with Clause 16.3.
- 16.3 The following provisions shall apply to any such reference to mediation:
- 16.3.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre for Effective Dispute Resolution (CEDR) for the time being in force;
- 16.3.2 the Participating Councils shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and provide all such information or documents as CEDR or the mediator may reasonably require to give effect to such mediation, including entering into an agreement in, or substantially in, the form of CEDR's Model Mediation Agreement for the time being in force; and
- 16.3.3 to the extent not provided for by such agreement of the MMP:
- (a) the mediation shall commence by a Council serving on the others written notice setting out, in summary form, the issues in dispute and calling on the other Councils to agree the appointment of a mediator; and
- (b) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Participating Councils or, in default of agreement, appointed by CEDR.
- 16.4 Should the mediation fail, in whole or in part, any Council may, upon giving written notice, and within twenty eight (28) days thereof, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single

arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless the Participating Councils have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Chartered Institute of Arbitrators (2000 Edition), as amended, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales

- 16.5 Without prejudice to any rights to seek redress in court, the Participating Councils shall continue to provide the Services and to perform their obligations under this Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause 16.

17 CONFIDENTIALITY

- 17.1 Each Council undertakes to the other Councils that it will at any time after the date of this Agreement (save as required by Law or by order of a Court of competent jurisdiction or any other relevant regulatory authority or as expressly permitted to be disclosed) use any Confidential Information (other than for the purposes of this Agreement) or disclose or divulge any Confidential Information to any person (other than to officers or employees of the Participating Councils) and that it shall use its best endeavours to prevent such use or publication or disclosure of any Confidential Information by any other person.

- 17.2 Except to the extent set out in this Clause 17, or where disclosure is expressly permitted elsewhere in this Agreement, each Council shall:

17.2.1 treat the other Councils' Confidential Information as confidential; and

17.2.2 not disclose the other Councils' Confidential Information to any other person without the owner's prior written consent.

- 17.3 Clause 17.1 shall not apply to the extent that:

17.3.1 such information was in the possession of the Council making the disclosure, without obligation of confidentiality, prior to its disclosure;

17.3.2 such information was obtained from a third party without obligation of confidentiality;

17.3.3 such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or

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

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

18 DATA PROTECTION

18.1 Nothing in this Agreement requires any Council to disclose any information to another party if that Council considers that to do so would be in breach of Data Protection Legislation.

19 FREEDOM OF INFORMATION ACT 2000 AND ENVIRONMENTAL INFORMATION REGULATIONS 2004

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

19.2 Where a Council receives a request for information under the FOI Legislation or the EIR in relation to information which it is holding on behalf of the other Councils in relation to the Services, it shall (and shall procure that its sub-contractors shall) :

19.2.1 transfer the request for information to the other Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;

19.2.2 provide the other Council with a copy of all information in its possession or power in the form that the authority requires within ten (10) Working Days (or such longer period as the authority may specify) of the Council requesting that information; and

19.2.3 provide all necessary assistance as reasonably requested by the other Council to enable the Council to respond to a request for information within the time for compliance set out in the FOI Legislation or the EIR.

19.3 Where a Council receives a request for information under the FOI Legislation or EIR which relates to the Agreement or the Services, it shall inform the other Council of the request for information as soon as practicable after receipt and in any event at least two (2) Working Days before disclosure and shall use all reasonable endeavours to consult with

the other Councils prior to disclosure and shall consider all representations made by the other Councils in relation to the decision whether or not to disclose the information requested.

19.4 Each Council shall be responsible for determining in their absolute discretion whether any information requested under the FOI Legislation or EIR:

19.4.1 is exempt from disclosure;

19.4.2 is to be disclosed in response to a request for information.

19.5 Each Council acknowledges that the other Councils may be obliged under the FOI Legislation or EIR to disclose information:

19.5.1 without consulting with the other Councils where it has not been practicable to achieve consultation; or

19.5.2 following consultation with the other Councils and having taken their views into account.

20 WAIVER AND SEVERABILITY

20.1 A failure or delay in exercising any rights, powers or privileges under this Agreement will not operate as a waiver of them. The single or partial exercise of any right, power or privilege does not prevent any other exercise of it or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise). Any waiver of a breach of this Agreement is not to be effective unless given in writing signed by the Council waiving its entitlement. No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Agreement.

20.2 If any term of this Agreement is illegal, void or unenforceable the remainder of this Agreement will continue in force as though that term had not been included in it.

21 CONFLICTS OF INTEREST

21.1 If any situation arises where there is an actual or potential conflict of interest or a perceived conflict of interest between the Participating Councils or any of the officers of the Participating Councils then such conflict of interest shall be drawn to the attention of the Monitoring Officer of the relevant Council, in writing, specifying the details of the actual, potential or perceived conflict.

- 21.2 Upon receipt of written notice of such a conflict the Monitoring Officer shall advise the Monitoring Officer of the other Councils and the Monitoring Officers shall:
- 21.2.1 consider the position in relation to their own Council; and
 - 21.2.2 prepare recommendations for consideration by the relevant Council as to how such a conflict may be managed or avoided or other appropriate action with a view to ensuring that officers or any Council are not compromised in performing their obligations under this Agreement;
- 21.3 The Monitoring Officer of the Lead Council shall keep a record specifying the details of all actual, potential or perceived conflicts of interest and how each one was managed or resolved.

22 ENTIRE AGREEMENT

- 22.1 This Agreement sets out the whole agreement between the Participating Councils in relation to the Services. It supersedes the existing arrangements and invalidates all other commitments, representations and warranties relating to its subject matter which any Council has made orally or in writing.
- 22.2 Each Council warrants that it has not entered into this Agreement on the basis of any representation made by the other except to the extent that such representation is expressly included in it (but nothing in this Clause 22 excludes any liability for fraudulent misrepresentation).
- 22.3 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by any of the Participating Partners from any competent authority the remaining provisions of this Agreement shall remain in full force and effect.

23 EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE

- 23.1 Nothing in this Agreement is to require any Council to act in anyway which is inconsistent with its obligations as a local authority.
- 23.2 Each Council subject to Clause 23.1 shall do all things and execute all further documents that the other may reasonably require to give effect to this Agreement.

24 NO PARTNERSHIP OR AGENCY

24.1 Nothing in this Agreement is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other legislation concerning partnerships or limited liability partnerships.

24.2 No Council shall hold itself out as the agent of the other or have any authority to bind the other except to the extent that this Agreement expressly provides otherwise.

25 THIRD PARTIES

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

26 VARIATIONS

26.1 Any variations to this Agreement shall only be effective where agreed in writing by the Participating Councils.

27 ASSIGNMENT AND SUBCONTRACTING

27.1 No Council may transfer, assign or pledge its rights or obligations under this Agreement (without the consent of the other Councils).

28 GOVERNING LAW AND ENFORCEMENT

28.1 The formation, construction, performance, validity and all aspects of this Agreement are to be governed by English law and agree to submit to the exclusive jurisdiction of the courts of England and Wales.

28.2 The rights and remedies given by this Agreement are cumulative and do not exclude any other rights or remedies given by law or under this Agreement.

29 NOTICES

29.1 Notices or other communications under this Agreement will be duly served if given by and sent to the Lead Council of each of the Participating Councils to be served in accordance with the following table with the date of service and method of proof being as set out in it:

Method of service	Date of service	Proof of service
--------------------------	------------------------	-------------------------

Personal delivery to the nominated representative	Day of delivery	Proof of handing to the nominated representative
Personal delivery of a letter addressed to the nominated representative at the address for service.	Day of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter.	Proof of delivery.
First class letter addressed to the nominated representative at the address for service.	48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day thereafter.	Proof of posting unless returned through the Post Office undelivered service within twenty one (21) days of posting.
Email if sent to the e-mail address given by a party to the other as being the designated e-mail address for the service of notices	10:0 on the next Working Day	Unless an error message or 'out of office' message is received by the sender

29.2 Each Council's address for service is the address set out at the start of this Agreement or such other address as it notifies to the other in writing.

29.3 The officer for the receipt of notices under this Agreement is the Chief Executive of each Council or such other person as that Council nominates by written notice to the other.

IN WITNES hereof the Participating Councils hereto have executed this Agreement as a Deed
the day and year first written

Executed as a Deed by)
THE COMMON SEAL of CHELTENHAM)
BOROUGH COUNCIL being affixed hereto and)
authenticated by the undermentioned person)
authorised by the Council to act for that purpose:)

Authorised Signatory

THE COMMON SEAL of COUNCIL)
FOR THE BOROUGH OF TEWKESBURY)
was hereto affixed In the presence of:)

Borough Solicitor/Authorised Officer

THE COMMON SEAL of THE COUNCIL)
OF THE CITY of GLOUCESTER)
was hereto affixed In the presence of:)

Council Solicitor/Authorised Officer

THE COMMON SEAL of)
GLOUCESTERSHIRE COUNTY)
COUNCIL)
was hereto affixed In the presence of:)

Head of Legal Services

SCHEDULE 1

THE SERVICES

The Lead Council shall undertake the following services:

Employer

To employ the following posts:

- the JCS Planning Policy Manager;
- the JCS Officer; and
- any other dedicated JCS resource required by the Participating Councils.

Accounting Body

- To hold and monitor the budget in the respect of the Services
- To retain a full audit trail of income and expenditure in respect of the Services.

Procurement of the Services

- To prepare tender documentation for the provision of any works, goods, consultancies and services pursuant to its obligations to provide the Services.
- To undertake procurement exercises in accordance with the Public Contract Regulations 2015 and its own contract rules as appropriate.
- To submit to the Task Group tenders for evaluation and to identify a single tender that will be recommended for award by the Lead Council.
- To enter into Service Agreements on behalf of the relevant Participating Councils.

Communications

- To host the JCS website and email address and provide media and communications support.

Support Services

- To provide administrative, Human Resources, Finance, ICT and legal services to support this partnership arrangement and this Agreement.

DRAFT

SCHEDULE 2

GOVERNANCE STRUCTURE

Task Group

Membership:

- JCS Planning Policy Manager (Chair)
- Team leaders (or equivalent) of each of the Planning Policy Teams of the Participating Councils;
- appropriate representation from the County Council's Economic Growth and Strategic Planning Team;
- Senior Planner; and
- JCS Manager (as required).

Main responsibilities of the Group are to deliver tasks and programme in line with the project plan for the JCS. Including but not limited to:

- the evaluation of tenders for delivery of the Services;
- the appointment of Staff;
- jointly preparing and supporting the delivery of supporting evidence and jointly preparing the review of JCS.

This Group meets on a bi-weekly basis

Steering Group

Membership:

- JCS Planning Policy Manager (Chair)
- Heads of Planning and Development of the Participating Councils;
- Lead Commissioner for Strategic Infrastructure for Gloucestershire County Council; and
- JCS Manager (as required)
- Other Task Group members, as required.

Main responsibilities of the Group are to advise on resource, delivery and key issues and to oversee programme management. It also deals with matters referred to it by Task Group for decision.

This Group meets on a monthly basis

Strategic Programme Board

Membership:

- Senior Reporting Officer (SRO) who shall be the Chief Executive of the Lead Council (Chair),
- a representative from each Participating Council at Chief Executive or lead planner level.

The JCS Planning Policy Manager also attends and sets the agenda with agreement from the SRO.

Other key stakeholders are invited to attend as appropriate according to the agenda.

The Strategic Programme Board take an overarching, strategic overview of the entire joint working programme, including the development of the JCS and related projects focused on the delivery of the JCS. The main function of the board is to sponsor and champion the joint working process and related projects within the programme, also to oversee the budget for the Joint Core Strategy.

This Board meets on a bi-monthly basis.

Joint Advisory Group

Membership:

- Lead member of each Council (chair to be Lead of host authority for the meeting)
- Chief Executive (or alternative senior manager) of each Council

The JCS Planning Policy Manager also attends and sets the agenda with agreement from the SRO.

Other key stakeholders are invited to attend as appropriate to the agenda.

The Joint Advisory Group is the highest decision making group on the JCS before full Council approval is sought. Key decisions on plan making that cannot be decided through officer working groups alone are taken by this Group.

The group meets on a bi-monthly basis.

Member Liaison Group

Membership:

- Cross party, cross boundary membership.
- Group Leaders of the 3 District Councils, and the County Council.

Members unable to attend are requested to send an appropriate substitute. The JCS Planning Policy Manager also attends and sets the agenda with agreement with the SRO and the Chair.

The Group is independently chaired, by somebody appointed from outside of the Joint Core Strategy.

The role of the group is to be:

- Political sponsors of the joint working process and its related projects within the programme.
- Providers of political advice and guidance to the programme, ensuring that officers are aware of any issues or changes that may impact on the programme.
- Ensure the smooth flow of information between the joint working programme and the authorities.
- Act as a sounding board for the JCS officer groups.
- Ensure the district councils have accurate information on which to base decision making.

This is not a decision making body.

The group meet on a bi-monthly basis, all meetings are minuted.

SCHEDULE 3

PROCESSING OF PERSONAL DATA OBLIGATIONS

1. Obligations of the Parties

- 1.1. The Participating Councils acknowledge that for the purposes of the Data Protection Legislation, the Participating Councils are Joint Controllers and the Lead Council will take on the major role in processing Personal Data.
- 1.2. The Lead Council shall process the Personal Data on behalf of the Participating Councils only to the extent, and in such a manner, as is necessary for the purposes specified in the Appendix to this Schedule 2. The Lead Council will keep a record of any processing of Personal Data it carries out on behalf of the Participating Councils.
- 1.3. Where the Lead Council is collecting Personal Data on behalf of the Participating Councils, the Lead Council shall provide a privacy notice informing the Data Subject of the identity of the Joint Controller and any Processors, the purpose or purposes for which the Data Subject's Personal Data will be processed and any other information required under the Data Protection Legislation and any other information which is deemed necessary having regard to the specific circumstances in which the Personal Data is, or is to be, processed to enable processing in respect of the Data Subject to be fair.
- 1.4. If the Lead Council or one of the other Participating Councils receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to any of the Participating Councils compliance with the Data Protection Legislation in relating to this Agreement, it shall immediately notify the Lead Council and the parties will fully co-operation and assistance each other in relation to any such complaint, notice or communication including providing full details and copies of the complaint, communication or request and providing such assistance in a timely manner so that the Participating Councils can comply to their obligation within the timescales set out in the Data Protection Legislation;
- 1.5. The Lead Council shall not transfer the Personal Data outside the European Economic Area without the prior written agreement of the Participating Councils.
- 1.6. The Lead Council will promptly and without undue delay notify the Participating Councils if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Lead Council will restore such Personal Data at its own expense.
- 1.7. The Lead Council will immediately and without undue delay notify the Participating Councils if it becomes aware of:
 - a) any accidental, unauthorised or unlawful processing of the Personal Data; or
 - b) any Personal Data Breach.
- 1.8. Where the Lead Council becomes aware of (a) and/or (b) above, it shall, without undue delay, also provide the Participating Councils with the following information:
 - a) description of the nature of (a) and/or (b), including the categories and approximate number of both Data Subjects and Personal Data records concerned;
 - b) the likely consequences; and
 - c) description of the measures taken, or proposed to be taken to address (a) and/or (b) above, including measures to mitigate its possible adverse effects.

- 1.9. Immediately following any unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. The Participating Councils will reasonably co-operate with the Lead Council's handling of the matter, including:
- a) assisting with any investigation;
 - b) providing the Lead Council with physical access to any facilities and operations affected;
 - c) facilitating interviews with the Participating Partner's employees, former employees and others involved in the matter;
 - d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Participating Councils; and
 - e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or unlawful Personal Data processing.
- 1.10. The Parties agrees that the Participating Councils acting as Joint Controller shall jointly determine:
- a) whether to provide notice of the Personal Data Breach to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others, as required by law or regulation or in the Participating Partner's discretion, including the contents and delivery method of the notice; and
 - b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
- 1.11. The Joint Controllers will cover all reasonable expenses associated with the performance of the obligations under clause 1.9 and clause 1.11 unless the matter arose from one of the Participating Councils specific instructions, negligence, wilful act or default or breach of this Agreement, in which case that Participating Partner will cover all reasonable expenses.

2. Access to Personal Data

- 2.1. Each Participating Councils shall ensure that access to the Personal Data is limited to:
- a) those employees, Service Providers and Participating Council's employees who need access to the Personal Data to meet the needs of this Agreement; and
 - b) in the case of any access by any employees, Service Provider and Participating Councils employees, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties.
- 2.2. Each Participating Councils shall ensure that its employees and the Service Providers:
- a) do not process Personal Data except in accordance with this Agreement and particularly the appendix to this Schedule
 - b) are informed of the confidential nature of the Personal Data;
 - c) have undertaken adequate training in the laws relating to and the use, care, protection and handling of Personal Data; and
 - d) are aware both of their duties and their personal duties and obligations under such laws and this Agreement.

3. Rights of the Data Subject

- 3.1. The Lead Council shall notify the Participating Councils within 1 working day if it
 - a) Receives a request from a Data Subject for access to their Personal Data.
 - b) Receives a request to rectify, block or erase any Personal Data;
 - c) Receives any other request, complaint or communication relating to the party's obligations under Data Protection Legislation
- 3.2. The Participating Councils shall provide the Lead Council with full co-operation and assistance in relation to any request made in accordance with clause 3.1.
- 3.3. The Lead Council may disclose the requested Personal Data to a Data Subject in accordance with the Data Protection Legislation or to a third party where the law allows or with the consent of the Data Subject and shall notify the Participating Councils of the action taken

4. Communication from the Information Commissioner and/or third parties

- 4.1. Each Participating Councils shall notify the Lead Council and the other Participating Councils within 1 working day if it;
 - a) Receives any communication from the Information Commissioner or any other regulatory Participating Councils in connection with Personal Data processed under this Agreement;
 - b) Receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.
- 4.2. The Participating Councils shall provide such assistance as is reasonably requested by the Participating Councils to enable the Lead Council to;
 - a) comply with a Data Subject Request and do so within the timescales set out in the Data Protection Legislation; or
 - b) Review and answer any request for information from the Information Commissioner's Office or other third party following a Data Loss Event; or
 - c) answer any request from the Information Commissioner's Office or any consultation by the Participating Councils with the Information Commissioner's Office.

5. Return or Destruction of Personal Data on Termination

- 5.1. On any termination of this agreement for any reason or on expiry of the Term the Participating Councils shall decide whether the Personal Data should continue to be held and by whom or if it is to be destroyed.
- 5.2. If the Participating Councils elects for destruction rather than retention of the Personal data under clause 5.1 above, the Lead Council and the Participating Councils shall as soon as reasonably practicable ensure that all copies of the Personal Data are deleted and paper copies destroyed and within 7 days of the destruction of the Personal Data, shall send a written notice to the Lead Council confirming the destruction of the Personal Data.

Appendix - Purposes for which Personal Data shall be Processed

Description	Details
Subject matter of the processing	For the purpose of administering and consulting on the proposed JCS or any revisions
Duration of the processing	For the terms of this agreement
Type of Personal Data	Names, address, Email address, phone numbers, opinions
Categories of Data Subject	Members of the public, statutory consultees, members of staff, businesses, other local authorities, government departments,
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Destroy the data in accordance with the Participating Councils retention schedule or as requested by the Data Subject during the term of the agreement and in accordance with clause 8 at the end of the agreement

1.

DRAFT

SCHEDULE 4

TUPE PROVISIONS ON TERMINATION

1. The Participating Councils acknowledge that it is their intention, subject to the law, at the termination of this Agreement or if a Council exits this Agreement in accordance with clause 8.2 and the commencement of the Services which are the same or similar to the Services (or any part of them) by any of the Councils or any New Supplier shall with respect to each of the Termination Employees be treated as a relevant transfer for the purposes of the TUPE Regulations and the Participating Councils agree that as a consequence of that relevant transfer the contracts of employment made between the Lead Council and the Termination Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under occupational pension scheme) shall have effect from and after the termination of this Agreement as if originally made between the relevant Council or as appropriate any New Supplier and the Termination Employees.
2. The Participating Councils shall, in good faith and following consultation with Staff and any appropriate representatives within the meaning of TUPE, attempt to agree which of the Staff will be deemed to transfer to each Council or any New Supplier in accordance with the Disaggregation Criteria set out in Paragraph 3, who shall be, for the purposes of this Agreement, the Termination Employees, with the remainder of such employees remaining with the Lead Council. If the Participating Councils have not agreed the identity of the Termination Employees at least 3 months prior to the Termination Date then the Participating Councils shall resolve the matter in accordance with the dispute resolution procedure set out in Clause 16.
3. The Disaggregation Criteria used to determine who shall be the Termination Employees shall be:-
 - (a) the relative proportion of work undertaken for each Council in the 12 month period immediately prior to the Termination Date;
 - (b) the relative costs involved in terminating and/or transferring the Staff, so as to ensure a fair sharing of the costs between the Participating Councils; and
 - (c) the skills of the Staff and requirements after the Termination Date of each Council and/or any New Supplier, so as to ensure a balance of skills and continuity of service for each Council after the Termination Date.

4. The Participating Councils agree to enter good faith negotiations to determine the form of indemnities that will be given to each of the transferee Councils or any New Supplier in relation to the Termination Employees on the Termination Date in connection with and as a result of :-

- (a) the employment or termination of employment of any Termination Employee by the Lead Council up to and including the Termination Date;
- (b) anything done or omitted to be done by or on behalf of the Lead Council in respect of any Termination Employee up to and including the Termination Date which is deemed to have been done or omitted to be done by or on behalf of each Council or any New Supplier in accordance with the TUPE Regulations;
- (c) any failure by the Lead Council to pay any of the Termination Employees any remuneration due or provide any benefits in respect of the period prior to Termination Date;
- (d) any claim by or on behalf of all or any of the Termination Employees arising out of any failure by the Lead Council to comply with its legal obligations in relation to information and consultation pursuant to Regulations 13 and 14 of the TUPE Regulations save insofar as any such failure results from any failure by each Council or any New Supplier to comply with its obligations pursuant to Regulation 13 (4) of the TUPE Regulations.