

DATED

[DATE]

COLLABORATION AGREEMENT

between

NORTH YORKSHIRE COUNTY COUNCIL

and

SELBY DISTRICT COUNCIL

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THIS AGREEMENT is dated [DATE]

PARTIES

- (1) NORTH YORKSHIRE COUNTY COUNCIL of County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD (“NYCC”) and
- (2) SELBY DISTRICT COUNCIL of Civic Centre, Doncaster Road, Selby, North Yorkshire, YO8 9FT (“SDC”)

BACKGROUND

- (A) NYCC and SDC have agreed to investigate how they can collaborate in Service delivery to the mutual benefit of both organisations and the public they serve.
- (B) It was agreed that the closer integration of County and District services would have as its intended overarching outcome:

“The most effective use of the joint resources of the two organisations in providing services to our shared client base.”
- (C) In delivering the intended outcome, closer collaboration would include the following elements:
 - Increased resilience in service delivery by the sharing of resource and the development of expertise.
 - A more focussed delivery of services at a community level.
 - Sharing of back office services in an appropriate and sustainable manner.
 - A seamless delivery of front facing services using appropriate resources in a manner which does not require the recipient to determine whether the service is a District or County function.
 - A reduction in the overall cost of service delivery to the benefit of both organisations.
- (D) The collaborative nature of the arrangements between NYCC and SDC is further demonstrated by the joint SDC Chief Executive and NYCC Assistant Chief Executive Role.
- (E) The Parties have agreed to enter into this Agreement to record the parties’ intentions, the principles of collaboration and the obligations in respect of the Services to be provided.

- (F) The Principles of collaboration are as follows:
- 1) collaborate and co-operate. Establish and adhere to the governance structure set out in this Agreement to ensure that activities are delivered and actions taken as required;
 - 2) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
 - 3) be open and honest. Communicate openly about major concerns, issues or opportunities relating to the Services and this Agreement;
 - 4) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
 - 5) adopt a positive outlook. Behave in a positive, proactive manner;
 - 6) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
 - 7) act in a timely manner;
 - 8) manage stakeholders effectively;
 - 9) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Agreement.; and
 - 10) act in good faith to support compliance with these Principles of Collaboration.
- (G) The Parties agree that the principles of collaboration set out in this agreement fall within the scope of the new EU Procurement Directive within the draft Regulations, which state in Regulation 12(7):

12(7) A contract concluded exclusively between two or more contracting authorities falls outside the scope of this Part where all of the following conditions are fulfilled

- (a) the contract establishes or implements [a] co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;
- (b) the implementation of that co-operation is governed solely by considerations relating to the public interest; and
- (c) the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.

1 **DEFINITIONS AND INTERPRETATION**

ACT has the meaning given to it in clause 4.28;

ADR has the meaning given to it in clause 12.7;

BACKGROUND INTELLECTUAL PROPERTY

means all technical know-how and information known to either Party at the date of this Agreement of a confidential nature not in the public domain, together with all intellectual property rights owned by or licensed to either Party at the date of this Agreement and, following the date of this Agreement, all technical know-how and information of a confidential nature (prior to it coming into the public domain) and intellectual property rights owned by or licensed to either Party which is not Foreground Intellectual Property;

CHANGE means an alteration to the Service;

COLLABORATION means the arrangements between the Parties to collaborate in service delivery to the mutual benefit of both organisations and the public in accordance with the Principles of Collaboration;

COMMENCEMENT DATE [Date];

CONTRACT STANDARDS means the Services are delivered:

- (i) in accordance with the Service Levels set out in the Schedules;
- (i) with due skill, care and diligence in accordance with the highest professional standards and industry practice; and
- (iii) generally to the Party's satisfaction;

DISPUTE has the meaning given to it in clause 12.1;

EIR	has the meaning given to it in clause 4.32;
EQUALITIES LEGISLATION	has the meaning given to it in clause 4.28;
EQUIPMENT	means any equipment required in the provision of individual Services as set out in the relevant Schedule
EVENT OF DEFAULT	has the meaning given to it in clause 7.2;
EXIT PLAN	means the time schedule and sequence of events for ceasing the provision of the individual Services, as appropriate;
FORCE MAJEURE	has the meaning given to it in clause 11.1;
FOIA	has the meaning given to it in clause 4.32;
FOREGROUND INTELLECTUAL PROPERTY	means all information know how, results, designs, inventions and other matter capable of being the subject of intellectual property rights which is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of providing the Services;
IMPLEMENTATION PLAN	means the time schedule and sequence of events for commencing the provision of the individual Services, as appropriate;
INFORMATION	has the meaning given to it in the FOIA;
LAW	means: <ul style="list-style-type: none"> (a) any Act of Parliament; (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;

(c) any exercise of the Royal Prerogative; and

(d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in force in the United Kingdom;

MINIMUM TERM means the minimum period (if any) for the provision of the individual Services to either Party as stated in the relevant Schedule;

NYCC REPRESENTATIVE means the person referred to in clause 3.5.1;

PRINCIPLES OF COLLABORATION means the principles set out in Background, Part E;

REIMBURSEMENT COSTS means the costs to be paid by either party to the other for the provision of the Services as appropriate and as set out in each Schedule;

REGULATIONS means the Public Contracts Regulations 2006;

REQUESTING PARTY has the meaning given to it in clause 4.33;

SCHEDULE means the schedules to this agreement which may be added to from time to time

SDC REPRESENTATIVE means the person referred to in clause 3.5.2;

SERVICE COMMENCEMENT DATE means the individual date of the commencement of the provision of each of the Services as set out in the relevant Schedule;

SERVICE REPRESENTATIVE means the person referred to in clause

3.5.5 and set out in the relevant Schedule;

SERVICES together means the services to be provided by NYCC to SDC or SDC to NYCC, as set out in the relevant Schedule;

STEERING GROUP means the strategic group overseeing the governance of the Collaboration as set out in clause 3;

TERM means the period of five (5) years from the Commencement Date subject to the provisions of clause 2.3;

USER means the individuals who access and use the Services;

WORKING DAY means Monday to Friday, 0900 to 1700, excluding public holidays

1.1 This Agreement shall be governed by English Law, and be subject to the exclusive jurisdiction of the English Courts.

1.2 References to: -

1.2.1 any Act, Order, Regulation, Statutory Instrument, etc, shall be construed as a reference to the Act, Order, Regulation or Statutory Instrument as amended, replaced, consolidated or re-enacted;.

1.2.2 one gender include any other gender;

1.2.3 persons include corporations;

1.2.4 singular includes the plural;

1.2.5 clauses are to clauses in the contract; and

1.2.6 NYCC's staff include NYCC's partners, directors, employees, agents and sub-contractors.

1.2.7 SDC's staff include SDC's partners, directors, employees, agents and sub-contractors.

1.3 This Agreement and the Schedules represent the entire agreement between NYCC and SDC and supersedes all other undertakings, statements and agreements relating to the subject matter of this Agreement.

- 1.4 The Schedules to this Agreement, together with the documents referred to in them, form an integral part of this Agreement.
- 1.5 In the event of any conflict or inconsistency between this Agreement and any conditions detailed in the Schedules to this Agreement the following order of precedence shall apply:
- 1.5.1 this Agreement; and
- 1.5.2 the Schedules
- 1.6 No deletion from, addition to, or variation of this Agreement or the Schedules shall be valid unless agreed in writing and signed by authorised signatories on behalf of NYCC and SDC.

2 **COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall start on the Commencement Date and shall continue for the Term subject to the terms of this Agreement.
- 2.2 The provision of the Services shall commence on the relevant Services Commencement Date and the Party providing the individual Service shall provide that Service from the relevant Service Commencement Date for the term specified in the individual Schedules.

At least 6 months before [Date] 2020 the Parties may agree to extend the Term for a further 3 years commencing on [Date] 2020. If the Term is extended, then at least 6 months before [Date] 2023 the Parties may also agree to extend the Term for a further 2 years commencing on [Date] 2023.

- 2.3 The Parties shall continue to provide the Services in accordance with the terms of this Agreement (except for the option to extend in clause 2.3 above) for the Term(s) specified.

3 **GOVERNANCE**

3.1 *Overview*

- 3.1.1 The governance structure set out in Schedule 1 and defined below provides a structure for the development and delivery the Collaboration.

3.2 *Guiding principles*

- 3.2.1 The following guiding principles are agreed. The Collaboration's governance will:
- a) provide strategic oversight, co-ordination and direction for the collaboration;
 - b) provide a robust monitoring role to the overall progress of the collaborations project portfolio;
 - c) provide coherent, timely and efficient decision-making;

- d) ensure that decisions are enacted appropriately within individual authorities; and
- e) correspond with the key features of the Collaboration governance arrangements as set out in this Agreement.

3.3 *Steering Group*

3.3.1 The Steering Group shall meet on a quarterly basis or any other frequency agreed between the Parties to:

3.3.1.1 provide strategic management at Collaboration and workstream level;

3.3.1.2 provide assurance that the Principles of Collaboration are being met and that the Collaboration is performing within the boundaries set by the Steering Group;

3.3.1.3 monitor performance of this Agreement including the review of the overall partnering arrangements and the individual Services; and

3.3.1.4 consider any reports of the individual Service review meetings.

3.3.2 The Steering Group consists of representatives from each of the Parties. The Steering Group shall have responsibility for the addition or removal of Services and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Steering Group. The core Steering Group members are:

Richard Flinton – NYCC Chief Executive

Mary Weastell – SDC Chief Executive & NYCC Assistant Chief Executive – Central Services

Justine Brooksbank – NYCC Assistant Chief Executive – Human Resources & Organisational Development

Jonathan Lund – SDC Deputy Chief Executive

Janette Barlow – SDC Director

Kevin Brown – NYCC Senior Project Manager

The Chief Executive officers shall be entitled to nominate replacements where relevant and appropriate. The Steering Group members shall each be entitled to nominate a substitute where appropriate.

3.4 *Reporting*

- 3.4.1 Minutes and actions will be recorded for each Steering Group meeting. Any additional reporting requirement shall be at the discretion of the Steering Group.

3.5 *Representatives*

- 3.5.1 NYCC shall appoint the NYCC Representative who shall have full authority to act on behalf of NYCC. In the event that the NYCC Representative changes NYCC shall inform SDC of the identity of the new NYCC Representative.
- 3.5.2 SDC shall appoint a SDC Representative who shall have full authority to act on behalf of SDC. In the event that the SDC Representative changes SDC shall inform NYCC of the identity of the new SDC Representative.
- 3.5.3 Both parties shall be entitled to treat any act of a NYCC Representative or a SDC Representative in connection with this Agreement as being expressly authorised by NYCC or SDC as the case may be and none of NYCC or SDC shall be required to determine whether any express authority has in fact been given to a NYCC Representative or a SDC Representative.
- 3.5.4 Any NYCC Representative or SDC Representative may at any time authorise any other person to exercise the functions, powers and authority delegated to the representative either generally or specifically.
- 3.5.5 The Parties shall each appoint a Service Representative in respect of each individual Service. In the event that there is no Service Representative appointed for an individual Service the relevant NYCC Representative or SDC Representative shall be the Service Representative for that Service.

4 **OBLIGATIONS OF THE PARTIES**

PRINCIPLES OF COLLABORATION

- 4.1 The Parties agree that to the extent which is reasonably practicable this Agreement shall operate on a collaborative basis and to this end each party agrees with the other to use all reasonable endeavours to adhere to the Principles of Collaboration.

PROVISION OF THE SERVICES

- 4.2 The Parties agree to provide the Services as set out in the Schedules in accordance with the Contract Standards.
- 4.3 If, following the Service Commencement Date, the Services fail to be provided in accordance with the Contract Standards, NYCC or SDC shall:

- 4.3.1 where applicable, attempt to remedy the failure as set out in the relevant Schedule for the individual Service; and
- 4.3.2 arrange all such additional resources as are necessary to perform the Services in accordance with the Contract Standards as early as practicable thereafter at no additional charge to the injured Party.

PAYMENT

- 4.4 Each Party shall pay the Reimbursement Costs in accordance with the relevant part of each Schedule. Such payment shall be made by BACS wherever possible and be a straight pass through of costs.
- 4.5 Each Party shall be liable to pay such Value Added Tax as may be properly chargeable in respect of the supply of the Services to the Party.
- 4.6 Invoices shall be in the format set out in the relevant part of each Schedule, and each Party will pay all undisputed elements of an invoice within 30 days of receipt of an undisputed invoice.
- 4.7 Any savings applicable to a specific project will be approved on a project by project basis and will be calculated and apportioned as per any project business case / agreement.

REVIEW MEETINGS

- 4.8 The NYCC Representative(s) and SDC Representative(s) shall attend regular review meetings with the individual Service Representatives to:
 - 4.8.1 review and discuss any reports relating to the individual Services;
 - 4.8.2 share any lessons learned;
 - 4.8.3 monitor performance of the individual Services and report to the Steering Group in respect of performance; and
 - 4.8.4 consider any other matters reasonably required by the other Party.
- 4.9 Notwithstanding clause 6.2, if any Party reasonably considers a circumstance constitutes an emergency or otherwise requires immediate resolution that Party may by notice require that a review meeting be held as soon as practicable and in any event within five (5) Working Days following that notice.
- 4.10 Minutes and actions will be recorded for each Service review meeting and relevant reports summarising updates on projects in implementation, performance information and outcomes on on-going projects and information regarding any disputes will be presented to the Steering Group when required. Any additional reporting requirement shall be at the discretion of the Service Representatives.

BEST VALUE AND CONTINUOUS IMPROVEMENT

- 4.11 Each Party is subject to the best value duty imposed on local authorities by Section 3 of the Local Government Act 1999.

HEALTH AND SAFETY

- 4.12 Each Party shall comply with the requirements of the Health and Safety at Work Act 1974 insofar as they apply to the provision of the Services and throughout the period of this Agreement each party shall have in place a health and safety policy which complies with all statutory requirements.

DATA PROTECTION

- 4.13 In this clause “DPA” means the Data Protection Act 1998 and “Personal Data” means information defined as such in DPA which is supplied and/or processed by one Party on behalf of the other.
- 4.14 Each Party shall comply with the DPA principles contained within the DPA and shall observe any other obligation under the DPA which arises in connection with this Agreement.
- 4.15 In respect of any data which arises as a result of the operation of this Agreement, Personal Data is owned by the Party in receipt of the Service (“Receiving Party”). The Receiving Party is the Data Controllers and the Party supplying the Service (“the Supplying Party”) is the Data Processor under DPA.
- 4.16 Each Party shall maintain appropriate confidentiality and security arrangements in respect of all Personal Data arising as a result of the operation of this Agreement and shall comply with the principles of DPA when processing that Personal Data.
- 4.17 Each Supplying Party shall ensure that Personal Data will:
- 4.17.1 be processed fairly and lawfully in accordance with the requirements of the first principle of the DPA;
 - 4.17.2 be processed only for the purpose of the provision of the Services and will not be processed for any other purpose without the Receiving Party's approval;
 - 4.17.3 be adequate, relevant and not excessive in relation to the purpose specified;
 - 4.17.4 be accurate and, where necessary, kept up to date;
 - 4.17.5 be secured to prevent unauthorised or unlawful processing and to protect against loss, destruction or damage;
 - 4.17.6 be held for only as long as necessary to meet the purpose;

- 4.17.7 not be transferred to any country outside the European Economic Area without the Receiving Party's approval; and
- 4.17.8 be processed in accordance with the rights afforded to individuals under the DPA.
- 4.18 The Parties shall ensure that their staff, agents or sub-contractors who have access to any Party's data comply with the requirements in this clause 6 and shall ensure that such employees, agents or sub-contractors receive appropriate data protection training and understand the responsibilities under the DPA in respect of Personal Data.
- 4.19 If a Party receives any subject request for Personal Data such request will be referred to the relevant Party's Data Protection Officer as soon as practicable after receipt.
- 4.20 If a Party sub-contracts any part of the Services, then that Party shall ensure that any contract or other arrangement with any such sub-contractor shall include a binding legal obligation upon the sub-contractor to comply with the obligations set out in this clause 6. For the avoidance of doubt such sub-contracting shall not relieve a Party of its obligation to comply with this clause 6.
- 4.21 The Supplying Party shall be liable for and shall indemnify each the Receiving Party against all claims, demands, actions, costs, proceedings and liabilities of any sort which a Receiving Party incurs due to a Supplying Party's or any sub-contractor's breach of clauses 6.6 to 6.13.
- 4.22 The Supplying Party shall provide to the Receiving Party, on request, evidence of its compliance with clauses 6.6 to 6.13 to the Receiving Party's reasonable satisfaction.
- 4.23 Each Party shall monitor compliance with clauses 6.6 to 6.13 and non-compliance may constitute a ground for termination of the Agreement.
- 4.24 The obligations set out in this clause shall remain in force notwithstanding termination of this Agreement.

HUMAN RIGHTS ACT AND OTHER LEGISLATION

- 4.25 Each Party shall comply with all other relevant legislation, regulations, codes of practice, guidance and other requirements of any relevant government or governmental agency other provisions relating to the Services including (but without limitation) the Human Rights Act 1998.
- 4.26 Without prejudice to clauses 6.5 to 6.18 (inclusive), where new legislation is enacted during the Term which has the effect of changing the manner in which the Services or any part of them is to be provided, the Supplying Party shall ensure that:
- 4.26.1 Each Party Representative is informed of the nature and effect of such legislation and the changes necessitated by it in the Services;
- 4.26.2 the Services are provided in accordance with such legislation.

RIGHTS OF THIRD PARTIES

- 4.27 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

EQUAL OPPORTUNITIES

- 4.28 Each Party's attention is drawn to the Equality Act 2010 (the "Act"). Each Party shall adopt a policy to comply with the Act and any subsequent legislation in respect of equalities which may be enacted during the Term. (the "Equalities Legislation"). Accordingly no party will discriminate directly or indirectly against any person because of their age, sex, disability, religious beliefs, sexual orientation, colour, race, nationality or national or ethnic origin in relation to decisions to recruit, train, promote, discipline or dismiss employees.
- 4.29 The Parties and any sub-contractor employed by them, shall observe as far as possible, the Commission for Racial Equality's Code of Practice for Employment as approved by Parliament in 2006 and/or any comparable statutory codes relating to the Equalities Legislation. This gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including monitoring of workforce matters and steps that can be taken to encourage people from minority groups to apply for jobs or take up training opportunities.
- 4.30 In the event of any finding of unlawful discrimination being made against the parties during the Term by any court or industrial tribunal or in comparable proceedings in any other jurisdiction, or of an adverse finding in any formal investigation by the Commission for Racial Equality and/or any comparable statutory body relating to the Equalities Legislation over the same period, the relevant Party shall inform the other Party of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 4.31 The Parties shall comply with the Equalities Legislation and shall satisfy the other Party that its working practices do not involve the treatment of one group or individual less favourably than any others because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation on any decision relating to their recruitment or employment with the Party and in relation to the provision of the Services under this Agreement policies on discrimination are set out:
- 4.31.1 in instructions to those concerned with recruitment, training and promotion;
 - 4.31.2 in documents available to employees, recognised trade unions or other representative groups of employees;
 - 4.31.3 in recruitment advertisements or other literature; and
 - 4.31.4 in instructions to those concerned with the provision of the Services.

FREEDOM OF INFORMATION

- 4.32 Each Party acknowledges that the other Party is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with each other (at their own expense) to enable the respective Party to comply with any information disclosure requirements.
- 4.33 The Parties shall make all reasonable efforts to assist each other in meeting their obligations under the FOIA and EIR in respect of the provision of the Services. If a Party (the "Requesting Party") receives an access request under the FOIA and/or EIR the other Party shall, upon request, provide:
- 4.33.1 to the Requesting Party a copy of information requested which is held by the other Parties on behalf of the Requesting Party within a period of five (5) Working Days;
- 4.33.2 access to the relevant Party Representative, within a period of five (5) Working Days, to inspect information held by those parties on behalf of the Requesting Party.
- 4.34 Where a Requesting Party is asked to release information which the other Party believes to be exempt Information under an exemption in the FOIA, it shall state in writing to the Requesting Party the nature of the information and the relevant exemption. The Parties acknowledge that the final decision whether to disclose such information will rest with the Requesting Party and not with any other Party. Nothing contained in this Agreement or any documents or negotiations relating to this Agreement shall prevent the Requesting Party from disclosing any information which (in the Requesting Party's reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOIA.
- 4.35 Each Party shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed by the FOIA and/or the EIR, as applicable.
- 4.36 Each Party shall indemnify the Requesting Party against all claims, demands, actions, costs, proceedings and liabilities that the Requesting Party directly incurs due to the other Party's or any sub-contractor's breach of clauses 6.25 to 6.28 or any part of them.

CONFIDENTIALITY

- 4.37 Each Party shall keep confidential all information obtained from the other party or through its provision or receipt of the Services.
- 4.38 The provisions of clause 6.30 shall not apply to any information which:
- 4.38.1 is or becomes public knowledge (otherwise than by a breach of this clause);
- 4.38.2 was in the possession of the party concerned without restriction as to its disclosure before receiving it from the other Party; or

4.38.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

4.39 Nothing in this clause shall prevent the Parties from disclosing information under or in accordance with any legal requirement, or in accordance with any lawful requirements made by any regulatory body or inspectorate established by law.

4.40 Each Party shall ensure that all employees engaged in the provision or receipt of the Services or otherwise with access to information relating to them will abide by this confidentiality clause.

5 INTELLECTUAL PROPERTY

5.1 For the avoidance of doubt, all Background Intellectual Property and Foreground Intellectual Property relating to or used in connection with the Services shall remain the property of the Party introducing the same.

5.2 Each Party grants to the other Party the non-exclusive, non-transferrable (except in the case of statutory or voluntary re-organisation) royalty free, right and licence to use all Background Intellectual Property and Foreground Intellectual Property so far as it is needed for the Party to use the Services.

6 INSURANCE

6.1 Each Party shall have in place and maintain public liability insurance against its liabilities under this Agreement for death, injury or third party damage for the sum of £10 million in respect of each and every incident in relation to which a claim against it is made.

6.2 Each Party shall have in place and maintain product liability insurance against its liabilities under this Agreement for death, injury or third party property damage for the sum of £10 million in respect of claims made in aggregation in relation to which a claim against it is made.

6.3 Each Party shall have in place and maintain employer's liability insurance against its liabilities under this Agreement for death, injury or third party damage for the sum of £10 million in respect of each and every incident in relation to which a claim against it is made.

6.4 Each Party shall have in place and maintain professional indemnity insurance against its liabilities under this Agreement in an amount of £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences unless stated otherwise in the relevant Schedule.

6.5 Each Party shall supply to the other Party on request documentary evidence of insurance in place to establish the Party's compliance with clauses 6.1 to 6.4 inclusive.

7 LIABILITIES AND INDEMNITIES

- 7.1 The following provisions set out each Party's entire liability (including any liability for the acts and omissions of their respective employees, agents or sub-contractors) to the other Party in respect of:
- 7.1.1 any breach of its contractual obligations under this Agreement; and
 - 7.1.2 any representation, statement or tortuous act or omission, including negligence, arising under or in connection with this Agreement.
- 7.2 Any act or omission on the part of any Party or its employees, agents or sub-contractors, falling within clause 10.1 shall, for the purposes of this clause 10 be an "Event of Default".
- 7.3 Except to the extent permitted by law each Party's liability to any other Party (other than any liability of any Party to pay the Reimbursement Costs for the Services under this Agreement) shall be limited to the total of the Reimbursement Costs payable by one Party to the other under this Agreement.
- 7.4 Subject to the provisions of clause 10.3 no Party is liable to any other Party or to any third party, whether in contract, tort, under statute or otherwise (including each case negligence) or otherwise for any of the following types of loss or damage arising under or in relation to this Agreement:
- 7.4.1 any loss of profits, business contracts, anticipated savings, goodwill or revenue; and/or
 - 7.4.2 any indirect or consequential loss or damage whatsoever.
- even if that Party was advised in advance of the possibility of such loss or damage arising.
- 7.5 Each Party acknowledges and agrees that the provisions of this clause 10 are reasonable and reflected in the amount of Reimbursement Costs, which would be higher without those provisions, and the Parties will accept such risk and/or insure accordingly.

8 **WARRANTY**

- 8.1 NYCC warrants and represents that:
- 8.1.1 it has full power and authority to enter into this Agreement and all necessary approvals and consents have been obtained and are in full force and effect;
 - 8.1.2 its execution of this Agreement does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
 - 8.1.3 it has the right to permit disclosure and use of Confidential Information for the purpose of this Agreement; and

- 8.1.4 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Agreement.
- 8.2 SDC warrants and represents that:
 - 8.2.1 it has full power and authority to enter into this Agreement and all necessary approvals and consents have been obtained and are in full force and effect;
 - 8.2.2 its execution of this Agreement does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a party or which is binding on it;
 - 8.2.3 it has the right to permit disclosure and use of Confidential Information for the purpose of this Agreement; and
 - 8.2.4 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Agreement.
- 8.3 Each Party provides warranties to the other Party in respect of the individual Services as set out in the Schedules.

9 **TERMINATION AND EXIT**

- 9.1 Either Party may terminate this Agreement or an individual Service with immediate effect without notice if the other Party:
 - 9.1.1 commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or
 - 9.1.2 commits a material breach of this Agreement which cannot be remedied.
- 9.2 Either Party may terminate this Agreement by giving at least 6 months' notice in writing to the other Party. The provisions of clause 10 shall apply.
- 9.3 Either Party may terminate an individual Service in accordance with the terms set out in the relevant Schedule for that Service. In the event that the Schedule for the individual Service does not contain provisions in respect of termination, clause 9.2 above shall apply.

10 **CONSEQUENCES OF EXIT AND TERMINATION**

- 10.1 If this Agreement expires or is terminated under clause 9, in whole or in part, the provisions of the Exit Plan shall come into effect and the Parties shall cooperate fully with each other to ensure an orderly wind down of the provision of the Services.
- 10.2 If either Party terminates this Agreement, in whole or in part, pursuant to clause 9 then, in addition to any other rights or remedies which the

terminating Party might have against the other Party, the provisions in respect of consequences of termination of an individual Service as set out in the relevant Schedule for that Service shall apply.

11 FORCE MAJEURE

- 11.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood or any disaster.
- 11.2 No Party shall in any circumstances be liable to the other Party for any loss of any kind whatsoever, including but not limited to any damages or abatement of Reimbursement Costs, whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations hereunder for a period in excess of six (6) months, either Party may Exit this Agreement.
- 11.3 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other Party by the most expeditious method then available and shall inform the other Party of the period for which it is estimated that such failure or delay shall continue.
- 11.4 It is expressly agreed that any failure by a Party to perform, or any delay by a Party in performing, its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which a Party has entered into any contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

12 DISPUTE RESOLUTION

- 12.1 Any dispute or difference (in this clause "Dispute") which arises between NYCC and SDC as to the construction of this Agreement, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Agreement shall be determined in accordance with the provisions of this clause 15.
- 12.2 In the first instance the individual Service Representatives shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.
- 12.3 If the individual Service Representatives (as applicable) are unable to reach an agreement following the consultation referred to in clause 12.2 then the matter shall be referred to the NYCC Representative and the SDC

Representative (as applicable) who shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.

- 12.4 If the NYCC Representative and the SDC Representative (as applicable) are unable to reach an agreement following the consultation referred to in clause 12.3 then the matter shall be referred to the Steering Group who shall use all reasonable endeavours to resolve such dispute
- 12.5 If the Steering Group is unable to reach an agreement following the consultation referred to in clause 12.4 then the matter shall be referred to the respective Chief Executives of the Parties who shall use all reasonable endeavours to resolve such dispute.
- 12.6 If the Parties are unable to reach an agreement following the consultation referred to in clause 12.4, NYCC and SDC (as applicable) shall submit the dispute to a neutral adviser appointed by agreement between them to assist them in resolving the dispute. Either Party may give written notice to the other describing the nature of the dispute, requiring it to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement within fourteen (14) days after such notice is given or, if no such notice is given within twenty-eight (28) days after the dispute has arisen, either Party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to both Parties.
- 12.7 The Parties shall, with the assistance of the neutral adviser appointed in accordance with clause 12.5, seek to resolve the Dispute by using an alternative dispute resolution (in this clause "ADR") procedure agreed between the Parties or, in default of such agreement established by a mutual adviser.
- 12.8 If the Parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the dispute, such agreement shall be recorded in writing and signed by the Parties and, if applicable, the neutral adviser and it shall be binding upon each Party.
- 12.9 If:
- 12.9.1 the Dispute has not been resolved to the satisfaction of the Parties within sixty (60) days after the appointment of the neutral adviser; or
- 12.9.2 either Party fails or refuses to agree or participate in the ADR procedure; or
- 12.9.3 in any event the dispute is not resolved within ninety (90) days after it has arisen
- then the dispute shall be resolved under clause 12.9.
- 12.10 Any dispute which is to be resolved under this clause 12.9 shall be resolved by the decision of an expert whose decision shall, save as to manifest error, be final and binding on the Parties. The expert shall be appointed by agreement between the parties or, if within ten (10) days after the dispute falls to be resolved, the parties have been unable to agree then on application of

either of the Parties to the President for the time being of the Chartered Institute of Arbitrators.

- 12.11 In the event that any costs and fees incurred by the Parties are not met in accordance with an agreement reached through the ADR procedure or in accordance with a decision reached by the expert under clause 12.9 each Party shall be responsible for its own costs.

13 **VARIATIONS**

- 13.1 Without prejudice to the other relevant provisions of this Agreement, either Party may at any time(s) during the Term request a variation in, in addition to or a Change to the Services. Such request may be by reason of the impact of new legislation, changes in operational requirements or for any other reason.

14 **ASSIGNMENT AND SUB CONTRACTING**

- 14.1 Neither Party shall assign or transfer this Agreement or any of its obligations or rights under this Agreement in whole or in part (save to any legal entity with which a Party merges or which is a successor body to the Party and for the avoidance of doubt this includes by reason of statutory or voluntary reorganisation of the Party) without the prior written consent of the other Party.

15 **NOTICES**

- 15.1 Notices under this Agreement must be in writing and may be served by either fax, personal delivery or recorded delivery to the addresses referred to in this Agreement.

16 **WAIVER**

- 16.1 Failure by any Party to enforce the provisions of this Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or the right of the Party concerned to enforce any provision in this Agreement.

17 **PUBLICITY**

- 17.1 Each Party agrees not to use any other Party's name or the existence of this Agreement in any publicity materials or advertising without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

18 **TUPE**

- 18.1 The Parties agree and acknowledge that TUPE may apply to the Services transferred under this Agreement. In the event that TUPE does apply the receiving Party agrees to accept the employees into employment on the same terms and conditions and length of service as the employees enjoyed with the transferring Party prior to the transfer date.

- 18.2 The Parties shall indemnify each other and keep each other indemnified against any losses incurred by the receiving Party in connection with any claim or demand by any transferring employee under TUPE in relation to the Services and/or this Agreement arising on or prior to the transfer date notwithstanding whether such claim or demand is brought by a transferring employee before, on or after the transfer date.
- 18.3 The Parties shall indemnify each other against all liability, loss, damages, injury, claims, costs and expenses awarded against the transferring Party as a result of the employment of the transferring employee by the receiving Party or for the breach of any requirements of TUPE or of this clause 18.

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties on the date first above written

Signed for and on behalf of
NORTH YORKSHIRE COUNTY COUNCIL

Signature:

Name:

Position:

Date:

Signature:

Name:

Position:

Date:

Signed for and on behalf of
SELBY DISTRICT COUNCIL

Signature:

Name:

Position:

Date:

Signature:

Name:

Position:

Date:

CONTACT

NYCC

Name:

Office Address:

.....

Tel No:

E-mail Address:

SDC

Name:

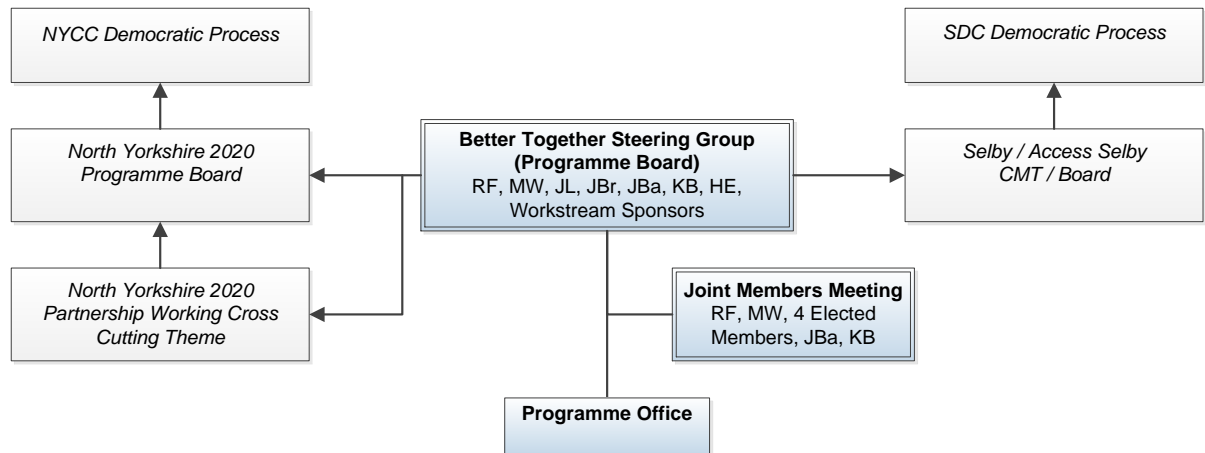
Office Address:

.....

Tel No:

E-mail Address:

Schedule 1. Governance Structure



Schedule 2. Services

- 1 The Services to be provided by NYCC to SDC are as follows:
 - 1.1 Schedule 3 – VOIP Telephony System
 - 1.2 Schedule 4 - CRM System
 - 1.3 Schedule 5 - Hosting Website
 - 1.4 Schedule 6 – Hosting Intranet
 - 1.5 Schedule 7 – IKEN
 - 1.6 Schedule 8 – Finance sweeping
 - 1.7 Schedule 9 – Health & Safety
 - 1.8 Schedule 10 - Payroll

- 2 The Services to be provided by SDC to NYCC are as follows:
 - 2.1 Schedule 11 – Registrars Service

- 3 The Specification in respect of each Service shall be largely in the form set out in Annex 1.

ANNEX 1 - TEMPLATE SPECIFICATION

[NAME OF SERVICE]

Service Level Agreement and Service Specification [2015/16]

OVERVIEW AND DESCRIPTION OF THE SERVICE

[insert a brief description of the service]

SERVICE OPTIONS

[set out the specific elements of the service]

SERVICE STANDARDS

[set out any service levels to be achieved]

COMMENCEMENT DATE AND NOTICE PERIODS

[set out the commencement date and notice period associated with the service]

CHARGES

[set out the charges and indexation (if any) here]

TERMINATION PROVISIONS

[set out the termination provisions here]

WARRANTIES

[set out the warranties here]

MONITORING

[set out the monitoring provisions here]

COMMENDATIONS OR CONCERNS

[suggested wording:

If you have a commendation or concern please contact [NAME] – Service Manager. Any concerns will be investigated quickly and sensitively and in full liaison with the School, and any commendations received shared with the Adviser and team.

Any concerns will be addressed by the Service Manager and it is expected that appropriate agreement can be reached with the customer. However, in the unusual event of this not being achieved, the matter will be referred to [NAME] Senior Manager (Tel: [NUMBER] or email: [EMAIL ADDRESS]) who will liaise between the customer, the Service Manager and as necessary the Steering Group.]

CONTACT POINTS

Job Title	Name	Telephone	E-mail

EQUALITIES STATEMENT ETC

The [NAME OF SERVICE] is fully committed to the County Council's Equality Policy. This includes a commitment to:-

- promoting equality
- challenging and eradicating discrimination both in employment and service delivery
- providing responsive and accessible services to all customers
- working towards the Equalities Standards and ensuring that all officers consider equalities issues in their work and make the promotion of equal opportunities a systematic process throughout the organisation

For full text please refer to the Equality Policy Statement which can be found on the County Council's "People Matters" website.

Schedule 3. VOIP TELEPHONY SYSTEM

SERVICE LEVEL AGREEMENT

1 PURPOSE AND SCOPE

1.1 This agreement applies to the Services described below and is a formal statement of the standard support arrangements in respect of the Services provided by NYCC.

1.2 The Services to be provided are:

1.2.1 VOIP telephony System

(a) To include support and configuration of all NYCC installed Mitel Telephony equipment.

(b) Any additional non NYCC installed Telephone is the Customer's own responsibility.

(c) In respect of VOIP Telephony System this SLA shall take effect from 24th November 2013 and shall remain in force until 31 March 2017 unless it is terminated at any time in accordance with clause 18 of this Agreement or clause 9 of this Schedule 1

1.2.3 Redbox Call Recording

(a) Shared Call Recording system that records contact centre agent calls.

1.3 This SLA establishes:

1.3.1 the responsibilities of the parties to the agreement

1.3.2 the parameters under which the Services are delivered

1.3.3 a mechanism for routing reporting of performance

1.3.4 details of how disputes and escalations will be managed.

2 RESPONSIBILITIES

2.1 By entering into this agreement NYCC will endeavour to:

2.1.1 deliver the Services to the standards and with all reasonable skill and care as defined in this agreement

2.1.2 report details of NYCC performance to the Customer on a regular basis

2.1.3 continue to improve and develop the Services

- 2.1.4 ensure where possible that all supporting licenses, maintenance agreements and support contracts are in place and up to date
 - 2.1.5 manage changes to the Services where reasonable so as to minimise disruption and unplanned downtime
 - 2.1.6 provide initial training, documentation and handover documentation.
 - 2.1.7 Supply the equipment listed in Appendix 1 to this SLA though NYCC or their suppliers shall have a discretion to substitute and replace any of the equipment providing this does not interfere with the provision of the Service. The Customer will be notified of any substitute equipment that may be supplied.
- 2.2 By entering into this agreement the Customer agrees to:
- 2.2.1 adhere to all relevant policies and procedures governing the use of and access to the Services which are available from NYCC upon request
 - 2.2.2 make no changes to any of the installed equipment or Services provided other than via the NYCC ICT Service Desk or their Authorised Officer
 - 2.2.3 investigate faults reported to the Customer's service desk in order to diagnose and assign NYCC faults and report all NYCC faults in a timely manner to the NYCC ICT Service Desk
 - 2.2.4 assist if possible any efforts by NYCC to diagnose and resolve faults and allow access to any equipment needing attention
 - 2.2.5 encourage staff to use self help tools such as password self provisioning
 - 2.2.6 contribute to the maintenance of appropriate Business Continuity Planning (BCP) activity
 - 2.2.7 arrange and pay for any training other than the initial training provided by NYCC
 - 2.2.8 Perform initial diagnosis to any support issue before the Customer's Service Desk calls the NYCC Service Desk as detailed in 3.2.1

3 SERVICE DETAILS

3.1 Service Hours

- 3.1.1 For the purpose of this agreement the service hours are:

Monday to Thursday	08:30 – 17:00 hours
Friday	08:30 – 16:30 hours

Any performance measurements will be based on these hours.

3.2 Support

3.2.1 All requirements for support should be raised via the Customer's own service desk in the first instance. In the event that the requirement for support is in respect of the Service requirements for support should then be raised via the NYCC ICT Service Desk by email at technologyandchange.servicedesk@northyorks.gov.uk or by telephoning 01609 532020 (2020). Only calls from the Customer's Service Desk will be accepted by the NYCC Service Desk.

3.2.2 The NYCC ICT service desk ("NYCC ICT Service Desk") is open during the following hours:

Monday to Thursday: 07:45 – 17:00 hours

Friday: 07:45 – 16:30 hours

4 INCIDENT MANAGEMENT

4.1 An incident is any occasion when normal service is not being delivered or is suffering some degree of degradation.

4.2 Service issues should be reported as outlined in clause 3.2.1. When a service issue is reported to the NYCC Service Desk an incident will be logged and progressed in accordance with the ICT services incident management procedure. Details on how to contact the NYCC ICT Service Desk can be found in section 3.2.

4.3 The priority of an incident is determined by:

4.3.1 Impact – how many users are affected

4.3.2 Urgency – how critical is it that the service is restored

4.4 It is important when logging an incident with the NYCC Service Desk that the impact and urgency are clearly communicated so that the correct priority is assigned.

4.5 The following table details the response, resolution and SLA times of incidents according to priority:

Priority	Measurement*	Response time	Resolution time	SLA
1	>100 users affected	30 mins	6.5 hours	7 hours
2	>10 users affected	2 hours	12 hours	14 hours
3	<10 users affected	6 hours	31 hours	37 hours
4	Work around available	10 hours	30 hours	40 hours

Note: 'hours' refers to working hours based on the service hours detailed in clause 3.1. The resolution time is the maximum time to resolve.

4.6 This measurement is used a guide and an exception will be made where a key service is affected that has less than 100 users. For example a library service may only have a small number of users, but due its public facing nature it will be logged as a high priority.

5 PROBLEM AND MAJOR INCIDENT MANAGEMENT

- 5.1 A problem is raised when an incident reoccurs or there are a number of incidents showing similar symptoms ("Problem"). A major incident is raised when there is a service failure that has a high impact on the Customer's business ("Major Incident").
- 5.2 NYCC ICT Services will proactively analyse Problems and Major Incidents with a view to identifying any trends. They will work with the relevant support teams to determine their root cause to prevent them from re-occurring.
- 5.3 NYCC ICT Services will also ensure that open Problems and Major Incidents are managed in accordance with the Problem and Major Incident processes.
- 5.4 Updates relating to Priority 1 Major Incidents (as defined in clause 4.5) will be made via telephone to the Authorised Officer within 25 minutes of the incident occurring, every hour thereafter, or when new information becomes available.
- 5.5 Updates relating to Priority 2 Major Incidents (as defined in clause 4.5) will be made via telephone to the Authorised Officer within 25 minutes of the incident occurring, every 4 hours thereafter, or when new information becomes available.
- 5.6 Due to the complex nature of Problems which generally require in-depth investigation involving several individuals and third parties, there are no SLA targets associated with Problems.

6 CHANGE MANAGEMENT

- 6.1 All changes to the Services will be managed via the NYCC ICT Services change management process set out in Schedule 4.
- 6.2 **Communication of service interruptions**
- 6.2.1 Communication of service interruptions will be done via telephone to the Authorised Officer. Where a change is required urgently, for example to prevent an unscheduled service interruption, initial communication may be verbal followed with written confirmation.
- 6.2.2 Notice periods for the communication of scheduled and emergency changes which will result in a service interruption are as follows:
- Major changes – minimum of 2 weeks notice
 - Significant, medium and low changes – minimum of 48 hours notice
 - Emergency changes – minimum of 3 hours notice recommended

7 ESCALATION AND MAKING A COMPLAINT

- 7.1 If a Customer feels that an incident is not being managed as expected, this should be raised in the first instance with the NYCC Service Manager as soon as the Customer feels this is appropriate, this can then be reviewed at the next Service Review Meeting.
- 7.2 If the outcome of this action is not satisfactory the incident should be escalated to the Service Agreement Manager who will fully investigate the issue and bring it to the

attention of NYCC's Head of ICT services. Any remedial action or preventative measures will be reported back the originator and the issue will not be closed until they have confirmed they are happy with the outcome.

8 SERVICE REVIEWS

8.1 The Service will be subject to regular review by NYCC to ensure it continues to reflect the service requirements of the Customer.

8.2 A high-level summary of NYCC ICT's performance against this SLA will be sent to the Customer on a monthly basis. It will cover Key Performance Indicators (KPIs) such as:

8.2.1 service desk call handling statistics

8.2.2 number of incidents resolved on first contact

8.2.3 % of incidents resolved within SLA by priority

8.2.4 % of incidents resolved within SLA

8.2.5 Customer escalations and complaints

8.2.6 number of changes processed

8.3 An initial service review meeting ("Service Review Meeting") will be held 1 month after the agreement date with the Customer and the Service Agreement Manager.

8.4 Further Service Review Meetings will take place every 8 weeks or during the planning process for changes to Services.

8.5 The purpose of the Service Review Meetings will be to:

8.5.1 ensure the agreement is up to date and still relevant

8.5.2 that the processes referred to are operating effectively and to agree any required changes

8.5.3 formally review any KPI's

8.5.4 to agree future service targets and performance

9 TERMINATION

9.1 This SLA shall terminate:

9.1.1 in the event that NYCC is no longer able to supply the specific Service to the Customer due to the termination of NYCC's contract with its supplier for the specific Service.

9.1.2 By termination of the Agreement for the provision of ICT Services to which this SLA is a schedule.

Schedule 4. CRM SYSTEM

Schedule 5. HOSTING WEBSITE

Schedule 6. HOSTING INTRANET

Schedule 7. IKEN

Schedule 8. FINANCE SWEEPING

Schedule 9. HEALTH & SAFETY

Schedule 10. PAYROLL

Schedule 11. REGISTRARS SERVICE