

Dated

2011

- (1) Doncaster Metropolitan Borough Council
- (2) Sheffield City Council
- (3) Rotherham Metropolitan Borough Council
- (4) Barnsley Metropolitan Borough Council
- (5) East Riding of Yorkshire Council
- (6) Hull City Council
- (7) North Lincolnshire Council
- (8) Wakefield Council
- (9) Calderdale Council
- (10) Kirklees Council
- (11) Bradford Metropolitan District Council
- (12) North Yorkshire County Council
- (13) Leeds City Council
- (14) City of York Council
- (15) Manchester City Council

Inter-Authority Agreement

Relating to the receipt of an e-Marketplace for Adult Social Care Services
Draft Version: 16 June 2011

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BETWEEN:

- (1) **Doncaster Borough Council** of PO Box 71, Copley House, Waterdale, Doncaster United Kingdom ("Authority"); and
- (2) **Sheffield City Council** of Town Hall, Pinstone Street, Sheffield, S1 2HH;
- (3) **Rotherham Borough Council** of Civic Building Walker Place Rotherham, S65 1UF;
- (4) **Barnsley Borough Council** of Corporate Mail Room, PO Box, 634, Barnsley, S70 9GG;
- (5) **East Riding of Yorkshire Council** of Town Hall, Quay Road, Bridlington, YO16 4LP;
- (6) **Hull City Council** of Guildhall, Hull, HU1 2AA;
- (7) **North Lincolnshire Council** of Pittwood House, Ashby Road, Scunthorpe, North Lincolnshire, DN16 1AB;
- (8) **Wakefield Council** of Town Hall, Wood Street, Wakefield, WF1 2HQ
- (9) **Calderdale Council** of Town Hall, Crossley Street, Halifax, West Yorkshire, HX1 1UJ
- (10) **Kirklees Council** of Civic Centre 3, Market Street, Huddersfield, HD1 2TG
- (11) **Bradford District Council** of City Hall, Centenary Square, Bradford, BD1 1HY
- (12) **North Yorkshire County Council** of County Hall, Northallerton, North Yorkshire, DL7 8AD
- (13) **Leeds City Council** of Civic Hall, Calverley Street, Leeds, LS1 1UR
- (14) **City of York Council**, Library Square, York, YO1 7DU; and
- (15) **Manchester City Council** of Town Hall, Albert Square, Manchester M60 2LA

each a 'party' and together the parties'.

BACKGROUND

- A. It is intended that the Authority enters into the Development Agreement (defined below) for the provision by the Contractor (defined below) of an e-Marketplace for Adult Social Care Services to the parties to this Agreement.

- B. The Authority and the Participating Authorities are entering into this Agreement in order to define and regulate the relationship between the Authority and the Participating Authorities and between the Participating Authorities themselves during the implementation and hosting of the e-Marketplace.

- C. This Agreement also formalises the commitment by the Authority and each Participating Authority to enter into their own Hosting and Support Agreement with the Contractor following successful implementation of their dedicated part of the e-Marketplace.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

- “Achievement”** has the meaning given to it in the Development Agreement

- “Affiliate”** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time

- “Authority Representative”** is [INSERT NAME AND JOB TITLE] or such other individual as is notified to the Participating Authorities in accordance with this Agreement

- “Authority Responsibilities”** has the meaning given to it in the Development Agreement

- “Authority Software”** software which is owned by or licensed to the Authority and/or any Participating Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor

	Software
"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU
"Change/s"	any change to the Development Agreement or any part/s thereof
"Charges"	the amounts payable by the Authority to the Contractor pursuant to the Development Agreement in relation to the provision of the Services
"Confidential Information"	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, and suppliers of the Authority and/or any Participating Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential
"Contracting Authority"	any contracting authority as defined in the Public Contracts Regulations 2006 other than the Authority
"Contractor"	[INSERT]
"Contractor Representative"	is [INSERT NAME AND JOB TITLE] or such other individual as is notified to the Authority in accordance with clause 15.3 of the Development Agreement
"Contractor Software"	software which is proprietary to the Contractor, or an Affiliate of the Contractor, which is or will be used by the Contractor for the purposes of providing the Services and specified as such in Schedule 9 (Software) of the Development Agreement
"Contract Term"	the period commencing on the Start Date and ending on the Termination Date

“Contractual Obligations”	the warranties, representations, conditions, undertakings and other obligations of the Contractor as set out in the Development Agreement
“Control”	that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly
“Crown Body”	any department, office or agency of the Crown
“Data”	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Authority or Participating Authorities; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to the Development Agreement and/or any Hosting and Support Agreement; or</p> <p>(b) any Personal Data for which the Authority or a Participating Authority is the Data Controller</p>
“Data Controller”	has the meaning given to it in the Data Protection Act
“Data Protection Act”	the Data Protection Act 1998 (as amended)
“Data Protection Legislation”	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection

Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

“Deliverables”

the Services or any other things to be provided by the Contractor to the Authority and/or Participating Authorities in the performance of its obligations under the Development Agreement

“Development Agreement”

the agreement for the provision of an e-Marketplace for Adult Social Care Services to the Authority and the Participating Authorities, entered into between the Authority and the Contractor on or around the date of this Agreement

“Dispute”

any dispute, difference or question of interpretation arising out of or in connection with this Agreement

“Documentation”

has the meaning given to it in the Development Agreement

“E-Marketplace Project Board”

the body comprising of Representatives of the Authority and Participating Authorities which is set up to deal with the governance of the Development Agreement, the implementation of the Solution and the receipt of the Services

“Enhancement Charges”

the charges payable by a Participating Authority for PA Enhancements pursuant to a Hosting and Support Agreement

“Environmental Information Regulations”

the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations

“Exit Management”

has the meaning given to it in the Development Agreement

"Fault"	a failure of the PA Website to operate in accordance with the Documentation and/or the Requirements
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under this 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
"Force Majeure Event"	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 acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster
"Hosting and Support Agreement"	an agreement between the Authority and the Contractor or a Participating Authority and the Contractor which is entered into pursuant to the Development Agreement for the provision by the Contractor of hosting, support and maintenance services in relation to a particular PA Website
"Intellectual Property Rights" or "IPR"	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or</p>

similar effect in any country or jurisdiction

"IPR Claim"	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services, the Solution and/or in the Licensed Materials or as otherwise provided by the Contractor (or to which the Contractor has provided access) to the Authority and/or any Participating Authorities in the fulfilment of its obligation
"Know How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Contractor's, the Authority's or a Participating Authority's possession before this Agreement
"Law"	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
"Licensed Materials"	has the meaning given to it in the Development Agreement
"Milestone Date"	has the meaning given to it in the Development Agreement
"Notice For a Change"	a request by either the Authority or the Contractor for a Change pursuant to the Development Agreement
"PA Enhancements"	an enhancement to the PA Website which upgrades the PA Website and/or additional functionality, including the provision of Type 4 Functionality but which (for the avoidance of doubt) excludes any fixes or workarounds provided in respect of Faults
"PA Representative/s"	the representatives of each Participating Authority who are appointed in accordance

with **clause 10** of this Agreement

"Participating Authorities"

Sheffield City Council, Rotherham Metropolitan Borough Council, Barnsley Metropolitan Borough Council, East Riding of Yorkshire Council, Hull City Council, N Lincolnshire Council, Wakefield City Council, Calderdale Council, Kirklees Council, Bradford Council, N Yorkshire County Council, Leeds City Council, York City Council, Manchester City Council and Cheshire West & Chester Council

"PA Website"

a bespoke part of the Solution which is to be supplied to each Participating Authority and which includes (where applicable) PA Enhancements

"Personnel"

any of the Authority's or any Participating Authority's (as the case may be) officers, members, directors, employees, consultants, agents and subcontractors appointed pursuant to receipt of the Services under the Development Agreement and/or Hosting and Support Agreement

"Personal Data"

shall have the same meaning as set out in the Data Protection Act 1998

"Regulatory Bodies"

those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and **"Regulatory Body"** shall be construed accordingly

"Representatives"

the Authority Representative, the Contractor Representative and each PA Representative (as applicable)

"Requirements"

the description of the Services and the business and technical requirements that the Solution must meet as set out in **Schedule 2**

of the Development Agreement (Requirements)

"Services" means any and all of the services delivered by the Contractor under the Development Agreement and/or a Hosting and Support Services Agreement

"Solution" the Contractor's Solution for an e-market place for Adult Care Services as detailed in **Schedule 4** of the Development Agreement including each PA Website to be provided to the Authority and the Participating Authorities in order to meet the Requirements

"Start Date" means the date of the Development Agreement

"Termination Assistance Period" has the meaning given to it in the Development Agreement

"Termination Date" the later of (i) the date upon which the Development Agreement terminates; and (ii) the expiry of the Termination Assistance Period

"Termination Payment" has the meaning given to it in the Development Agreement

"Tests" and "Testing" any tests required to be carried out under the Development Agreement, as further described in **Schedule 11** of the Development Agreement

"Testing Procedures" the applicable testing procedures and test success criteria which are set out (and more particularly defined) in the Development Agreement

"Working Days" means any day which is not a Saturday, Sunday or a public holiday in England and Wales

1.2 In this Agreement the expression "person" means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.

- 1.3 In this Agreement, obligations expressed in terms of being undertaken by "the Participating Authorities" shall be interpreted as being undertaken by the Participating Authorities severally.
- 1.4 In this Agreement, unless the context otherwise requires:
- 1.4.1 the singular includes the plural and vice versa;
 - 1.4.2 reference to a gender includes the other gender and the neuter;
 - 1.4.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it; and
 - 1.4.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.5 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.6 References to clauses and Schedule are, unless otherwise provided, references to the clauses of and Schedule to this Agreement. References to a paragraph, unless otherwise provided, are references to paragraphs in the Schedule.

2. **COMMENCEMENT, DURATION AND EXTENSION**

- 2.1 This Agreement shall commence on the date of the Start Date and shall terminate automatically, without notice, on the Termination Date, subject to **clause 2.2**.
- 2.2 Notwithstanding the termination of this Agreement on the Termination Date, the following provisions shall survive any termination of this Agreement, together with any provisions which are either expressly or impliedly stated to survive termination:
- clauses 2, 11, 12, 14, 15, 16, 18, 27 and 32.**

3. **GENERAL OBLIGATIONS OF THE AUTHORITY**

- 3.1 The Authority covenants to the Participating Authorities that so long as this Agreement and the Development Agreement remain in force and effect it will (subject to **clause 10.5**):
- 3.1.1 comply in all material respects with its obligations under the Development Agreement and, act in accordance with the provisions of

this Agreement and the instructions of the E-Marketplace Project Board in connection with the Development Agreement providing such provisions and/or instructions would not place the Authority in breach of its obligations under the Development Agreement;

- 3.1.2 act in good faith in connection with any matters relating to this Agreement and/or the Development Agreement;
- 3.1.3 as soon as reasonably practicable notify any Participating Authority of any matters of which it becomes aware which may materially adversely affect the receipt of the Services to be provided to that Participating Authority; and
- 3.1.4 generally do all things necessary to give effect to the terms of this Agreement and the Development Agreement.

4. GENERAL OBLIGATIONS OF THE PARTICIPATING AUTHORITIES

- 4.1 Each Participating Authority covenants to the Authority that so long as this Agreement and any provision of the Development Agreement remain in force and effect it will:
 - 4.1.1 act in good faith in connection with any matters relating to this Agreement and/or the Development Agreement;
 - 4.1.2 as soon as reasonably practicable notify the Authority of any matters of which it becomes aware which may affect the receipt of the Services to be provided to any Participating Authority;
 - 4.1.3 supply to the Authority such information in respect of the Services as the Authority shall from time to time reasonably request;
 - 4.1.4 generally do all things necessary to give effect to the terms of this Agreement and the Development Agreement;
 - 4.1.5 comply with any lawful instructions which the Authority might give from time to time to enable the Authority to comply with any provision of the Development Agreement;
 - 4.1.6 not do anything or fail to do anything which would affect or which might reasonably be expected to affect the ability of the Authority to perform (or prevent the Authority from performing) all or any of its obligations under the Development Agreement or which may put the Authority in breach of the Development Agreement; and

4.1.7 ratify (and procure that the E-Marketplace Board ratifies) all acts, deeds and things done by the Authority in connection with the Development Agreement; and

4.1.8 enter into a Hosting and Support Agreement pursuant to the terms of the Development Agreement.

4.2 Each Participating Authority warrants to the Authority that in the event that it assigns or novates the benefit of the Development Agreement to any Contracting Authority, the Participating Authority shall immediately notify the Contractor in writing and shall procure that the Contracting Authority and/or other body enters into the warranties set out in this **clause 4.2**.

5. **DEVELOPMENT AGREEMENT**

5.1 The Authority and each Participating Authority acknowledges and agrees that that pursuant to **clause 1.8** of the Development Agreement, the Authority is entering into the Agreement for benefit of itself and the other Participating Authorities, both collectively and individually.

5.2 Each Participating Authority acknowledges that it is fully aware of the terms of the Development Agreement.

5.3 Each Participating Authority covenants to the Authority that it will not, save for the purchase of PA Enhancements pursuant to a Hosting and Support Agreement, order any services from the Contractor in relation to any of the Requirements.

6. **DEPENDENCIES**

6.1 Each Participating Authority covenants to the Authority that it shall:

6.1.1 fulfil any Authority Responsibilities that apply to that Participating Authority; and

6.1.2 otherwise enable the Authority to comply with any obligation under the Development Agreement in circumstances where the Authority is dependent upon (either in whole or in part) that Participating Authority in order to comply with such obligation.

7. **CHANGES**

7.1 The Participating Authorities acknowledge and agree that as the Authority is liable to pay the Charges under the Development Agreement, the Authority has absolute discretion in determining whether any proposed Changes will be put through the Change Control Procedure.

7.2 Where a Participating Authority requires a PA Enhancement, that PA Authority agrees to purchase that PA Enhancement pursuant to the term its Hosting and Support Agreement and to be liable for any Enhancement Charges related thereto.

8. TESTING

8.1 The Participating Authorities acknowledge that Testing the Solution and its component parts shall be conducted in accordance with the provisions of **clause 4** of the Development Agreement and the Testing Procedures.

8.2 Each Participating Authority shall comply with and participate in the Testing Procedures:

8.2.1 in respect of its own PA Website; and

8.2.2 insofar as their compliance and participation is required by the Authority or other Participating Authorities in order to carry out Testing of other parts of the Solution or the Solution as a whole.

9. CO-OPERATION

9.1 Each party shall:

9.1.1 act reasonably and co-operatively with the other parties and in a manner which is equitable and not unreasonably detrimental to the other parties;

9.1.2 work together with the other parties and as far as is lawful, reasonable and practicable (but without being obliged to incur any material expenditure) to reduce the detrimental impact on the other parties of any failure to carry out their respective obligations under this Agreement and the Development Agreement;

9.1.3 co-operate with the other parties in identifying, as early as reasonably practicable, any issues or problems which arise under the Agreement and/or the Development Agreement and to reach and implement solutions to overcome such issues or problems;

9.1.4 work together with the other parties, in a spirit of openness and mutual good faith, to resolve any difficulties concerning this Agreement and/or the Development Agreement openly, quickly and honestly, before any such issues have a negative impact on the Agreement and/or the Development Agreement; and

9.1.5 pay the utmost regard to the standing and reputation of the others and shall not do (by act or omission) anything which may bring the standing or reputation of any of the other parties into disrepute or attract adverse publicity to any of the other parties; and

9.1.6 ensure that all decisions made in relation to this Agreement and the Development Agreement shall be made by them acting reasonably.

10. PROJECT MEETINGS AND REPRESENTATIVES

10.1 Each Participating Authority shall appoint a PA Representative to co-ordinate the actions of that Participating Authority in relation to the Development Agreement, its Hosting and Support Agreement (and in all relations with the Authority Representative and Contractor Representatives generally) and shall use all reasonable endeavours to ensure that that such PA Representative attends all meetings of the E-Marketplace Project Board. The current terms of reference of the E-Marketplace Project Board are as set out in the Schedule to this Agreement.

10.2 The Authority and the Participating Authorities shall appoint and remove their Representatives on the E-Marketplace Project Board by written notice delivered to the others at any time. A Representative may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a Representative is unavailable (and the other parties' Representatives may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the Representative.

10.3 If after the Achievement of the final Milestone under the Development Agreement:

10.3.1 there is, following the termination of the Authority's Hosting and Support Agreement either one or more Hosting and Support Agreements between the Contractor and any Participating Authorities remaining in full force and effect; or

10.3.2 a decision is reached by the E-marketplace Project Board that the Exit Management provisions in the Development Agreement should be exercised, whilst the Authority's Hosting and Support Agreement is in full force and effect,

then in each case it is acknowledged that the Authority shall not be the party responsible for enforcing and complying with the Exit Management provisions.

10.4 In order to effect the intention of **clause 10.3**, a meeting of the E-Marketplace Project Board shall be called in order to establish which Participating Authority the Development Agreement and this Agreement should be novated to from the Authority (such that, for the avoidance of doubt, in both cases the chosen Participating Authority ceases to be a Participating Authority only and supersedes the Authority). Once agreed, the Authority the nominated Participating Authorities shall execute the necessary deeds of novation to novate the Development Agreement and this Agreement to such Participating Authority.

- 10.5 If, following a period of thirty (30) days after either the termination of the Authority's Hosting and Support Agreement referred to in **clause 10.3.1** or the decision referred to in **clause 10.3.2** is reached by the E-Marketplace Project Board (the "**Stop Date**"), the Development Agreement and this Agreement have not been novated from the Authority to one of the Participating Authorities, then from the Stop Date, the Authority shall no longer be liable to any Participating Authority for any failure to comply with this Agreement and/or to comply with or enforce the terms of the Development Agreement, including the provisions in the Development Agreement relating to Exit Management.
- 10.6 The references to the 'Authority' in **clauses 10.3 to 10.5** are only intended to apply to Doncaster Borough Council, such that following a novation of this Agreement pursuant to clause **10.5**, clauses **10.3 to 10.5** shall no longer have force and effect.

11. **FREEDOM OF INFORMATION AND DATA PROTECTION**

- 11.1 Each party shall provide such assistance and co-operation to the other parties as is necessary to comply with FOIA and the Environmental Information Regulations insofar as they apply to this Agreement, the Development Agreement and/or any Hosting and Support Agreement to which they are a party.
- 11.2 All parties shall comply with all relevant provisions of the Data Protection Legislation in the performance of their obligations under this Agreement.
- 11.3 In particular (but without prejudice to the generality of the foregoing) each shall: -
- 11.3.1 keep all Personal Data arising from or concerning the Agreement separate from all other data or databases stored by or under its control and only process it in accordance with the Agreement and/or as instructed by the relevant party in writing;
 - 11.3.2 keep all Personal Data fully and adequately protected against improper use and/or disclosure by means of passwords and/or other access restrictions;
 - 11.3.3 implement such technical organisational and practical security measures against unauthorised unlawful or improper processing of Personal Data as are necessary to enable the other parties to comply with the Data Protection Legislation; and
 - 11.3.4 provide the other parties with such information as they shall reasonably request from time to time sufficient to demonstrate compliance by the obligations under the Data Protection Legislation and (without prejudice to the generality) this **clause 11**.

12. **CONFIDENTIALITY**

12.1 Except to the extent set out in this **clause 12** or where disclosure is expressly permitted elsewhere in this Agreement, the Development Agreement and/or any Hosting and Support Agreement (as applicable) the Authority and each Participating Authority, shall:

12.1.1 treat each other's Confidential Information as confidential and safeguard it accordingly; and

12.1.2 not disclose each other's Confidential Information to any other person without the relevant party's prior written consent.

12.2 **Clauses 12.1** and **12.2** shall not apply to the extent that:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to **clause 11** (Freedom of Information and Data Protection);

12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

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

12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement, the Development Agreement and/or any Hosting and Support Agreement;
or

12.2.5 it is independently developed without access to the other party's Confidential Information.

12.3 The receiving party may only disclose the disclosing party's Confidential Information to the receiving party's Personnel directly involved in the provision or receipt of the Services and who need to know the information, and shall ensure that such Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any its Personnel causes or contributes (or could cause or contribute) to the receiving party breaching its obligations as to confidentiality under or in connection with this Agreement, the receiving party shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any of its Personnel, the receiving party shall provide such evidence to the disclosing party as the disclosing party may

reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the receiving party is taking appropriate steps to comply with this **clause 12**, including copies of any written communications to and/or from its Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the receiving party's Personnel in connection with obligations as to confidentiality.

- 12.4 The receiving party shall not, and shall procure that the receiving party Personnel do not, use any of the disclosing party's Confidential Information received otherwise than for the purposes of this Agreement and/or any Hosting and Support Agreement.
- 12.5 At the written request of the disclosing party, the receiving party shall procure that those members of the receiving party Personnel identified in the disclosing party's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement, the Development Agreement and/or any Hosting and Support Agreement.
- 12.6 Nothing in this Agreement shall prevent the receiving party from disclosing the disclosing party's Confidential Information:
- 12.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 12.6.2 to any person conducting an Office of Government Commerce gateway review;
 - 12.6.3 to any consultant, contractor or other person engaged by the receiving party in connection with this Agreement, provided that the receiving party shall have required that such information be treated as confidential by such consultant, contractor or other person, together with their servants, including requiring servants to enter into a confidentiality agreement prior to disclosure of the Confidential Information;
 - 12.6.4 for the purpose of the examination and certification of the receiving party's accounts; or
 - 12.6.5 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority and/or a Participating Authority has used its resources.

12.7 Nothing in this **clause 12** shall prevent a party from using any techniques, ideas or general knowledge gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Commercially Sensitive Information, other Confidential Information or an infringement of IPRs.

13. **PAYMENT**

13.1 Subject to **clause 13.2**, the payment of the Charges to the Contractor shall be made by the Authority on behalf of itself and each Participating Authority, in accordance with the terms of the Development Agreement.

13.2 Each Participating Authority acknowledges and agrees that the payment by the Authority of the Charges is wholly dependent upon funding from the Joint Improvement Partnership. The Authority shall have no liability to the other Participating Authorities arising from any failure by the Joint Improvement Partnership to provide the necessary funding for the Charges, nor shall the Authority be required to bridge any shortfall between the funding provided and the Charges due to the Contractor under the Development Agreement.

13.3 Each Participating Authority shall pay the Contractor any Enhancement Charges due in respect of PA Enhancements which it purchases under the terms of its Hosting and Support Agreement.

14. **INTELLECTUAL PROPERTY RIGHTS**

14.1 The Authority and each Participating Authority shall retain all rights, title and interest in or to their Intellectual Property Rights including in to the extent any of the following which are owned by the Authority or a Participating Authority (as applicable):

14.1.1 the Authority Software;

14.1.2 the Data;

14.1.3 the Authority's or a Participating Authority's documentation, processes and procedures; and

14.1.4 the Authority's or a Participating Authority's Know-How.

14.2 The Authority's and each Participating Authority's right to use the Solution and the Licensed Materials shall be as described in **clause 24** of the Development Agreement.

14.3 Each Participating Authority covenants to the Authority that it shall:

- 14.3.1 immediately give notice to the Authority of any IPR Claim is brought against it as soon as reasonably practicable after becoming aware of the same;
- 14.3.2 give the Authority or the Contractor sole control of the defence to, and any negotiations in connection with, any claim or action in respect of an IPR Claim;
- 14.3.3 act in accordance with the reasonable instructions of the Authority and/or the Contractor and give the Authority and/or the Contractor such assistance as it shall reasonably require in respect of the conduct of the said defence and/or negotiations; and
- 14.3.4 not at any time make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action or otherwise attempt to settle the said claim or action except upon the express instruction of the Authority and/or the Contractor.

15. **INDEMNITIES AND LIABILITIES**

- 15.1 Each Participating Authority shall indemnify and keep indemnified the Authority on demand from and against all losses, costs, damages and expenses suffered or incurred by or awarded against the Authority as a result of any claims, demands or proceedings brought by the Contractor against the Authority arising out of any:
 - 15.1.1 negligence by that Participating Authority; or
 - 15.1.2 claim made against the Authority by the Contractor including any tortious claim (including negligence) or a breach of contract claim under the Development Agreement as a (direct or indirect) result of any act or omission of that Participating Authority; or
 - 15.1.3 procurement of any goods or services from the Contractor which is outside the scope of the Requirements and/or infringes Law; or
 - 15.1.4 in relation to any shortfall in any Termination Payment due to the Contractor under the Development Agreement as a result of a shortfall in any Joint Improvement Partnership funding, each Participating Authority (and the Authority) bearing an equal amount of such shortfall.

16. **CONDUCT OF CLAIMS**

- 16.1 Unless the Authority notifies the E-Marketplace Project Board to the contrary, the Authority shall have sole conduct of claims against the Contractor for breach of Contractual Obligations, including the right to settle any such litigation on such terms as it reasonably considers satisfactory, subject to the approval of the E-

Marketplace Project Board. The Authority may opt to take action in the name of the relevant Participating Authority(s) or in its own name on behalf of such Participating Authority(s) and shall be entitled to sue for and recover the relevant Participating Authority(s) losses on the behalf of and for the account of such Participating Authority(s). The Participating Authorities shall be obliged to take account (giving reasonable and fair consideration) of the content of any legal opinion obtained by the Authority as to the merits and/or quantum of such claim.

- 16.2 Unless otherwise agreed in writing by a duly authorised representative of the Authority, no Participating Authority shall enter into any communications with the Contractor in respect of any breach of Contractual Obligations or commence or negotiate or settle any dispute, claim, proceedings or other litigation in respect of breach of Contractual Obligations.
- 16.3 Unless the Authority notifies the E-Marketplace Project Board that the relevant Participating Authorities must enforce the Contractual Obligations in their own right and subject also to the provisions of **clause 16.4**, the Authority shall use its reasonable endeavours to enforce Contractual Obligations and to pursue any resulting claim against the Contractor on behalf of the Participating Authorities (or any of them) if and to the extent the Authority is instructed by the E-Marketplace Project Board to do so.
- 16.4 The Authority shall have no obligation to take any action described in **clause 16.3** of this Agreement in relation to any particular matter unless and until the Authority and all the Participating Authorities have agreed the terms of reference of such action, the basis on which the costs of such action are to be borne by all the Participating Authorities and the basis on which any damages, costs and expenses actually recovered from the Contractor in respect of such action are to be divided between the Authority and all Participating Authorities.
- 16.5 The Participating Authorities shall at their own expense provide such assistance and co-operation to the Authority in connection with such action as the Authority may reasonably require.
- 16.6 Nothing in this clause restricts or prevents any Participating Authority from bringing tortious claims directly against the Contractor.

17. **FORCE MAJEURE EVENTS**

- 17.1 No party or parties to this Agreement (the "**Non-Affected Party**") shall be entitled to bring a claim for a breach of obligations under this Agreement by any other party (the "**Affected Party**") to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event.
- 17.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the Non-Affected Party as soon as practicable. The notification shall include details of

the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

17.3 The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay.

17.4 The Affected Party shall notify the Non-Affected Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

18. **CONSEQUENCES OF TERMINATION**

18.1 On the termination for any reason or expiry of this Agreement the Authority and each Participating Authority shall return to the relevant party any of that party's Confidential Information, Personal Data and other Data in its possession or control.

18.2 Termination of this Agreement shall be without prejudice to any accrued rights and liabilities of any of the parties.

19. **ENTIRE AGREEMENT**

19.1 This Agreement, together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters.

19.2 The Authority and each Participating Authority acknowledge and agrees that in entering into this Agreement, and the documents referred to in it and attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to a party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

19.3 Nothing in this Agreement seeks to exclude or limit a party's liability for fraud or fraudulent misrepresentation.

20. **WAIVER**

Failure by any party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under this Agreement or otherwise.

21. **AMENDMENT**

This Agreement may not be amended, modified, varied or supplemented except in writing signed by or on behalf of all parties.

22. **NOTICES**

22.1 Notices under this Agreement shall be in writing. Notices may be delivered to the other parties by hand or sent by first class mail or facsimile transmission at the address or facsimile number notified for such purposes. Notices shall not be deemed to be delivered if sent by electronic mail. Correctly addressed notices shall be deemed to be delivered:

22.1.1 if delivered by hand, on the day of delivery if delivered before 16:00 hours of any Working Day and otherwise the next Working Day;

22.1.2 if sent by first class mail, two Working Days after posting; and

22.1.3 if sent by facsimile transmission, on the day of transmission if sent before 16:00 hours of any Working Day and otherwise the next Working Day.

23. **SEVERANCE**

If any provision of this Agreement is or becomes invalid or unenforceable it will be severed from the rest of this Agreement so that it is ineffective to the extent that it is invalid or unenforceable and no other provision of this Agreement shall be rendered invalid, enforceable or be otherwise effected.

24. **RELATIONSHIP**

Nothing in this Agreement shall make any party, the agent or partner of the other, or give any party the power to bind the other to any third party other than as expressly stated in this Agreement.

25. **ASSIGNMENT AND SUB-CONTRACTING**

25.1 Subject to **clause 25.3** of this Agreement, each Participating Authority shall be entitled to:

25.1.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority; or

25.1.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Participating Authority in question subject to the prior written consent of the other Participating Authority.

25.2 Any change in the legal status of any of the Authority or Participating Authorities such that it ceases to be a Contracting Authority shall not, subject to **clause 25.3** of this Agreement, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Authority or Participating Authority in question.

- 25.3 If this Agreement is novated to a body which is not a Contracting Authority pursuant to **clause 25.1.2** of this Agreement or if a successor body which is not a Contracting Authority becomes a Participating Authority pursuant to **clause 25.2** of this Agreement (in the remainder of this clause both such bodies are referred to as the "transferee") the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Authority or other Participating Authorities.
- 25.4 Each Participating Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor which relates to the performance of the Services by the Contractor to the extent to which it is reasonably necessary. In such circumstances the Participating Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality undertaking contained herein in relation to such Confidential Information.
- 25.5 Except as expressly provided above, the Authority and Participating Authorities may not assign, transfer sub-contract or charge or in any other way make over to any third party, whether in whole or in part, the benefit of and/or its obligations under this Agreement without the prior written authority of the Authority and/or other Participating Authorities (as applicable).

26. **THIRD PARTY RIGHTS**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

27. **JURISDICTION**

This Agreement (and any non-contractual obligations arising out of it) shall be governed by English law. The parties hereby submit to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).

28. **COUNTERPARTS**

This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed and delivered at least one counterpart to the other. Each counterpart, when executed and delivered, shall constitute an original, but all counterparts shall together constitute one and the same instrument.

29. **PUBLICITY**

Any announcement or public circular relating to the existence or the subject matter of this Agreement or the Development Agreement shall only be made or

issued in accordance with such communication strategy as shall be agreed from time to time by the Participating Authority Forum.

30. **MITIGATION OF COSTS**

Any party claiming under this Agreement against the other party, howsoever arising, shall use all reasonable endeavours to avoid and/or mitigate such costs and expenses.

31. **SUCCESSORS**

This Agreement shall be binding upon and shall enure to the benefit of each party's permitted successors and permitted assigns.

32. **DISPUTE RESOLUTION**

32.1 In the event of any Dispute the matter shall be referred to the E-Marketplace Project Board. If the dispute has not been resolved within 20 days of the date on which it was referred to the E-Marketplace Board then it shall be referred to the Chief Executive of each of the parties in the dispute for resolution. In the event that a dispute between the parties cannot be resolved by escalation to the Chief Executives under this **clause 32.1**, the parties to the dispute shall attempt to resolve it in accordance with CEDR's model mediation procedure.

32.2 A party shall be entitled to disregard **clause 32.1** and take such action and steps as is permitted by law (including obtaining judgment in a court of competent jurisdiction) where it can show that principal subject matter of the relevant dispute concerns a breach, or threatened breach, of the provisions of **clause 12** (Confidential Information) in respect of which a party wishes to claim injunctive relief, including (without limitation) to protect its Intellectual Property Rights.

32.3 For the avoidance of doubt, any disputes with or involving the Contractor in connection with the provision of the Services and/or the Contractor's performance of its obligations under the Development Agreement and/or a Hosting and Support Agreement shall be dealt with pursuant to the procedure in **clause 19** of the Development Agreement (as such clause is incorporated into a Hosting and Support Agreement in the case of a dispute relating to a Hosting and Support Agreement).

THIS DOCUMENT is executed as a Deed and delivered on the date stated at the beginning of this Deed

The Common Seal of)

Doncaster Borough Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Sheffield City Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Rotherham Borough Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Barnsley Borough Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

East Riding of Yorkshire Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Hull City Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

North Lincolnshire Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Wakefield Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Calderdale Council)

affixed and is authenticated by:)

Authorised Officer)

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Kirklees Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Bradford District Council)

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North Yorkshire County Council)

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The Common Seal of)

Leeds City Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

City of York Council)

affixed and is authenticated by:)

Authorised Officer)

The Common Seal of)

Manchester City Council)

affixed and is authenticated by:)

Authorised Officer)

SCHEDULE 1

E-Market Place Project Board Terms of Reference



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