

**Dated**

*20 March*

**2008**

## **Memorandum of Understanding**

Avon and Somerset Police Authority

(1)

and

Somerset County Council

(2)

and

Taunton Deane Borough Council

(3)

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**MEMORANDUM OF UNDERSTANDING** (the "**Agreement**") executed as a deed this 20<sup>th</sup> day of March 2008 (the "**Commencement Date**")

**BETWEEN**

- (1) **AVON AND SOMERSET POLICE AUTHORITY** whose head quarters are situated at PO Box 37, Valley Road, Portishead, Bristol BS20 8JJ ("**ASPA**");
- (2) **SOMERSET COUNTY COUNCIL** whose principal offices are situated at County Hall, Taunton, Somerset, TA1 4DY ("**SCC**"); and
- (3) **TAUNTON DEANE BOROUGH COUNCIL** whose principal offices are situated at The Deane House, Belvedere Road, Taunton, Somerset TA1 1HE ("**TDBC**").

**WHEREAS:**

- (A) The defined terms used in these recitals ((A) to (E) below) shall have the meanings set out in Clause 1.1 below.
- (B) The Parties selected IBM to be the private sector partner in respect of the provision of the Services.
- (C) The Parties have each entered into a Service Delivery Contract with South West One to deliver the Services and have entered into the Joint Venture and Shareholders Agreement.
- (D) The Parties have agreed to enter into this Agreement to govern their collaborative working and joint decision making in relation to the Project.
- (E) The Parties acknowledge that the Revised Interim Memorandum of Understanding will automatically terminate on the Commencement Date and will be replaced in its entirety by this Agreement.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 The following capitalised words and phrases used in this Agreement have the meanings set out against them in the text above and in the list below:

**"Additional Joint Costs"**

means those costs other than the Consultancy Costs and the Transformation Projects Costs determined by the JCB as being costs in connection with the Project that should be shared between the Parties;

**"ASPA Specific Services"**

means those services which relate wholly or primarily to ASPA rather than the other Parties;

**"Business Days"**

means any day which is not:

- (a) a Saturday
- (b) a Sunday; or
- (c) a public holiday in England and Wales;



<b>"CEDR"</b>	means the Centre for Effective Dispute Resolution;
<b>"CEO"</b>	means the Chief Executive Officer for SCC and for TDBC and the Chief Constable;
<b>"Chief Constable"</b>	means the Chief Constable of Avon and Somerset Constabulary;
<b>"Claim"</b>	means any claim for any cost brought by a third party or JV Co against a Party in connection with the Project;
<b>"Client Head"</b>	means the head of a Party's Client Team;
<b>"Client Team"</b>	means a Party's team engaged in connection with the Project;
<b>"Communication Manager"</b>	means a Party's communication manager in respect of the Project;
<b>"Confidential Information"</b>	has the meaning ascribed to it in Schedule 4 (Confidentiality Protocol);
<b>"Consultancy Costs"</b>	means legal fees (such as, for example, the legal fees of Burges Salmon LLP and Veale Wasbrough Lawyers) or any other consultancy fees (such as, for example, the consultancy fees of KPMG) to the extent incurred in relation to work representing all three Parties;
<b>"Councils"</b>	means SCC and TDBC;
<b>"Councils' Total Procurement Expenditure"</b>	means SCC's and TDBC's combined contribution at any time to the procurement costs incurred in relation to the Project, which shall include both Parties' contribution to Consultancy Costs and Transformation Project Costs and both Parties' Unitary Charge;
<b>"Deed of Accession"</b>	means the deed of accession to the Joint Venture and Shareholders Agreement duly executed by the Parties, the JV Co, and IBM on or about the date of this Agreement entitled the "Deed of Accession" and by which ASPA shall be a party to the Joint Venture and Shareholders Agreement;
<b>"Dispute"</b>	means any difference or dispute between the Parties arising out of or in connection with this Agreement (including any question as to the validity of the Agreement and including any dispute arising before or after termination of the Agreement);

<b>"Dispute Resolution Option"</b>	means mediation or arbitration as set out in Schedule 2 (together the <b>"Dispute Resolution Options"</b> );
<b>"Escalation Procedure"</b>	means the procedure for escalating the resolution of disputes between the Parties as set out at Schedule 2;
<b>"Excess Profits"</b>	has the meaning ascribed to it in the Parties' SDCs;
<b>"Expiry Date"</b>	means the date on which JVCo ceases to have more than one shareholder in addition to IBM;
<b>"Framework Agreement"</b>	means the Framework Agreement entered into by the Parties and JVCo on around the date of this Agreement, through which JVCo shall provide services to third party customers and the Parties shall be entitled to receive a share of the revenue received by JVCo as a result of such new business;
<b>"Future Project Costs"</b>	means any Joint Costs agreed to by a Withdrawing Party in writing prior to the Withdrawal Date that accrue after the Withdrawal Date, or (as the case may be) any Joint Costs agreed to by a SDC Terminating Party prior to the SDC Termination Date that accrue after the SDC Termination Date;
<b>"IBM"</b>	IBM United Kingdom Limited, the appointed preferred bidder;
<b>"Joint Client Board" or "JCB"</b>	means the joint client board referred to in Schedule 1;
<b>"Joint Costs"</b>	means the following costs incurred in connection with the Project: <ul style="list-style-type: none"> <li>(a) the Consultancy Costs;</li> <li>(b) the Transformation Projects Costs; and</li> <li>(c) the Additional Joint Costs;</li> </ul>
<b>"Joint Venture and Shareholders Agreement"</b>	means the agreement bearing that name, entered into on 29 September 2007 between SCC, TDBC, IBM and JVCo (and to which ASPA shall accede on or around the date of this Agreement in accordance with the Deed of Accession) and governing certain aspects of the business of JVCo;
<b>"JVCo Main Board"</b>	means the JVCo Main Board to be set up by the Parties and IBM and which shall consist of representatives from IBM and each of the

	Parties for the purposes of: dealing with all fiduciary and governance issues for JVCo; setting the overall direction for JVCo including delivery of business objectives, trends in growth, values and company strategic decisions; and approving the business expansion of JVCo;
"JVCo"	means the joint venture company (named as South West One Limited) which will deliver the Services in which IBM and the Parties will be shareholders;
"JVCo Key Appointments"	means the JVCo key appointments as set out at Schedule 21 of each Party's SDC;
"Key Personnel"	means the key personnel as set out at Schedule 21 of each Party's SDC, and "Key Person" shall be construed accordingly;
"Material Joint Costs"	means any Joint Costs in excess of £1,000 (one thousand pounds) which have not previously been agreed by the SROs;
"Operational Service Contract Review Function"	means a function of the Joint Client Board set up by the JCB in accordance with paragraph 1.5 (d) of Schedule 1;
"Part 1 Reserved Matter"	means any matter described at Part 1 of Schedule 1 to the Joint Venture and Shareholders Agreement;
"Parties"	means SCC, TDBC and ASPA and "Party" shall mean any one of them;
"Partnering Principles"	means the matters set out in clause 4 of this Agreement;
"Partnership Board"	means the partnership board to be set up by the Parties and IBM comprising each Party's SRO and the Chief Executive Officer of JVCo;
"Primary Programme Objectives"	means the following primary objectives and aims: (1) to improve access to and delivery of customer-facing services; (2) to modernise, reduce the cost of and improve corporate, transactional and support services; (3) to help modernise and transform the overall working of the Parties; (4) to invest in new world class technologies to improve productivity; (5) to create an excellent working environment and a more sustainable employment future for staff; and (6) to generate economic development by

**"Priority Part 2 Reserved Matter"**

attracting a private sector partner willing to invest in the South West of England;

means any of the following matters described at Part 2 of Schedule 1 to the Joint Venture and Shareholders Agreement (with defined terms in (a) to (g) below having the meanings set out in that agreement, and cross-references in (a) to (g) below being to provisions of that agreement):

(a) enter into any additional and material agreement which is:

(i) not in the ordinary course of the Business; and / or

(ii) not on an arm's length basis (save for an agreement entered into between the Company and IBM or any of its Associated Companies which is entered into on or about the date of this Agreement or which relates to the provision of services to IBM or any of its Associated Companies to the Company and which is entered into on terms which are fair and reasonable to the Company);

(b) change the name of the Company or its registered office;

(c) increase or reduce or cancel or subdivide the authorised or issued share capital of the Company, allot or agree to allot, whether actually or contingently, any of the share capital of the Company or any security of the Company whether or not convertible into share capital, grant any options or other rights to subscribe for or to convert any security into shares of the Company or alter the classification of any part of the share capital of the Company or issue any loan capital of the Company, or redeem or purchase any Shares or otherwise reorganise the share capital of the Company;

(d) admit any person whether by subscription or transfer as a member of the Company save as provided for in this Agreement (including without limitation clause 18) and/or in the Articles;

(e) merge or amalgamate with any company, association, partnership or legal entity or acquire any business of any other person;

	(f) enter into any partnership arrangement with any person or create any bonus or other incentive scheme; and
	(g) alter any of the provisions of the Memorandum of Association or the Articles or any of the rights attaching to the Shares;
<b>"Programme Requirements"</b>	means the following key requirements: (1) to have a service base within the borough of Taunton Deane from which some Shared Services will be delivered; (2) to retain ASPA's Portishead hub and location; and (3) to deliver the ASPA Specific Services from such Portishead hub and consider the delivery of services to any police authorities who participate in the Project in future from such Portishead hub;
<b>"Project"</b>	means the "Improving Services in Somerset" initiative, as encapsulated in various contracts including the Service Delivery Contracts, the Joint Venture and Shareholders Agreement, the Framework Agreement, the SAP Transformation Implementation Contracts and this Agreement (together with various contracts that are ancillary to such agreements);
<b>"Project Documents"</b>	means the contractual documents entered into by the Parties, JVCo and IBM in relation to the Project, including each Party's Service Delivery Contract, the Joint Venture and Shareholders Agreement, the Framework Agreement and the SAP Transformation Implementation Contracts;
<b>"Reserved Matters"</b>	means those reserved matters set out at Schedule 1 to the Joint Venture and Shareholders Agreement;
<b>"Revised Interim Memorandum of Understanding"</b>	means the Revised Interim Memorandum of Understanding of that name entered into by the Parties on 29 <sup>th</sup> September 2007;
<b>"SAP Transformation Implementation Contracts"</b>	means the contracts between the Parties and JVCo governing the terms of the SAP Transformation Projects;
<b>"SAP Transformation Projects"</b>	means the SAP transformation projects which the Parties have commissioned jointly through JVCo;



<b>"SAP Transformation Projects Costs"</b>	means the total costs to the Parties for the SAP Transformation Projects which the Parties have commissioned jointly through JVCo;
<b>"SDC Termination Date"</b>	means the date on which a Party's SDC terminates;
<b>"SDC Terminating Party"</b>	has the meaning ascribed to it in clause 6.2;
<b>"Services"</b>	means the services to be delivered by JVCo to each of the Parties pursuant to the Service Delivery Contracts;
<b>"Service Delivery Contract" or "SDC"</b>	means the Service Delivery Contract that each Party shall sign up to with JVCo for the provision of the Services;
<b>"Shared Services"</b>	means all the Services other than the ASPA Specific Services;
<b>"South West One"</b>	means JVCo;
<b>"SRO"</b>	means the "Senior Responsible Officer" for each Party, being the following as at the date of this Agreement: <ul style="list-style-type: none"> <li>(a) for SCC, Roger Kershaw;</li> <li>(b) for TDBC, Shirlene Adam; and</li> <li>(c) for ASPA, Rod Hansen,</li> </ul> or their nominated representatives (provided that any Party may change the identity of its SRO by giving 10 (ten) days' notice (in writing) of such change to the other Parties);
<b>"Staffing Agreement"</b>	means an agreement bearing that name and relating to the Project, entered into between any of the Parties and JVCo;
<b>"Standard Part 2 Reserved Matter"</b>	means any matter described at Part 2 of Schedule 1 to the Joint Venture and Shareholders Agreement that is not a Priority Part 2 Reserved Matter;
<b>"Total Project Costs"</b>	means the total costs shared between the Parties in connection with the Project, such amount to be determined between the Parties within fourteen (14) days of the Commencement Date (unless otherwise agreed between the Parties);
<b>"Transformation Project(s)"</b>	means the SAP Transformation Projects and the wave 2 business transformation projects which the Parties may commission through



	JVCo from time to time in accordance with the Project's contracts;
<b>"Transformation Projects Costs"</b>	means the SAP Transformation Project Costs and the Wave 2 Transformation Projects Costs;
<b>"Transformation Project Review and Commissioning Function"</b>	means a function of the Joint Client Board set up by the JCB in accordance with paragraph 1.5(d) of Schedule 1;
<b>"Unitary Charge"</b>	means a Party's monthly payment to JVCo for the delivery of the Services as detailed in Schedule 4 (Payment Arrangements, Service Credits Mechanism and Financial Model) of each Party's SDC;
<b>"Wave 2 Transformation Project Costs"</b>	means the costs to the Parties for the wave 2 business transformation projects which the Parties may commission through JVCo from time to time in accordance with the Project's contracts;
<b>"Withdrawal Date"</b>	has the meaning ascribed to it in clause 6.1; and
<b>"Withdrawing Party"</b>	has the meaning ascribed to it in clause 6.1.

1.2 In this Agreement, unless otherwise specified:

- (a) the headings are for convenience only and shall not affect its interpretation;
- (b) references to a clause, schedule or paragraph are to a clause, a schedule or a paragraph in this Agreement;
- (c) any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- (d) any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation or subordinate legislation made under it (or under such an amendment, consolidation or re-enactment);
- (e) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms;
- (f) the words "in writing" and "written" mean "in documented form" whether electronic or hard copy, unless otherwise stated;
- (g) reference to the plural shall include the singular and *vice versa*, and reference to one gender includes reference to all genders;

- (h) any reference to a person shall be to a legal person of whatever kind whether incorporated or unincorporated, and to its successors, permitted assigns and transferees; and
- (i) words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

## **2 COMMENCEMENT AND DURATION**

2.1 This Agreement shall come into effect on the Commencement Date and shall continue in force until the earlier of:

- (a) termination of this Agreement by mutual written consent between all Parties;
- (b) termination of this Agreement in accordance with its terms; and
- (c) the Expiry Date.

2.2 The Parties acknowledge and agree that the Revised Interim Memorandum of Understanding shall terminate on the Commencement Date and shall be replaced and superseded in its entirety by this Agreement and the Parties' signatures to this Agreement shall constitute the Parties' mutual written consent to terminate the Revised Interim Memorandum of Understanding in accordance with clause 2.1(a) of the Revised Interim Memorandum of Understanding.

## **3 PRIMARY PROGRAMME OBJECTIVES AND PROGRAMME REQUIREMENTS**

3.1 Each of the Parties:

- (a) confirms and agrees the Primary Programme Objectives and Programme Requirements, the principles for collaboration and joint working to achieve them and the other arrangements set out in this Agreement; and
- (b) enters into this Agreement in order to further develop the methodology for regulating and managing their relationship in respect of the Project and to identify their intended respective inputs and responsibilities to achieve delivery of the Primary Programme Objectives and the Programme Requirements in accordance with the Partnering Principles;

provided that the Parties acknowledge that the Primary Programme Objective set out at sub paragraph (6) of the definition at clause 1 is not a Primary Programme Objective of ASPA and this Agreement should be construed accordingly.

3.2 In respect of the Programme Requirements, the Parties agree:

- (a) to adhere to the Programme Requirements;
- (b) that the Programme Requirements form part of the procurement contemplated by the Parties; and
- (c) that they shall not derogate from the Programme Requirements unless otherwise unanimously agreed in writing.

#### 4 PARTNERING PRINCIPLES

##### 4.1 Each of the Parties shall:

- (a) co-operate with each other in a partnering relationship to achieve the Primary Programme Objectives (including promoting joint working, commitment and co-operation between the Parties at all levels, project members and all stakeholders of the Project) and shall use reasonable endeavours to perform their respective obligations set out in or identified pursuant to this Agreement;
- (b) at all times act in good faith towards each of the other Parties in respect of the development of the Project and the delivery of their respective inputs under this Agreement with the intention of maximising the benefit received by and minimising any prejudice to each other in respect of the Project. This obligation shall not require any Party to incur any expenditure or forego any benefit or entitlement on behalf of another;
- (c) co-ordinate, manage, develop, initiate and complete their respective inputs under this Agreement with the intention of delivering the Project in the most efficient and effective way and to otherwise contribute to ensure the administration of the Project operates efficiently and effectively;
- (d) endeavour to respond, meet to discuss and where necessary reach agreement on any matter requiring response in a timely fashion and as soon as reasonably practicable so as not to unduly delay the Project;
- (e) recognise the legal, managerial, financial and political constraints affecting each Party and shall have full regard to such constraints in the development of the Project and the delivery of the Primary Programme Objectives;
- (f) at all times act fairly and equitably as between themselves in respect of the Project with the intention that neither should unduly benefit or be disadvantaged compared with the other and that the most appropriate approach applicable in the relevant circumstances should be adopted whenever possible. If in the course of the Project unfairness to a Party is disclosed or anticipated the other Parties shall use all reasonable endeavours to agree upon such actions as may be necessary and equitable to remove the cause or causes of the same;
- (g) promote at all times good, open and effective communication between the Parties (whether verbally, by e-mail, letter or by meetings); and
- (h) adopt a public sector/natured outlook and ethos in relation to the resolution of Disputes.

#### 5 FUNDING AND RESOURCING

##### 5.1 Subject to clauses 5.2 to 5.7 below, each Party shall apply funds and be responsible for its own costs and its share of the Joint Costs during the term of this Agreement, such Joint Costs to be apportioned between the Parties as follows:

- (a) in relation to the Consultancy Costs:
  - (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) [REDACTED]

- (b) in relation to the SAP Transformation Projects Costs, the Parties acknowledge and agree that:
- (i) ASPA shall pay to the Councils a payment of [REDACTED] in accordance with the agreed deferred payment profile set out at Part 1 of Schedule 6 (ASPA Deferred Payment Profile) (the "ASPA Deferred Payment");
  - (ii) the ASPA Deferred Payment shall be subject to indexation and the JCB shall agree a suitable index;
  - (iii) the treatment of the ASPA Deferred Payment on termination of this Agreement, termination of the SAP Transformation Implementation Contracts and if a Party withdraws from this Agreement, shall be dealt with in accordance with the terms of Part 2 of Schedule 6 (Treatment of ASPA Deferred Payment on Termination or Withdrawal);
  - (iv) once the SAP Transformation Projects have reached the end of the blueprint phase ("Phase 1"), the Parties shall (subject to clause 5.1(b)(v) below), at the next scheduled meeting of the JCB immediately following the end of Phase 1, discuss each Party's contribution (as at the date of such meeting) to the total SAP Transformation Projects Costs; and
  - (v) in respect of the Parties' obligations to discuss those matters referred to in clause 5.1(b)(iv) above, unless otherwise agreed between the Parties, no Party shall be obliged to contribute any further monies to the SAP Transformation Project Costs;
- (c) in relation to the Wave 2 Transformation Projects Costs, as determined by the JCB with due regard to any assessment or information provided by the JV Co or other third party to all the Parties in relation to the potential proportionate cost impact of the wave 2 transformation project on each of the Parties;
- (d) in relation to the Additional Joint Costs:
- (i) as determined by the JCB; or
  - (ii) if the JCB fails to reach agreement, the Additional Joint Costs shall be shared as follows:
    - (A) [REDACTED]
    - (B) [REDACTED]
    - (C) [REDACTED]

5.2 If the scope of a Party's Service Delivery Contract changes such that its Unitary Charge reduces or increases by more than [REDACTED], the Parties shall be obliged to discuss the matter at the next meeting of the JCB immediately following the month in which such reduction or increase occurs and consider (acting reasonably and in good faith) the proportion of each Party's contribution to the Joint Costs taking account of the new percentage values of JVCo's business that each Service Delivery Contract represents.

5.3 All Material Joint Costs shall be agreed by the JCB prior to such Material Joint Costs being incurred.



- 5.4 Any costs incurred by a Party which are not Joint Costs shall be borne exclusively by the Party which incurs them unless such costs have been previously approved or are subsequently approved as Additional Joint Costs by the JCB.
- 5.5 The Party incurring Joint Costs shall invoice the other Parties for their respective shares of the Joint Costs. Such invoice shall provide the Parties being invoiced with:
- (a) a description of the Joint Costs being invoiced;
  - (b) a breakdown of the total costs incurred; and
  - (c) a calculation of the apportionment of such costs in accordance with the agreed percentage splits set out above.
- 5.6 The Parties being invoiced pursuant to Clause 5.5 above shall pay their respective shares of the Joint Costs within 30 (thirty) days of receipt of such invoice. Any Disputes in relation to an invoice shall be referred to the Escalation Procedure set out at Schedule 2.
- 5.7 Subject to clauses 5.7 (a) and 5.7 (b) below, if a Party considers it necessary for the Parties to provide JVCo with additional funds in connection with the Project and/or JVCo requests further funding from one or more of the Parties, the Parties shall meet to discuss and consider the matter at the next scheduled meeting of the JCB.
- (a) A Party shall not be obliged to provide any additional funds to JVCo and a Party shall not be under a duty to act reasonably when making its decision as to whether to provide additional funds to JVCo and for the sole purposes of this clause 5.7 (a) any general duty to act reasonably under this Agreement and/or in accordance with the Partnering Principles shall not apply.
  - (b) If the Parties agree to provide additional funds to JVCo each Party's contribution to such additional funds shall be determined by the JCB.

## 6 WITHDRAWAL

### 6.1 Any Party that:

- (a) having been a shareholder in JVCo, subsequently ceases to be such a shareholder; or
- (b) having been a party to the Joint Venture and Shareholders Agreement, subsequently ceases to be a party to the Joint Venture and Shareholders Agreement,

shall:

- (i) automatically withdraw from this Agreement (the "**Withdrawing Party**") on the earlier of the date on which such Party ceases to be a shareholder, or ceases to be a party to the Joint Venture and Shareholders Agreement (the "**Withdrawal Date**");
- (ii) remain liable for any undischarged liability accrued by such Withdrawing Party in respect of its proportionate share (in accordance with clause 5 above) of any Joint Costs incurred up to the Withdrawal Date;

- (iii) (unless otherwise agreed by the other Parties) remain liable for its contribution (in accordance with clause 5 above) to any Future Project Costs, provided that the other Parties shall be under a duty to use their reasonable endeavours to reduce the Withdrawing Party's liability for such Future Project Costs.

6.2 Subject to clause 6.4 below, if a Party's Service Delivery Contract terminates (for whatever reason) (the "**SDC Terminating Party**") and the SDC Terminating Party remains a party to the Joint Venture and Shareholders Agreement and/or remains a shareholder in JVCo, the SDC Terminating Party's rights and obligations under this Agreement shall lapse other than:

- (a) the SDC Terminating Party shall continue to be bound by the requirement to support the other Parties' wishes in respect of the Reserved Matters as set out at clause 9 below (but shall not be entitled to reciprocal support on the Reserved Matters as set out at clause 9 below); and
- (b) the SDC Terminating Party shall remain liable for any undischarged liability accrued by the SDC Terminating Party in respect of its proportionate share (in accordance with clause 5 above) of any Joint Costs incurred up to the SDC Termination Date and in addition shall be obliged to provide the other Parties with reasonable assistance:
  - (i) to ensure that (wherever possible) the other Parties' Services do not suffer as a result of the termination of the SDC Terminating Party's Service Delivery Contract; and
  - (ii) in limiting any losses the other Parties may incur as a result of the termination of the SDC Terminating Party's Service Delivery Contract,
- (c) the SDC Terminating Party shall remain liable for its contribution (in accordance with clause 5 above) to any Future Project Costs, provided that the other Parties shall be under a duty to use their reasonable endeavours to reduce the SDC Terminating Party's liability for such Future Project Costs.

6.3 Notwithstanding the provisions of clauses 6.1 and 6.2 above and subject to clause 6.4 below, if a Party's Service Delivery Contract terminates (for whatever reason) and it ceases to be a party to the Joint Venture and Shareholders Agreement and/or ceases to be a shareholder in JVCo, such Party shall:

- (a) remain liable for any undischarged liability accrued by such Party in respect of its proportionate share (in accordance with clause 5 above) of any Joint Costs incurred up to the earlier of the Withdrawal Date or the SDC Termination Date;
- (b) remain liable for its contribution (in accordance with clause 5 above) to any Future Project Costs, provided that the other Parties shall be under a duty to use their reasonable endeavours to reduce such Party's liability for such Future Project Costs;
- (c) from the SDC Termination Date, be obliged to provide the other Parties with reasonable assistance:
  - (i) to ensure that (wherever possible) the other Parties' Services do not suffer as a result of the termination of such Party's Service Delivery Contract; and



- (ii) in limiting any losses the other Parties may incur as a result of the termination of such Party's Service Delivery Contract.

6.4 If a Party wishes to terminate its Service Delivery Contract (the "**Departing Party**"), it shall:

- (a) give to the other Parties at least 2 (two) months written notice prior to serving notice on JVCo under its Service Delivery Contract of its intention to terminate unless (acting reasonably) the Departing Party is unable to give such notice in which case it shall notify the other Parties of its intention to terminate as soon as reasonably practicable and in any event prior to formally serving notice on JVCo under its Service Delivery Contract; and
- (b) immediately call a meeting of the JCB to discuss its reasons for termination and in particular to discuss (paying due regard to the best allocation of the use of public funds) the treatment of assets shared between the Parties in connection with the Project (including SAP shared assets) and the related costs of extraction or removal of that part of such assets as may be removed by the Departing Party, but for the avoidance of doubt no Party shall be obliged to contribute towards any costs which may be incurred by the Departing Party or to purchase any assets (including SAP assets) from such Departing Party.

6.5 If one Party withdraws from this Agreement or one Party's SDC terminates, the remaining Parties shall have the option to withdraw from this Agreement (by giving the other remaining Party at least 3 (three) months written notice) or continue on the same terms subject to agreeing their additional contributions towards the Joint Costs. If one of the remaining Parties exercises its option to withdraw from this Agreement, this Agreement shall automatically terminate on the date such notice period ends. If the remaining Parties fail to agree on their additional contributions towards the Joint Costs within 6 (six) months from the date on which a Party withdraws from this Agreement, or (as the case may be) from the date on which a Party's SDC terminates, this Agreement shall automatically terminate at the end of such 6 (six) month period.

6.6 Subject to clauses 6.1 to 6.5 above, the Parties acknowledge and agree that (unless otherwise agreed between the Parties) a Party shall remain a party to this Agreement and shall be bound by its obligations under this Agreement for such time as it remains a party to the Joint Venture and Shareholders Agreement and/or a shareholder in JVCo.

## 7 GOVERNANCE STRUCTURE

The Parties shall comply with the provisions of Schedule 1 in respect of the agreed governance arrangements in relation to the Project.

## 8 JOINT DECISION MAKING

8.1 Notwithstanding the provisions of clause 9 below, the Parties shall comply with the provisions of this clause 8 in respect of the following matters to which the Parties shall be required to make joint decisions:

- (a) the Parties agree that the following clauses 8.1(a) (i) to (iii) (inclusive) below shall only apply to the Councils and shall not apply to ASPA on the basis that ASPA shall have an independent service credit mechanism, performance regime and yearly aggregated liability caps under its SDC to that of the Councils:

(any defined terms set out in clause 8.1 (a) (i) to (iii) (inclusive) below that are not defined in clause 1 of this Agreement, shall have the meanings ascribed to them in the Councils' SDCs)

- (i) in relation to Service Line Weighting and Service Credit Distribution between the Councils under their SDCs:
  - (A) the 100 non-ICT Service Line Weighting Points the Councils have by virtue of paragraph 9.8 of Schedule 2 Umbrella Output Specification of their respective SDCs will be split between SCC and TDBC so that SCC has [REDACTED] points to allocate and TDBC has [REDACTED] points to allocate;
  - (B) the Councils will meet as necessary in order to agree the initial distribution and any subsequent adjustment to the distribution of the Service Line Weighting Points across the non-ICT Service Lines and within service KPI Weighting Points for all Service Lines;
  - (C) where a Service Credit is payable:
    - 1) in respect of a service which is specific to one of the Councils (e.g. Benefits, Corporate Administration, Revenues, SCC Traded Services) the entire amount of the credit will be paid to the Council receiving the service in respect of which the Service Credit is payable;
    - 2) in respect of an aggregated KPI for a service where the KPI has been failed for both Councils the amount payable shall be split so that SCC receives [REDACTED] of the amount and TDBC receives [REDACTED] of the amount;
    - 3) in respect of an aggregated KPI for a service where the KPI has been failed for SCC only (i.e. where [REDACTED] of the Service Credit is payable) then the entire amount of the payment will be payable to SCC;
    - 4) in respect of an aggregated KPI for a service where the KPI has been failed in respect of TDBC only (i.e. where [REDACTED] of the Service Credit is payable) then [REDACTED] of the Service Credit will be paid to SCC and [REDACTED] will be paid to TDBC;
    - 5) in respect of a non-aggregated KPI for a joint service where the KPI has been failed in respect of SCC then the entire amount of the Service Credit will be paid to SCC;
    - 6) in respect of a non-aggregated KPI for a joint service where the KPI has been failed in respect of TDBC then the amount payable shall be split so that SCC receives [REDACTED] of the amount and TDBC receives [REDACTED] of the amount;

- (D) on an annual basis either Council may request a review of the split of the Service Line Weighting Points and the split of any Service Credits payable between the Councils. Where a review is requested the Councils will meet to discuss and agree any adjustments to the split of Service Line Weighting Points and Service Credits payable. Where the Councils are unable to agree the adjustments they will be re-calculated in proportion with SCC's and TDBC's total contribution to the Councils' Total Procurement Expenditure;
- (ii) in relation to the distribution of monies within the Councils' aggregated liability caps under their SDCs, the Councils shall distribute such amounts in proportion with SCC's and TDBC's total contribution to the Councils' Total Procurement Expenditure;
- (iii) in relation to the treatment of Assured Deliverables (as such term is defined in the SDCs) it is acknowledged by SCC and TDBC that certain remedies may become payable in the event of non-delivery of Assured Deliverables under Schedule 40 of the SDCs. Both SCC and TDBC agree to meet within ninety (90) days of the Commencement Date to apportion such remedies (as and when they might occur) between them;

and the Councils agree that any Disputes between the Councils in relation to clause 8.1 (a) (i) to (iii) (inclusive) above, shall be dealt with by the Councils' SROs and then, should the Councils' SROs fail to resolve such Dispute, in accordance with paragraph 1(e) of Schedule 2 (Escalation Process) and onwards;

- (b) the Parties shall share revenue received under the Framework Agreement in accordance with the provisions of Schedule 5 (Framework Agreement Revenue Sharing);
- (c) the JCB shall discuss and agree the JVCo Key Appointments and the Key Personnel. In relation to the Key Personnel, if the JCB fails to determine which Party shall be a Key Person's employer, such Key Person shall be employed directly by JVCo;
- (d) the following matters shall be determined by the JCB:
  - (i) determining wave 2 Transformation Projects for which a business case should be requested;
  - (ii) choosing a lead Party for the request and stewardship of a Transformation Project request / proposal;
  - (iii) signing off on the acceptance criteria for Transformation Projects;
  - (iv) termination of a Transformation Project;
  - (v) decisions on Key Personnel and JVCo Key Appointments (both recruitment (in accordance with clause 8.1(c) above) and discharge);
  - (vi) assimilating any new public sector partners into the Project;

- (vii) any other matters requiring joint decision making referred to the JCB by a Party.

- 8.2 For the avoidance of doubt, the Parties agree that there shall be no pooling and subsequent distribution amongst the Parties of any Excess Profits received under each of the Parties' Service Delivery Contracts.

## **9 RESERVED MATTERS DECISION MAKING PROCESS**

### **Part 1 Reserved Matters**

- 9.1 In respect of any vote of the shareholders of JVCo concerning a Part 1 Reserved Matter, the Parties shall, not less than 20 (twenty) days prior to the date on which such vote is scheduled to take place, communicate to each other their voting intentions. If there is any difference in the voting intentions of the Parties, the Parties shall then meet within 5 (five) days to attempt (acting reasonably and in good faith) to reach agreement on the way in which the Parties should vote, provided that in the event of failure to reach such agreement the Parties shall vote against the proposal that falls within the scope of the relevant Part 1 Reserved Matter.

### **Priority Part 2 Reserved Matters**

- 9.2 In respect of any vote of the shareholders of JVCo concerning a Priority Part 2 Reserved Matter, any Party (the "**Dissenting Party**") intending to vote against a proposal that falls within the scope of such Priority Part 2 Reserved Matter shall notify the other Parties of such intention not less than 20 (twenty) days prior to the date on which such vote is scheduled to take place.
- 9.3 Where a Party receives a notice from a Dissenting Party pursuant to clause 9.2 above and disagrees with the Dissenting Party's intention to vote against the relevant proposal, such receiving Party shall notify the Dissenting Party of its disagreement, following which the Parties shall meet (within 5 (five) days) to attempt (in good faith) to resolve such disagreement.
- 9.4 If the meeting described at clause 9.3 above does not result in a change of the Dissenting Party's intention, the other Parties shall vote at the relevant JVCo shareholder meeting in the same way as the Dissenting Party.

### **Standard Part 2 Reserved Matters**

- 9.5 In respect of any vote of the shareholders of JVCo concerning a Standard Part 2 Reserved Matter, the Parties shall, not less than 20 (twenty) days prior to the date on which such vote is scheduled to take place, communicate to each other their voting intentions. If there is any difference in the voting intentions of the Parties, the Parties shall then meet within 5 (five) days to attempt (acting reasonably and in good faith) to reach agreement on the way in which the Parties should vote, provided that in the event of failure to reach such agreement, the Parties shall be free to vote as they choose in respect of such Standard Part 2 Reserved Matter.

## **10 INFORMATION SHARING**

- 10.1 The Parties shall share the following information at the monthly meetings of the Operational Service Contract Review Function (if such information arises from and/or is in connection with the Service Delivery Contracts) or at the monthly meetings of the Transformation Project Review and Commissioning Function (if such information arises from and/or is in connection with the Transformation Projects):



- (a) service credit information;
- (b) JVCo performance monitoring information;
- (c) benchmarking reports (when available and at the monthly meeting following the issue of such reports);
- (d) relevant staffing information including attrition rates;
- (e) relevant financial information including audit reports, certificate of costs and Excess Profits information;
- (f) relevant Transformation Projects information including progress against agreed Transformation Project deliverables, timeframes, milestones and project objectives; and
- (g) any other information required to be shared between the Parties in accordance with the Partnering Principles.

## **11 RESPECTIVE INPUTS**

### **11.1 Each Party shall:**

- (a) commit such non-monetary resources and assistance (including staff time) to this Agreement as shall be reasonably required to ensure its successful implementation. In particular, each Party shall:
  - (i) co-operate and use its reasonable endeavours to ensure that high and effective standards of quality assurance on all aspects of the Project are established, generally understood and consistently maintained and observed;
  - (ii) adhere to agreed project management processes in relation to standards for management and control of the Project; and
  - (iii) attend regular meetings to ensure successful implementation of the Project and ensure that those attending such meetings represent the appropriate level of empowered seniority.

## **12 LIABILITY SHARING**

**12.1** Notwithstanding the Parties' obligations under this Agreement to share liability in relation to Joint Costs and Future Joint Costs (or any other liability sharing arrangements agreed between the Parties under this Agreement), if a Claim is brought against any of the Parties, the Claim shall be discussed at the meeting of the JCB immediately following any of the Parties becoming aware of such Claim (and each Party shall be under an obligation to notify the other Parties immediately it becomes aware of such Claim) and the JCB shall, subject to clause 12.2 and 12.3 below:

- (a) determine whether the Claim is in relation to a matter which should result in any or all of the Parties sharing the liability in connection with that Claim; and
- (b) if the JCB determines (in accordance with clause 12.1(a) above) that the liability under such Claim shall be shared between the Parties, the JCB shall determine:

- (i) the actual liability to be shared (e.g. whether this includes the costs of defending the Claim, as well as any financial award for damages resulting from such Claim);
- (ii) how the Claim should be defended and the process around the conduct of the Parties in relation to the Claim; and
- (iii) in what proportions such liability shall be shared between the Parties.

12.2 When determining whether the potential liability in relation to a Claim should be shared between the Parties in accordance with clause 12.1 above, the JCB shall (without limitation) take into account the following:

- (a) the Parties' respective involvement in the matter from which the Claim has arisen;
- (b) whether the Claim is specific to any one of the Parties' acts or omissions;
- (c) the nature of such acts or omissions giving rise to the Claim and the nature of the Claim itself (e.g. whether it is a negligence claim);
- (d) the potential effect the Claim might have on a Party should such liability not be shared (e.g. financial and reputational);
- (e) whether the Party to whom the Claim relates has acted in accordance with the Partnering Principles and in accordance with its duties and responsibilities under this Agreement;
- (f) the respective ability for each Party to mitigate;
- (g) the Parties' respective insurance cover applicable to the Claim;
- (h) when determining in what proportions the liability should be shared, the respective contributions of each of the Parties in relation to the matter to which the Claim relates; and,
- (i) the Primary Programme Objectives and the Programme Requirements.

12.3 The Parties agree that unless a Claim is brought against a Party and it is clear that the Claim is specific to that Party and relates solely to that Party's acts or omissions (in which case any liability under the Claim shall not be shared between the Parties, unless otherwise agreed between the Parties) the Parties shall, taking into account the matters to be considered by the JCB in accordance with clause 12.2 above, share liability in connection with and resulting from a Claim.

### 13 DISPUTES

13.1 Any Disputes between any of the Parties in connection with this Agreement shall be dealt with in accordance with the Escalation Procedure set out at Schedule 2.

### 14 CO-ORDINATED LITIGATION ACTIONS

14.1 Subject to clause 14.3 below, if a Party considers that it has a legal action against JVCo and/or IBM under any of the Project Documents, or considers that it has a legal action against a third party in connection with the Project, before pursuing or taking such legal action, such Party shall call a meeting of the JCB to discuss the nature of such claim and the potential impact such claim might have on another Party (including any potential



impact such claim might have on another Party in relation to those Project Documents to which SCC, TDBC and ASPA are all parties). In addition, the JCB shall determine whether or not the Parties shall pursue such legal action as a joint legal action and if so:

- (a) how such joint action shall be co-ordinated and managed between the Parties; and
- (b) which Party shall lead the joint action on behalf of the Parties.

14.2 The Parties agree that the Party agreed by the JCB to lead the joint action (in accordance with clause 14.1 (b) above) shall be entitled to receive from the other Parties all its reasonable costs and expenses incurred (including all legal costs and consultancy costs) as a result of leading the joint action (other than such Party's own contribution to such costs and expenses in the proportion set out below) and (unless otherwise agreed by the JCB) such costs and expenses shall be shared between the Parties as follows:

- (i) [REDACTED]
- (ii) [REDACTED] and
- (iii) [REDACTED]

14.3 Although the Parties shall have a duty to consult each other under clause 14.1 above prior to pursuing any claim against JVCo and /or IBM, or against a third party in connection with the Project, no Party shall be prevented from taking such action once such action has been discussed at a meeting of the JCB in accordance with clause 14.1 above.

## **15 COMMUNICATIONS AND MARKETING PROTOCOL**

15.1 In respect of all external communications with third parties and marketing, the Parties shall comply with the provisions of Schedule 3 (Communications and Marketing Protocol).

## **16 CONFIDENTIALITY**

16.1 Subject to any legal requirement to do so, no Party shall disclose this Agreement (or any details of its contents) to any third party without the prior written consent of the other Parties and the Parties shall comply with the provisions of Schedule 4 (Confidentiality Protocol).

## **17 FURTHER ASSURANCE**

17.1 Each Party agrees to use all reasonable endeavours to do or procure to be done all such further acts and execute or procure the execution of all such documents as any other Party may from time to time reasonably require for the purpose of giving the other Parties the full benefit of the provisions of this Agreement.

## **18 NO AGENCY OR PARTNERSHIP**

18.1 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor constitute any Party the agent of any other Party.

18.2 Neither Party shall act or describe itself as the agent of any other Party, nor shall it make or represent that it has authority to make any commitments on the behalf of any other Party.

**19 NO DELEGATION**

- 19.1 No provision of this Agreement shall be construed as a delegation by any of the Parties of any of their respective functions or authority to any Party.

**20 ENTIRE AGREEMENT**

- 20.1 This Agreement, including its Schedules, sets out the entire agreement between the Parties in connection with its subject matter and supersedes all prior oral or written agreements, arrangements or understandings between them.

**21 STATUTORY POWERS**

- 21.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights, powers, duties and obligations of each of the Parties in the exercise of their respective functions as may be amended, supplemented or increased from time to time and the rights, powers, duties and obligations of each of the Parties pursuant to their respective functions may be as fully and effectually exercised as if this Agreement had not been made.

**22 VARIATION**

- 22.1 No variation or purported variation of any provision of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each Party.

**23 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 23.1 For the purpose of section 1(2) of the Contracts (Rights of the Third Parties) Act 1999 the Parties state that they do not intend any term of this Agreement to be enforced by any third parties.

**24 COUNTERPARTS**

- 24.1 This Agreement may be signed in any number of counterparts and this has the same effect as if the signatures on counterparts were on a single copy of this Agreement.

**25 LEGALLY BINDING**

- 25.1 The Parties agree that this Agreement shall be fully legally binding between the Parties.

**26 GOVERNING LAW AND JURISDICTION**

- 26.1 This Agreement shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.

EXECUTED AND DELIVERED AS A DEED ON 20 March 2008 FOR AND ON  
BEHALF OF AVON AND SOMERSET POLICE AUTHORITY

[Affix common seal of Avon and Somerset Police Authority]

ATTESTED BY:

Signature:

Moxley Cooper

Name:

MOXLEY COOPER

Position:

CHIEF EXECUTIVE

Date:

EXECUTED AND DELIVERED AS A DEED ON 20 March 2008 FOR AND ON  
BEHALF OF SOMERSET COUNTY COUNCIL

[Affix common seal of Somerset County Council]

ATTESTED BY:

Signature:

David D. Curry  
DAVID D. CURRY

Name:

Position:

County Solicitor

Date:

Number in Register 19010

EXECUTED AND DELIVERED AS A DEED ON 20 March 2008 FOR AND ON BEHALF  
OF TAUNTON DEANE BOROUGH COUNCIL

[Affix common seal of Taunton Deane Borough Council]

ATTESTED BY:

Signature:

Shirley Adam

Name:

SHIRLENE ADAM

Position:

STRATEGIC DIRECTOR

Date:

20.3.08

AL672  
A.M. Casey

## Schedule 1

### Governance provisions

#### 1 Internal Function

- 1.1 Each Party shall be responsible for developing an internal intelligent client function that is adequately resourced to meet the demands of the Project and to allow timely decision making.

#### Joint Client Board

- 1.2 On or before the Commencement Date, the Parties shall set up the Joint Client Board (or JCB), membership of which shall include on behalf of each Party:

- (a) SROs;
- (b) Client Heads;
- (c) Communication Manager; and
- (d) other invitees as appropriate,

and a quorum shall consist of at least one Client Head and two SROs.

- 1.3 Meetings of the JCB shall be held once weekly (unless otherwise agreed between the Parties).

- 1.4 Extraordinary meetings may be called by any Party, subject to attendance being quorate.

- 1.5 The purpose and functions of the Joint Client Board shall include:

- (a) ensuring on behalf of the Parties that the operation and performance of the JV Co is aligned to the Primary Programme Objectives, Programme Requirements, and both current and emerging business strategies and priorities of the Parties. The Joint Client Board will consider both strategic and operational delivery, and financial issues;
- (b) allowing the Parties to explore the future strategy of the Project before such matters are discussed and reviewed by the JVCo Main Board which shall consist of the Parties' CEOs and a representative from IBM;
- (c) to review the operations and performance of JVCo prior to JVCo board meetings;
- (d) to set up and monitor the Transformation Project Review and Commissioning Function and the Operational Service Contract Review Function which shall, once established, escalate any issues arising from such functions to the Joint Client Board for discussion and review and thereafter to pass such issues onto either the Partnership Board or the JVCo Main Board depending on the nature of such issues; and
- (e) to discuss, review and resolve those issues and matters referred to in this Agreement as issues and matters to be dealt with by the Joint Client Board.

Transformation Project Review and Commissioning Function

- 27.6 The JCB shall set up the Transformation Project Review and Commissioning Function which shall meet monthly to consider, monitor, and approve (as appropriate) all proposals, draft, and full business cases for wave 2 Transformation Projects and to provide JVCo with a single point of contact in respect of all Transformation Projects and in particular for those joint Transformation Projects which are applicable to all three Parties. Each Party shall provide lead officers and operational team leads to carry out this function.

Operational Service Contract Review Function

- 27.7 The Parties shall set up the Operational Service Contract Review Function which shall meet monthly to jointly consider JVCo's performance and service delivery under each of the Service Delivery Contracts and to identify any issues which are common to all three Parties in respect of JVCo's performance under the Service Delivery Contracts. The Parties acknowledge that they will each have a Service Delivery Contract with JVCo and that this joint forum may only be able to deal with issues of concern under the Service Delivery Contracts that are common to all three Parties. Each Party shall provide lead officers and operational team leads to carry out this function.
- 27.8 All decisions of the Joint Client Board shall (subject to paragraph 4 of Schedule 6) be made only upon unanimous vote of the SROs.
- 27.9 Escalation Process
- 27.10 In the event that the Joint Client Board is unable to resolve an issue the Escalation Procedure at Schedule 2 (except for the steps set out at paragraphs 1(a) to (c) of Schedule 2) shall apply.



## Schedule 2

### Escalation Procedure

- 1 The Parties shall attempt to resolve any Dispute referred to the Escalation Procedure through reasonable discussion by referring the matter to the body identified in the list below which is on the next level until a solution is agreed or the dispute resolved (as the case may be). The next level for this purpose is determined by the next higher level in accordance with process set out below. At each stage of the Escalation Procedure the Parties shall use their best endeavours, acting in good faith, to resolve the Dispute in accordance with the Partnering Principles.
  - (a) The Escalation Procedure shall be deemed to have commenced when a Party provides written notice to the other Parties informing them that a Dispute has arisen and requiring that such Dispute be referred to the Escalation Procedure. Such notice shall contain brief details of the Dispute which is to be the subject of the Escalation Procedure.
  - (b) The Client Teams of each of the Parties shall meet within 10 (ten) Business Days of the commencement of the Escalation Procedure.
  - (c) If the Dispute has not been resolved by the Client Teams within 10 (ten) Business Days of the step in paragraph (b) above being initiated, then the Clients Heads of each of the Parties shall meet within 5 (five) Business Days of the end of such period.
  - (d) If the Dispute has not been resolved by the Client Heads within 10 (ten) Business Days of the step in paragraph (c) above being initiated, then the JCB shall meet within 5 (five) Business Days of the end of such period.
  - (e) If the Dispute has not been resolved by the JCB within 10 (ten) Business Days of the step in paragraph (d) above being initiated, then the CEOs shall meet within 5 (five) Business Days of the end of such period.
- 2 If either Party considers that any step should in the circumstances be omitted in order to reach the final step in paragraph 1(e) above sooner due to the urgency of resolving the Dispute, due to the significance of the Dispute, or for any other good reason, they may notify the other of the steps which are to be omitted and the Escalation Procedure shall be applied in that case as so modified.
- 3 If a Dispute is resolved pursuant to the Escalation Procedure, the resolution will be recorded in writing (including any corrective action which is to be taken, by whom, by what date and at whose cost) and signed by duly authorised representatives of each of the Parties. Such resolution will be final and binding on the Parties.
- 4 If the Parties are unable to resolve a Dispute in accordance with the Escalation Procedure within 20 (twenty) Business Days of the step in paragraph 1(e) above being initiated, the Parties may agree (each Party acting in its own discretion) to refer the Dispute to one of the Dispute Resolution Options as set out below at paragraph 7. If one of the Dispute Resolution Options has not been initiated within a further 20 (twenty) Business Days (or such other period as the Parties, acting reasonably, shall agree), then the Dispute will be deemed to have lapsed and the Escalation Process shall be recommenced by any Party if it (acting reasonably) believes that such recommencement is necessary.



- 5 The Dispute Resolution Options are (to the extent that they could otherwise relate to the same Dispute) mutually exclusive. If one of the Dispute Resolution Options is initiated in respect of a Dispute, no other Dispute Resolution Option shall be initiated in respect of the same (or substantially the same) Dispute prior to the resolution of the Dispute Resolution Option previously initiated.
- 6 All negotiations connected with the Dispute shall be conducted on a without prejudice basis and shall not affect the rights of the Parties or be used against a Party in any future proceedings.
- 7 Dispute Resolution Options
- 7.1 **Mediation**
- (a) If the Parties are unable to resolve a Dispute in accordance with the Escalation Procedure set out at paragraphs 1 to 6 above within 20 (twenty) Business Days of the step in paragraph 1(e) above being initiated, the Parties may agree (each Party acting in its absolute discretion) to refer the Dispute to mediation in accordance with the CEDR Model Mediation Procedure, provided that no other Dispute Resolution Option in respect of that Dispute is ongoing. Unless otherwise agreed by the Parties, the mediator will be nominated by CEDR and the CEDR Mediation Rules in force at the commencement of the mediation will apply. To initiate the mediation a Party must give notice in writing (an "ADR notice") to the other Parties, requesting a mediation. A copy of the request shall simultaneously be sent to CEDR. The mediation shall commence no later than 20 (twenty) Business Days after the date of the ADR notice.
  - (b) Each of the Parties shall ensure that it is represented in the mediation by an individual with authority to settle the Dispute and to sign any settlement agreement that may be agreed.
  - (c) The mediator shall, in consultation with the Parties, determine the timetable and procedure for the mediation. For that purpose the Parties shall within 10 (ten) Business Days of the appointment of the mediator meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted.
  - (d) The mediation shall be conducted on a without prejudice basis and in strict confidence.
  - (e) The mediator shall incur no legal liability to the Parties in respect of his/her role in relation to the mediation except in the case of proven fraudulent conduct on the part of the mediator.
  - (f) If a Dispute is settled through mediation, the terms of the settlement will be recorded in writing in a legally binding form signed by a duly authorised representative of each of the Parties. If a settlement is reached while proceedings are pending, the Parties acknowledge that an appropriate application must be made to the court or other relevant tribunal to render the terms of the settlement as a consent order or award.
  - (g) If within 3 (three) months of the mediator being appointed, the mediation has not resulted in settlement of the Dispute then the mediation procedure shall, unless otherwise agreed, be terminated. In that event, any proceedings which have been stayed will resume forthwith.

- (h) No-one appointed to act as a mediator shall be called to give evidence in any subsequent proceedings between the Parties nor shall any mediator be entitled to act as an adviser to either Party in any subsequent proceedings whether as counsel, solicitor or independent expert without the prior written consent of the other Party. The mediator shall not act as an expert in any subsequent Dispute.
- (i) If the Parties are unable to reach agreement pursuant to the mediation, either of them may invite the mediator to provide a non-binding but informative opinion in writing, who need only comply with their request if he/she considers it would be helpful. Any such opinion shall not be an attempt to anticipate what a court might order but rather the mediator's suggestions as to the settlement terms which are considered appropriate in all the circumstances. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings arising in connection with this Agreement without the prior written consent of both Parties.
- (j) Where:
  - (i) the Parties agree that the CEDR Mediation Rules then in force do not apply, and
  - (ii) the mediation settlement does not address the issue of which Party is responsible for the fees and expenses of the mediation,

then each Party shall bear its own costs and expenses for its participation in the mediation and the fees and expenses of the mediator shall be borne equally by each Party.

## 7.2 Arbitration

- (a) If the Parties are unable to resolve a Dispute in accordance with the Escalation Procedure set out at paragraphs 1 to 6 above within 20 (twenty) Business Days of the step in paragraph (e) above being initiated, the Parties may agree (each Party acting in its absolute discretion) to refer the Dispute to arbitration for determination in accordance with the procedure set out below, provided that no other Dispute Resolution Option in respect of that Dispute is ongoing.
- (b) The following provisions shall apply to such arbitration:
  - (i) the arbitration shall be conducted under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated into this Agreement;
  - (ii) the number of arbitrators shall be 3;
  - (iii) the seat, or legal place, of arbitration shall be England and Wales; and
  - (iv) the language to be used in the arbitral proceedings shall be English.
- (c) Each Party shall nominate one arbitrator, and the arbitrators nominated by the Parties shall jointly appoint an independent chairman. If no chairman is appointed within 30 (thirty) days of the appointment of the second arbitrator, the chairman will be appointed by the LCIA Court (as defined in the Rules) in accordance with the Rules.

- (d) In respect of damages awards, the arbitrators will be limited to awarding compensatory damages and will have no authority to award damages excluded by this Schedule or damages in excess of the limitations contained in this Agreement.
- (e) Nothing in this Schedule shall prevent either Party from resorting to judicial proceedings to obtain interim or provisional relief if such relief from a court is necessary either to prevent material prejudice to one Party or to third parties, or to prevent or stop a breach of any confidentiality provisions or intellectual property rights. Nothing in this Schedule will prevent either Party from resorting to judicial proceedings as necessary to determine the validity or ownership of any copyright, patent or trademark owned or asserted by a Party to the Schedule, or by any parent company, subsidiary, or affiliate under common control of any Party.
- (f) If more than one arbitration is begun under this Agreement and any separate agreements related to this agreement ("Related Agreements") and any Party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitral tribunal appointed in the first-filed of such proceedings shall have the power to determine whether, in the interests of justice and efficiency, the whole or part of the matters at issue should be consolidated before that arbitral tribunal upon such terms or conditions as the arbitral tribunal thinks fit.
- (g) The Parties expressly accept that any Dispute under this Agreement may accordingly be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Agreement.
- (h) The arbitral tribunal appointed in respect of any Dispute may, upon the request of a party:
  - (i) to the Dispute;
  - (ii) to the Agreement; or
  - (iii) to any of the Related Agreements which itself wishes to be joined in any arbitration proceedings in relation to a Dispute;

having regard to the stage of the proceedings and other relevant circumstances, join any Party or any party to any of the Related Agreements to arbitration proceedings in relation to that Dispute. Any party so joined to arbitration proceedings may request that one or more further Parties or parties to any of the Related Agreements be joined to such arbitration proceedings.

- (i) The right of any party to be joined to arbitration proceedings under paragraph 7.2 (h) above shall be subject to such party agreeing to be bound by such arbitration rules and procedures as are set out or referred to in this Schedule and, where the Parties (acting reasonably) believes necessary, shall be subject to such party entering into to a confidentiality agreement that is reasonably acceptable to the Parties.
- (j) Each of the Parties hereby consents (subject to, where the Parties (acting reasonably) believes it to be necessary, any third party included in such arbitration proceedings entering into a confidentiality agreement that is reasonably acceptable to the Parties) to be joined to arbitration proceedings in

relation to any Dispute at the request of a Party to that Dispute following the initiation of the joinder of parties or consolidation of Disputes or arbitral proceedings. The Parties hereby agree that any arbitration proceedings to which any one or more of them may be joined pursuant to this clause shall continue under the same arbitration rules as those under which it was commenced and with the same arbitral tribunal.

- (k) If any or all members of the arbitral tribunal shall be unable or unwilling to act, the replacement members of the arbitral tribunal shall be directly appointed by the LCIA Court (as defined in the Rules).



### Schedule 3

#### Communications and Marketing Protocol

##### 1 Introduction

This Protocol governs communications and marketing matters that relate to the Parties' participation and performance in relation to the Project or otherwise to matters relating to one Party that may impact on the image or reputation of another Party.

##### 2 Principles

- 2.1 Without prejudice to more specific requirements set out in this Protocol, all communications and marketing matters that relate to the Parties' participation and performance in relation to the Project or otherwise to matters relating to one Party that may impact on the security, image or reputation of the other Party shall be agreed in advance in writing by the Parties.
- 2.2 In relation to any costs in connection with the Parties' communication and/or media activities under this Protocol, such costs shall be borne by the Parties as determined by the JCB.
- 2.3 The Parties' communications and marketing activities shall have regard to the following principles:
- (a) the Parties' policies in general;
  - (b) the Parties' complaints procedures;
  - (c) the Parties' standards of discipline;
  - (d) the operational sensitivity of the Parties;
  - (e) the Partnering Principles; and
  - (f) the Primary Programme Objectives and Programme Requirements.
- 2.4 Any amendment to this Protocol shall be by agreement of the Parties in writing.
- 2.5 The Parties agree to co-operate fully with each other for the purposes of communication, marketing, publicity and liaison under this Protocol.

#### Schedule 4

##### Confidentiality Protocol

Businesses are used to exchanging confidentiality agreements to protect any confidential information. Any threatened breach of confidence may lead to legal action to prevent disclosures or action to recover damages afterwards.

Where confidential information is imparted by businesses to public bodies, then there is an expectation by businesses that that information will not be disclosed if it is likely to prejudice its commercial interests.

Local authorities operate to different rules of accountability and, in particular, are subject to the Freedom of Information Act 2000 (as may be amended from time to time). The Parties therefore have to achieve a reasonable balance between meeting the contradictory needs of confidentiality versus public accountability.

- 1 The Parties shall implement this Protocol in accordance with the Partnering Principles and pursuant to the Primary Programme Objectives.
- 2 The Parties shall use best endeavours to keep in strict confidence, and shall ensure that their employees and agents keep in strict confidence, all and any Confidential Information (as defined in paragraph 6 below) acquired by the Parties (whether directly or indirectly), concerning any other stakeholder in consequence of their participation in the Project.
- 3 No Party shall use or disclose any Confidential Information received by it other than for the purposes of the Project provided that a Party may otherwise use Confidential Information which:
  - 3.1 becomes generally available to the public through no fault of the receiving authority;
  - 3.2 the receiving Party can show was in its possession prior to the disclosure without any restriction on disclosure; or
  - 3.3 as may be required pursuant to any legislation or by any Court or other body authorised by law to direct disclosure.
- 4 Where information considered to be Confidential Information needs to be released by one of the Parties then they must inform the other Parties that they are doing so.
- 5 The spirit of this Protocol will be applied equally to anyone working on or associated with the Project.
- 6 For the purposes of this Protocol, Confidential Information shall be considered to be:
  - 6.1 information provided in confidence;
  - 6.2 'trade secrets'; and
  - 6.3 information which if disclosed would prejudice the commercial interests of any person (inclusive of the local authorities themselves).
- 7 If there is any doubt as to what should be regarded as Confidential Information then the matter shall be referred to the Joint Client Board.

## Schedule 5

### Framework Agreement Revenue Sharing

The JCB shall, subject to Schedule 6 paragraph 4 below, determine whether proceeds received by the Parties under the Framework Agreement shall be paid by way of Joiners Fees, Revenue Share, or Economies of Scale (as such terms are defined in the schedule of the Framework Agreement entitled "New Business Payments"), to the extent the Parties are able to determine how such proceeds are received in accordance with the terms of the Framework Agreement, and the Parties shall allocate the proceeds received in accordance with the schedule of the Framework Agreement entitled "New Business Payments" (the "Revenue Share Payment") as follows:-

#### 1 Joiners Fee

Any Revenue Share Payment which is received by the Parties in relation to a Joiners Fee (as such term is defined in the New Business Payments Schedule of the Framework Agreement) ("Joiners Fees") shall be allocated between the Parties:

##### 1.1 in respect of aggregated amounts up to and equal to the Total Project Costs:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

##### 1.2 in respect of aggregated amounts above the Total Project Costs:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

#### 2 Revenue Share and Economies of Scale Payments

Any Revenue Share Payment which is received by the Parties in relation to either Revenue Share or Economies of Scale Payment (as such terms are defined in the New Business Payments Schedule of the Framework Agreement) shall be allocated between the Parties in accordance with the following proportions:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

## Schedule 6

### ASPA Deferred Payment

#### Part 1 (ASPA Deferred Payment Profile)

- 1 In relation to the ASPA Deferred Payment [REDACTED] ASPA shall pay to the Councils (in the proportions set out in paragraph 3 below):
  - (a) on or before 1<sup>st</sup> April 2011, [REDACTED]
  - (b) on or before 1<sup>st</sup> April 2012, [REDACTED]
  - (c) on or before 1<sup>st</sup> April 2013, [REDACTED] and
  - (d) subject to paragraph 2 below, [REDACTED] the "At Risk Amount").
- 2 Subject to paragraph 4 below, until the aggregate amount of the Revenue Share Payment received by ASPA in relation to Joiners Fees exceeds the At Risk Amount, ASPA shall pay to SCC and TDBC the Revenue Share Payment amounts received by ASPA in relation to Joiners Fees, provided that the Parties acknowledge and agree that ASPA shall not be obliged to pay the At Risk Amount to the Councils other than from Revenue Share Payment amounts received by ASPA in relation to Joiners Fees.
- 3 All payments made by ASPA in relation to the ASPA Deferred Payment in accordance with this Schedule 6 shall be paid to SCC and TDBC in the following proportions:
  - (a) [REDACTED]
  - (b) [REDACTED]
- 4 The Parties acknowledge and agree that ASPA shall not be entitled to vote at the meetings of the JCB in relation to matters dealing with how proceeds received by the Parties under the Framework Agreement shall be paid (i.e. whether by way of Joiners Fees, Revenue Share, or Economies of Scale), until such time as ASPA has fully paid to the Councils the At Risk Amount in accordance with the provisions of this Schedule 6.

#### Part 2 (Treatment of ASPA Deferred Payment on Termination or Withdrawal)

- 5 If, for whatever reason:
  - (a) this Agreement terminates;
  - (b) SCC or TDBC withdraws from this Agreement;
  - (c) the SAP Transformation Implementation Contracts terminate; or
  - (d) ASPA withdraws from this Agreement,and at the date of such termination or withdrawal there are any outstanding monies owed to the Councils in relation to the ASPA Deferred Payment (the "**Outstanding Amounts**"), ASPA shall, subject to paragraph 7 below:
  - (i) in relation to 5 (a), (c) and (d) above, pay the Outstanding Amounts to the Councils in the proportions set out at paragraph 3 above;



- (ii) in relation to 5 (b) above, ASPA shall pay the withdrawing Party's proportion of the Outstanding Amounts in accordance with paragraph 3 above.

6 The Parties acknowledge and agree that any amounts owed to the Councils in relation to the ASPA Deferred Payment shall be without prejudice to:

- (a) any other monies properly due and owing by ASPA to the Councils under this Agreement (whether by virtue of Joint Costs, Future Joint Costs, damages which the Councils may be entitled to recover pursuant to a breach of this Agreement by ASPA, or otherwise); or
- (b) any monies the Councils may be entitled to receive from JVCo in accordance with the terms of the SAP Transformation Implementation Contracts or by virtue of JVCo's breach of the SAP Transformation Implementation Contracts.

7 The Parties acknowledge and agree that ASPA shall only retain liability for the At Risk Amount and owe monies to the Councils in relation to the At Risk Amount for such time as ASPA is entitled to receive a share of the Revenue Share Payment by way of Joiners Fees. To the extent the Outstanding Amounts include any unpaid amounts of the At Risk Amount and ASPA remains entitled to receive a share of the Revenue Share Payment by way of Joiners Fees, ASPA shall remain liable to the Councils for such unpaid amounts of the At Risk Amount which shall continue to be paid to the Councils until the aggregate amount of the Revenue Share Payment received by ASPA in relation to Joiners Fees exceeds the At Risk Amount.

