

**Draft 23.09.19**

**Dated**

**2019**

**TEWKESBURY BOROUGH COUNCIL**

**and**

**CHELTENHAM BOROUGH COUNCIL**

**AGREEMENT**

**pursuant to s101**

**Local Government**

**Act 1972**

**Shared Building Control Services**

**S J Freckleton  
Borough Solicitor  
Tewkesbury Borough Council  
Council Offices  
Gloucester Road  
Tewkesbury  
GL20 5TT**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2019

**BETWEEN**

(1) **TEWKESBURY BOROUGH COUNCIL** of Council Offices Gloucester Road  
Tewkesbury Gloucestershire GL20 5TT (“Tewkesbury”)

And

(2) **CHELTENHAM BOROUGH COUNCIL** of Municipal Offices The Promenade  
Cheltenham Gloucestershire GL50 9SA (“Cheltenham”)

**WHEREAS**

- (a) On 30<sup>th</sup> October 2009 Tewkesbury and Cheltenham entered into a shared Building Control service known as “Cheltenham and Tewkesbury Building Control Services” for a period of 10 years
- (b) Tewkesbury and Cheltenham have agreed continue with the shared Building Control service on the terms set out in this Agreement

**IT IS HEREBY AGREED AS FOLLOWS**

**1. DEFINITIONS AND INTEPRETATION**

“Ancillary Functions”	means any additional services which are ancillary to the Functions as may be agreed in accordance with clause 7.5.5
“Arbitrator/Expert”	means the person appoint in accordance with clause 16.3 to 16.6
“Chargeable Work”	means building regulations chargeable activities under the Building (Local Authorities Charges) Regulations 2010
“Commencement Date”	means 1 <sup>st</sup> November 2019
“Confidential Information”	means information which is disclosed by a Party or its staff in connection with this

	<p>Agreement which the other Party ought reasonably to regard as being confidential to the disclosing Party whether or not such information is expressly stated to be confidential or marked as such</p>
“Disaggregation Criteria”	means the criteria set out in clause 12.8
“Data Protection Legislation”	means (I) The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), the Law Enforcement Directive (2016/680) and any applicable national implementing Laws as amended from time to time, (ii) The Data Protection Act 2018 to the extent that it relates to Processing of Personal Data and privacy, (iii) all applicable Laws relating to Personal Data and privacy
“Employees”	means all employees undertaking the Functions
“Financial Requirements”	means the financial provisions and requirements and principles set out in clause 11 and Schedule 1 which identifies estimates of costs and savings in respect of the Functions
“FOIA”	means 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 in relation to such legislation
“Functions”	means the building control function undertaken in accordance with the enactments set out in clause 4.1 and as set out in Schedule 2 Part I
“Intellectual Property Rights”	means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom)
“Joint Monitoring and Liaison Group”	means the body established by the Parties as set out in clause 5.1
“Monitoring Officer”	means the officer appointed as the authority’s Monitoring Officer under sections 5 and 5A of the Local Government and Housing Act 1989
“New Supplier”	means any person, firm or company who is engaged whether directly or indirectly by Tewkesbury after the Termination Date in the discharge of functions which are the same or similar to the Functions or any part of them;

“Non- Chargeable Activities”	means the non- chargeable activities under the Building (Local Authorities Charges) Regulations 2010
“Parties”	means Tewkesbury and Cheltenham
“Personal Data”	has the meaning as defined in Data Protection Legislation
“Processor”	has the meaning as defined in Data Protection Legislation
“Regulations”	means the Building (Local Authority Charges) Regulations 2010
“s151 Officer”	means the officer designated by a local authority as the person responsible for the proper administration of its financial affairs, as required by section 151 of the Local Government Act 1972
“Termination Date”	means the date on which Cheltenham ceases discharging the Functions (or any part of them) pursuant to this Agreement;
“Termination Employees”	means the Employees who it is determined in accordance with the procedure as set out in clause 12.7 will transfer to the Tewkesbury or any New Supplier on the Termination Date;
“Tewkesbury’s Client Officer”	means Tewkesbury’s Corporate Head of Service responsible for the Functions or as otherwise nominated by Tewkesbury
“Third Party Income”	means all other building control services

outside of the building regulations services  
undertaken for third parties

“TUPE Regulations”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006

“Working Days”

means the days on which the Parties’ offices are open to the public

1.2 the terms and expressions set out above shall have the meanings ascribed therein;

1.3 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.4 words importing the masculine include the feminine and the neuter;

1.5 reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement

## **2. POWERS AND DELEGATION**

2.1 In exercise of their powers under sections 101, 102, 111 and 113 of the Local Government Act 1972 and under Part 1A Chapter 2 Section 9EB of the Local Government Act 2000 and pursuant to the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and all other relevant enabling powers the Parties have agreed as follows:-

2.1.1 Tewkesbury has agreed to arrange for the discharge of the Functions by

Cheltenham

2.1.2 Cheltenham has agreed to carry out the Functions in accordance with this Agreement

2.2 The Parties have entered into this Agreement in the spirit of partnership with the object of providing effective economic and efficient service and both Parties declare their intention to seek to continuously improve delivery of the Functions in accordance with the principles of best value

### **3. TERM**

3.1 This Agreement shall commence on the Commencement Date and shall continue in force for a period of 10 years **PROVIDED THAT** this Agreement may be terminated by either Party serving:

- not less than 12 calendar months' notice in writing upon the other expiring on the fifth anniversary of the Commencement Date or by serving not less than 12 calendar months' notice in writing thereafter or
- in the event of material breach of this Agreement the Agreement may be terminated in accordance with clause 13

### **4. PROVISION OF THE FUNCTIONS**

4.1 Cheltenham shall discharge all of Tewkesbury's Functions including under the following enactments:-

- (i) The Building Act 1984 and regulations made under it
- (ii) Local Government (Miscellaneous Provisions Act) Act 1982
- (iii) Town Improvements Clauses Act 1847 and Public Health Act 1925
- (iv) Town and Country Planning Act 1990
- (v) Licensing Act 2003
- (vi) The Buildings ( Approved Inspectors etc) Regulations 2000
- (vii) The Buildings ( Local Authority Charges) Regulations 2010

4.2 For the avoidance of doubt the discharge of the Functions by Cheltenham shall

include:-

- (i) appointment and/or authorisation of officers to exercise statutory Functions;
- (ii) to undertake inspections, investigations, interviews, service of notices, notifications, consultation responses, legal proceedings and to exercise all other relevant powers including powers of entry provided under the enactments set out in clause 4.1 above or as relevant;
- (iii) determination of application, service of notices, exercise of powers in default and recovery of expenses

4.3 Cheltenham shall not increase the staffing establishment as accounted for in the Financial Requirements without the prior approval of Tewkesbury

4.4 Cheltenham shall not increase capital investment without the prior approval of Tewkesbury

## **5. GOVERNANCE ARRANGEMENTS**

5.1 The Parties agree to set up a Joint Monitoring and Liaison Group whose membership and terms of reference (unless otherwise agreed between the Parties) shall be as set out in Schedule 3

5.2 Cheltenham shall be responsible for secretarial and administrative support to the Joint Monitoring and Liaison Group

5.3 Every notice convening a meeting of the Joint Monitoring and Liaison Group shall specify the place date and time of the meeting and the general nature of the business to be discussed at the meeting

5.4 No business shall be transacted at any meeting of the Joint Monitoring and Liaison Group unless a quorum is present as set out in Schedule 3 and if such a quorum is not present within half an hour from the time appointed for the meeting the meeting shall stand adjourned to a time determined by Joint Monitoring and Liaison Group



5.5 Decisions of the Joint Monitoring and Liaison Group shall be on a consensus basis and if a consensus cannot be reached the matter will be referred to dispute resolution in accordance with clause 16

5.6 Minutes of the Joint Monitoring and Liaison Group meetings shall be produced by Cheltenham and circulated to all members of the Joint Monitoring and Liaison Group within 21 days of each meeting. Preparation of these minutes shall be the responsibility of Cheltenham

## **6. SERVICE DELIVERY**

6.1 Cheltenham warrants and represents that :-

6.1.1 this Agreement is executed by a duly authorised representative of Cheltenham;

6.1.2 it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good service practice applicable to the Functions;

6.1.3 all obligations set out in this Agreement shall be performed and rendered by appropriately experienced, qualified and trained Employees with all due skill, care and diligence.

## **7. OPERATIONAL AND MONITORING MATTERS**

7.1 Cheltenham shall discharge the Functions in accordance with service standards set out in Schedule 2 Part I as amended from time to time by the Joint Monitoring and Liaison Group and shall provide quarterly reports on the said standards to Tewkesbury's Client Officer

7.2 Cheltenham shall endeavour to meet the performance standards set out in Schedule 2 Part II as amended from time to time by the Joint Monitoring and Liaison Group

7.3 Day to day operational matters shall generally be addressed to the Building Control Manager by Tewkesbury's Client Officer or Councillors of Tewkesbury as

necessary for consideration and resolution

7.4 Cheltenham shall introduce customer service feedback procedures for Tewkesbury and shall seek customer service feedback on an ongoing basis but at least annually and shall report outcomes to the Joint Monitoring and Liaison Group as directed by the Joint Monitoring and Liaison Group from time to time

7.5 Cheltenham shall:-

7.5.1 carry out and assist Tewkesbury's Client Officer with Corporate and Strategic issues relating to the Functions;

7.5.2 liaise as necessary with the Local Authority Building Control Organisation

7.5.3 contribute to Tewkesbury's strategic plans including Equality Act, compliance, key performance indicators, annual efficiency statements, best value duties and comprehensive area assessment

7.5.4 contribute to Tewkesbury's commercialisation strategy by increasing third party income for Tewkesbury and by creating other ways of reducing the costs of the Functions

7.5.5 carry out Ancillary Functions for Tewkesbury as may be agreed from time to time between the Parties following consideration and approval by the Joint Liaison and Monitoring Group;

7.5.6 liaise with Tewkesbury's Departments as required by Tewkesbury from time to time for the proper undertaking of the Functions and Ancillary Functions

7.5.7 ensure that Tewkesbury's Client Officer participates in the future appointment of the Building Control Manager

## **8. COMPLAINTS**

8.1 Complaints relating to the provision of the Functions from the public shall be handled in accordance with Cheltenham's corporate complaints procedure

- 8.2 Complaints relating to the provision of the Functions from Tewkesbury's Client Officer or a Tewkesbury Councillor shall be investigated by the Building Control Manager or Cheltenham's Director of Environment or Cheltenham's Chief Executive as considered appropriate by Tewkesbury's Client Officer
- 8.3 The Parties shall co-operate fully with each other in responding to any enquiries in the course of investigations carried out by the Local Government Ombudsman or any other relevant statutory body or statutory officer which shall include the Monitoring Officer or s151 Officer of the Parties

## **9. ACCOMMODATION**

- 9.1 Each Party undertakes to make available such accommodation, working space and associated facilities and services as shall from time to time be necessary to enable the Functions to be performed in accordance with this Agreement and such accommodation and associated facilities and services to be provided by Cheltenham and Tewkesbury as at the Commencement
- 9.2 Tewkesbury hereby grant a licence to Cheltenham to allow the Employees to enter Tewkesbury's offices premises for the purposes of performing the Functions and to utilise such associated services and facilities as shall be provided from time to time in accordance with this clause 10
- 9.3 Cheltenham shall throughout the Term maintain at least one duty officer at Tewkesbury unless otherwise directed by Tewkesbury

## **10. ICT AND EQUIPMENT**

- 10.1 The Employees shall continue to use their existing computers, mobile phones and other ICT devices used by those employees prior to the Commencement Date from the Commencement Date until replaced in accordance with Cheltenham's or Tewkesbury's ICT replacement policies or practices
- 10.2 The Parties undertake to develop an integration of the ICT systems used for the provision of the Functions as soon as reasonably practicable and in conjunction

with either Parties' ICT proposals provided that such integration shall be referred and approved by the Joint Monitoring and Liaison Group prior to implementation

10.3 Each Party shall cooperate with each other to make technical specifications available to each other as necessary to ensure the continuous delivery of the Functions and shall take appropriate steps to protect against unauthorised access tampering or systems failure of each others ICT systems

10.4 Cheltenham shall from the Commencement Date :-

10.4.1 ensure with the assistance of Tewkesbury that all Employees have access to all data necessary for the provision of the Functions at Tewkesbury and Cheltenham offices and remotely

10.4.2 invest and support the existing Uniform systems at Tewkesbury and Cheltenham to ensure that new versions are compatible for easy access and working at Tewkesbury and Cheltenham and remotely

10.4.3 be represented on Uniform user groups so that changes to the business systems are planned, agreed and co-ordinated

10.5 The Parties agree that all Employees will comply with their respective ICT security policies and shall undertake training as necessary and that appropriate security badges to gain entry to accommodation at both Tewkesbury and Cheltenham locations shall be provided to all Employees as appropriate

## **11. FINANCIAL PROVISIONS**

11.1 The Parties agree that Third Party Income shall be shared on a 50/50 basis when achieved or realised based on actuals and that any shared savings shall be on the basis of a variance from an agreed base position on 31<sup>st</sup> October 2019

11.2 Cheltenham shall maintain the following accounts:

- For Chargeable Work account
- Non-Chargeable Activities account
- Third Party income account

- For Tewkesbury called “The Tewkesbury Borough Council Building Control Account” and shall include all the relevant information as detailed in the CIPFA Local Authority Building Control Accounting guidance.

11.3 Cheltenham shall maintain detailed records to support the information set out in clause 11.2 above which shall be in a form suitable for external and internal audit inspection including timesheets to support those figures

11.4 Cheltenham shall provide to Tewkesbury the information set out in clauses 11.2 and 11.3 above by end of April each year for the preceding financial year and to provide all necessary assistance to Tewkesbury to ensure timely compliance of the external audits requirements

11.5 Cheltenham agrees to consider and report to Tewkesbury’s Client Officer the implications of any revised regulations and CIPFA accounting guidance

11.6 Cheltenham shall comply with the statutory requirements of the Regulations in respect of the Building Regulations Chargeable Service referred to in clause 11.2 above and shall by end of October each year provide Tewkesbury with a detailed estimate as follows;

- Revised for the current financial year
- Initial estimate for following financial year

11.7 Cheltenham shall invoice or pay Tewkesbury quarterly in arrears for the trading deficit or trading surplus (with an adjusting invoice/payment for the preceding financial year issued by the 14<sup>th</sup> May each year).

## **12. TERMINATION**

12.1 Either Party may terminate this Agreement with immediate effect in the event that there is a material breach of this Agreement which is irredeemable

12.2 Upon termination Cheltenham shall:-

- 12.2.1 Provide Tewkesbury all relevant information relating to the Functions which Tewkesbury reasonably require to enable them to provide the

Functions from the date of termination

- 12.2.2 Prepare and maintain an asset register of all assets and equipment used in discharging the Functions and those assets and equipment shall be valued by agreement of the Parties or in the absence of agreement by the Arbitrator/Expert
  - 12.2.3 Each Party shall receive such portion of (or sum equal to the value of) the aforesaid valued assets and equipment according to the calculation set out in clause 12.2.4 below
  - 12.2.4 Where neither Party wishes to receive a particular valued asset or equipment such item shall be sold by the Party in possession of it at the best price reasonably obtainable and the resulting sums shall be distributed after deduction of expenses reasonably incurred in the item sale according to clause 12.3
  - 12.2.5 Cheltenham shall deliver to Tewkesbury no later than 7 days after termination any data held by Cheltenham which relates to the discharge of the Functions and Ancillary Functions for or by Tewkesbury
- 12.3 The distributions made in clause 12.2.4 shall be made on a 50/50 basis between the Parties
- 12.4 Both of the Parties acknowledge that it is their intention that on the cessation of the discharge of the Functions by Cheltenham (or any part of them) and the commencement of any discharge of any functions which are the same or similar to the Functions (or any part of them) by Tewkesbury or any New Supplier shall with respect to each of the Termination Employees be treated as a relevant transfer for the purposes of the TUPE Regulations
- 12.5 Without prejudice to the TUPE Regulations, Cheltenham shall when requested by Tewkesbury at any time within the 12 month period prior to the expiry of this Agreement, or if at any time either party serves notice to terminate provide in

respect of the Employees:-

12.5.1 full and accurate details regarding their identity, age, sex, length of service, job title, grade and terms and conditions of employment;

12.5.2 current, pending and threatened claims, disputes, trade disputes and industrial action by any Employee or their representative and circumstances known to Cheltenham which make such a claim, dispute or industrial action possible;

12.5.3 and any other information which Tewkesbury may reasonably request

12.6 Cheltenham shall provide the information referred to above at clause 12.5 as soon as reasonably practicable after receipt of the said written notice and at no cost to Tewkesbury and notify Tewkesbury forthwith in writing of any material changes to such information as soon as reasonably practicable as and when such changes arise.

12.7 The Parties will in good faith and following consultation with the employees of Cheltenham and any appropriate representatives within the meaning of TUPE attempt to agree which of the Employees will be deemed to transfer to Tewkesbury or any New Supplier in accordance with clause 12.4 based on the Disaggregation Criteria who shall be, for the purposes of this Agreement, the Termination Employees, with the remainder of such employees remaining with Cheltenham. If the Parties have not agreed the identity of the Termination Employees at least 3 months prior to the Termination Date then the Parties will resolve the matter in accordance with the dispute resolution procedure set out in clause 16 of this Agreement.

12.8 The Disaggregation Criteria used to determine who shall be the Termination Employees shall be:-

12.8.1 the relative proportion of work undertaken for Tewkesbury and Cheltenham in 12 month period immediately prior to the Termination

Date;

12.8.2 any preference stated by the Employee;

12.8.3 the relative costs involved in terminating and/or transferring the Employee, so as to ensure a fair sharing of the costs between the Parties; and

12.8.4 the skills of the Employee and requirements after the Termination Date of Cheltenham, Tewkesbury and/or any New Supplier, so as to ensure a balance of skills and continuity of service for both Parties after the Termination Date.

12.9 If TUPE does not apply on the Termination Date, Tewkesbury shall offer, or shall procure that any New Supplier offers, employment to the Termination Employees on the same terms and conditions as applied immediately before the Termination Date (save in relation to any change which would otherwise be in accordance with regulation 4(5) of TUPE) including full continuity of employment.

12.10 Cheltenham shall indemnify Tewkesbury or any New Supplier from and against each and every cost claim, liability expense or demand which is properly and reasonably incurred by Tewkesbury or any New Supplier in connection with and as a result of any action or omission by Cheltenham up to and including the Termination Date in connection with any matter relating to or arising out of:-

12.10.1 arising from Cheltenham's breach of its obligations under clause 12.5

12.10.2 the employment or termination of employment of any Termination Employee by Cheltenham up to and including the Termination Date;

12.10.3 anything done or omitted to be done by or on behalf of Cheltenham in respect of any Termination Employee up to and including the Termination Date which is deemed to have been done or omitted to be done by or on behalf of Tewkesbury or any New Supplier in accordance with the TUPE Regulations;



- 12.10.4 any failure by Cheltenham's to pay any of the Termination Employees any remuneration due or provide any benefits in respect of the period prior to Termination Date;
- 12.10.5 any claim by or on behalf of all or any of the Termination Employees arising out of any failure by Cheltenham to comply with its legal obligations in relation to information and consultation pursuant to regulations 13 and 14 of the TUPE Regulations save insofar as any such failure results from any failure by Tewkesbury or any New Supplier to comply with its obligations pursuant to regulation 13 (4) of the TUPE Regulations

12.11 Cheltenham shall indemnify Tewkesbury or any New Supplier from and against all claims, liabilities, costs, demands (including all expenses associated therewith) made within 12 months of the Termination Date by or in relation to each and every employee or former employee of Cheltenham who is not a Termination Employee and who was prior to the Termination Date employed by Cheltenham in the provision of the Functions in respect of whom it is alleged their employment or any liabilities have transferred to Tewkesbury or any New Supplier pursuant to the TUPE Regulations being any claim, liability, cost and demand arising out of:-

- 12.11.1 the employment or termination of employment of such a person up to and including the Termination Date; or
- 12.11.2 the employment or any termination of employment of such a person after the Termination Date (excluding claims for discrimination by Tewkesbury) ; or
- 12.11.3 any claim by or on behalf of any such person arising out of any failure to comply with regulations 13 and 14 of the TUPE Regulations

**PROVIDED THAT** in the event of any such claim being made Tewkesbury or any New Supplier shall forthwith notify Cheltenham and no agreement or settlement

shall be reached or entered into by Tewkesbury or any New Supplier without the prior written consent of Cheltenham such consent not to be unreasonably withheld or delayed

- 12.12 Tewkesbury shall indemnify Cheltenham from and against each and every cost, claim, liability, expense or demand which is properly and reasonably incurred by Cheltenham in connection with or as the result of any act or omission by Tewkesbury or the New Supplier after the Termination Date in connection with any matter relating to the Termination Employees;
- 12.12.1 the employment or termination of employment of any Termination Employee by Tewkesbury or any New Supplier after the Termination Date;
- 12.12.2 any claim by or on behalf of all or any of the Termination Employees that the transfer involves or would involve a substantial change in working conditions to the material detriment of such a person;
- 12.12.3 any claim by or on behalf of all or any of the Termination Employees arising out of Tewkesbury's or any New Supplier's failure to comply with its legal obligations in relation to information and consultation pursuant to regulations 13(4).
- 12.13 On the Termination Date, the Parties shall co-operate to manage the pension aspects of any onward transfer of any Termination Employees to Tewkesbury or any New Supplier;
- 12.14 Cheltenham shall promptly provide to the Local Government Scheme and to Tewkesbury or any New Supplier such documents and information as may reasonably be required in advance of the Termination Date and shall fully co-operate with the reasonable requests of the Scheme and Tewkesbury or any New Supplier relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any Termination Employees on the

Termination Date.

- 12.15 The Parties agree that any payments payable to the Local Government Scheme by Tewkesbury or any New Supplier that participates in the Scheme in respect of the Termination Employees shall be calculated on the assumption that as at the Termination Date any liabilities relating to the Termination Employees' membership prior to the Termination Date are 100% (one hundred per cent) funded (as determined by the Actuary to the Scheme in accordance with the most recent actuarial valuation of the Scheme before the Termination Date).

**13. CONSEQUENCES OF TERMINATION**

- 13.1 Six months prior to termination, if practical, otherwise as soon as practical, the Parties shall:-
- 13.1.1 develop an implementation plan so that each Party will be able to meet its obligations to discharge legal service and co-operate in implementing the agreed arrangements
  - 13.1.2 co-operate in terminating modifying restructuring assigning or novating contractual arrangements entered into to mutually advantage and properly and timeously execute any documents necessary
  - 13.1.3 Immediately transfer or return any property including data belonging to the other Party
  - 13.1.4 Confirm in writing and produce evidence as is reasonable to prove compliance with their obligations under this clause
  - 13.1.5 Agree how any ICT facilities shall be divided between the Parties so that each Party will have the facilities necessary to meet its obligations to discharge the Functions and co-operate in implementing the agreed arrangements
- 13.2 The costs of termination, including any costs resulting from the division of ICT facilities shall be divided as follows:

13.2.1 If the termination of this Agreement follows the service of notice by one of the Parties in accordance with clause 3 of this Agreement, the Parties shall share equally the costs of early termination

13.2.2 If the termination of this Agreement is the result of a material breach by one of the Parties the Party in material breach shall be responsible for any costs or losses or damages incurred by the other Party as result of early termination

#### **14. FORCE MAJEURE**

14.1 Neither of the Parties shall be liable to each other to any extent in relations to any "Force Majeure Event" (which for this purpose shall mean a failure by either Party to fulfil its obligations under this Agreement due to reasons beyond its reasonable control). Without limiting the meaning of that expression, "reasons beyond its reasonable control" may include industrial disputes of any kind, whether involving the employees of either party or those of any other person, government intervention, act of war and other hostilities, storm, fire, flood, theft, riot and earthquake)

14.2 As soon as either Party becomes aware that a Force Majeure Event has occurred or is likely to occur, that Part will notify the other Party. The Parties shall then agree as soon as possible what action should be taken to avoid or mitigate the effects of the Force Majeure Event

#### **15. INSURANCE**

15.1 Other than those actions claims demands proceedings damages losses costs charges and expenses covered by the insurances provided by Cheltenham under clause 15.2 the Parties shall hold each other harmless from and against all actions claims demands proceedings damages losses costs charges and expenses whatsoever in respect of or in any way arising out of the provision of the Functions or any part of them or other work carried out pursuant to this Agreement

- 15.2 Cheltenham shall ensure that adequate insurance cover is effected and maintained and notified annually to Tewkesbury in respect of :-
- 15.2.1 any property held by it for the purposes of this Agreement;
  - 15.2.2 Employers' liability;
  - 15.2.3 Public liability;
  - 15.2.5 Officials indemnity
  - 15.2.6 Professional indemnity<sup>2.5</sup>
- 15.3 Cheltenham shall institute and defend all such claims or legal proceedings as Cheltenham finds reasonable to do so in connection with the discharge and carrying out of any of the Functions by Cheltenham.
- PROVIDED ALWAYS** that **EXCEPT** in relation to claims or proceedings in respect of which insurances provide full indemnity and cover Cheltenham shall consider any advice offered by Tewkesbury in relation to the prosecution defence compromise or settlement of any proceedings taken or defended in accordance with this clause to which Cheltenham is a party in the High Court of Justice the Court of Appeal or the House of Lords but Cheltenham shall not be obliged to take any step or any action that may compromise any claim under any insurance held by it
- 15.4 Cheltenham shall use its reasonable endeavours to undertake the Functions in such a way as to minimise third party claims for compensation damages or otherwise or any legal liability arising in connection with or incidental to the carrying out of the Functions through the negligence default or neglect of Cheltenham
- 15.5 In the event of failure by either Party reasonably to comply with the requirements of this Agreement which results in the other Party incurring additional expenditure then the Party at fault shall indemnify and reimburse the other Party for the reasonable expenditure so incurred. For the purposes of this clause 15.5 the

Party at fault shall be provided with evidence of the costs incurred by the other Party as a result of such failure

**16. DISPUTES AND ARBITRATION**

16.1 Either Party may request that a dispute be referred to the Joint Monitoring and Liaison Group for determination and if that does not resolve the dispute either Party may request the other to participate in a meeting of their respective Chief Executives in order to discuss the dispute and to agree a strategy to resolve it. The Parties shall then liaise in good faith to arrange and hold the meeting within ten (10) Working Days and shall exchange statements at least three (3) clear Working Days prior to the date of the meeting, setting out their respective views of the disputed issues

16.2 If notwithstanding any steps which are taken by the Parties pursuant to clause 16.1 the dispute between them remains unresolved then at the request of either Party the dispute in question shall be referred to an independent and professional mediator who shall be nominated without delay by agreement between Parties, or (in the absence of such agreement) by the President of the Law Society (or his authorised representative). Any such mediation shall then be carried out in confidence and on a without prejudice basis in relation to any subsequent proceedings and each of the Parties shall bear their own expenses and one half of the mediator's resulting charges.

16.3 If regardless of whether or not the Parties have implemented the procedures which are specified in clauses 16.2 and 16.3 the Parties fail to resolve their dispute within six (6) weeks of the dispute first arising, then either Party may serve notice on the other to require the dispute to be referred to either (as applicable):

16.3.1 arbitration in accordance with the Arbitration Acts 1996 or an appropriate independent expert who shall be nominated without delay by agreement between the Parties (such agreement not to be unreasonably withheld

or delayed) and who shall act as an expert and not as an arbitrator, provided that in default of agreement as to such nomination, the expert shall be nominated on the joint application of the Parties (or if either of them neglects to concur in such application, then on the sole application of the other) by the president or other Chief Officer or Acting Chief Officer for the time being of the Law Society ( or such other appropriate professional body as shall be agreed by the Parties, such agreement not to be unreasonably withheld or delayed); or

16.3.2 institute legal proceedings in Court

16.4 Regardless of whether the Arbitrator/Expert is appointed under clause 16.4, the Parties shall each use their reasonable endeavours to ensure that the appointed Arbitrator/Expert (as applicable):

16.4.1 sets a strict (but nevertheless fair) timetable, with which the Parties must comply in order to secure a resolution of their dispute without undue delay or expense;

16.4.2 invites each of the Parties (or their respective agents) to submit written representations to him to explain their respective cases in relation to the dispute (such response to be made by each of the Parties within twenty (20) Working Days of being requested to do so by the Arbitrator/Expert (as applicable));

16.4.3 immediately discloses any representations which have been made pursuant to sub clause 16.5.2, to the other party, so that they can then submit further written comments on the same to the Arbitrator/Expert (as applicable) within a further five (5) Working Days

16.5 The Parties agree that if either an expert or an arbitrator is appointed under clause 16.4, then:

16.5.1 the Arbitrator/Expert (as applicable) shall not be fettered by any

representations (or comments on the same) which are made by either of the Parties to the Arbitrator/Expert (as applicable);

16.5.2 the decision of the Arbitrator/Expert (as applicable) shall be final and binding on the Parties provided that the appointed person provides each of the Parties with a detailed statement setting out their reasons for making the decision which they have arrived at;

16.5.3 each of the Parties shall bear one half of the costs of the reference to the Arbitrator/Expert (as applicable) unless the Arbitrator/Expert (as applicable) directs otherwise

16.6 If any dispute between the Parties is resolved pursuant to the provisions of this section (otherwise than via the appointment of an arbitrator) then the Parties shall record the resolution of their dispute in writing and shall each promptly sign the same. The signed document shall then form a legally binding agreement between the Parties by way of supplement to this Agreement

## **17. DATA PROTECTION**

17.1 Both parties will comply with the applicable requirements of the Data Protection Legislation.

17.2 Where Cheltenham is processing Personal Data on behalf of Tewkesbury, the Parties acknowledge that the Tewkesbury is the Controller and the Cheltenham is the Processor. Both parties shall ensure that they each hold a record of processing as required by the Data Protection Legislation.

17.3 Where Cheltenham is processing Personal Data on behalf of the Tewkesbury, Tewkesbury will ensure that it has the necessary consents or can comply with other processing conditions contained within the Data Protection Legislation and that it has the appropriate notices and privacy policies in place to enable the lawful transfer of Personal Data to Tewkesbury for the duration of the Agreement and for the purposes of the processing as detailed in this Agreement



17.4

Where Cheltenham is acting as a Processor, Cheltenham shall:

- act only on Tewkesbury's written instructions;
- have in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
- ensure any staff who have access to the Personal Data are obliged to keep it confidential;
- assist Tewkesbury to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
- assist Tewkesbury (if requested) with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
- notify Tewkesbury without undue delay in the event of a data security breach and where acting as a Processor shall assist with any investigation
- maintain and keep up to date the data processing record referred to above;
- delete or return all personal data to Tewkesbury as requested at the end of the agreement (unless already deleted in line with Tewkesbury's retention policy); and
- submit to audits and inspections and provide Tewkesbury with whatever information it needs to ensure that both parties are complying with their obligations under the Data Protection Legislation and inform Tewkesbury immediately if asked to do something that is likely to infringe the Data Protection Legislation or other law of the UK, EU or a member state
- enter into a data transfer agreement, where this agreement will involve or require a transfer of any Personal Data from one country to a country outside the country of origin and if required by applicable law, that is consistent with the requirements of applicable law.

**18. CONFIDENTIALITY AND FOIA**

18.1 Each Party:-

- 18.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly;

- 18.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement
- 18.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party under or in connection with the Agreement:-
- 18.2.1 is given only to such of the other Party staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- 18.2.2 is treated as confidential and not disclosed (without prior approval from the other Party) or used by any of the other Party's staff or such professional advisors or consultants otherwise than for the purposes of the Agreement
- 18.3 Each Party shall not use any Confidential Information it receives from the other Party otherwise than for the purposes of the Agreement
- 18.4 The provisions of clauses 18.1 to 18.3 shall not apply to any Confidential Information received by one Party from the other:-
- 18.4.1 which is or becomes public knowledge (otherwise than by breach of this clause 18);
- 18.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 18.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 18.4.4 is independently developed without access to the Confidential

Information; or

- 18.4.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' Functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), the FOIA, or the Environmental Information Regulations 2004
- 18.5 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and each Party shall assist and co-operate with the other (at their own expense) to enable the other Party to comply with these Information disclosure obligations
- 18.6 Where a Party receives a request for information in relation to information which it is holding on behalf of the other Party, it shall :-
  - 18.6.1 provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within 5 Working Days (or such other period as the Parties may specify) of the Party requesting that information; and
  - 18.6.2 provide all necessary assistance as reasonably requested by the Party to enable the Party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004
- 18.7 Where a Party receives a request for information which relates to the Agreement, it shall inform the other Party of the request for information as soon as practicable after receipt and in any event within 2 Working Days of receiving a request for information
- 18.8 If either Party determines that information (including Confidential Information) must

be disclosed pursuant to clause 18.7, it shall notify the other Party of that decision at least 2 Working Days before disclosure

18.9 Each Party shall be responsible for determining at its absolute discretion whether the commercially sensitive information and/or any other Information:-

18.9.1 is exempt from disclosure under the FOIA or the Environmental Information Regulations 2004;

18.9.2 is to be disclosed in response to a Request for Information

18.10 Each Party acknowledges that the other Party may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), the FOIA or the Environmental Information Regulations 2004 be obliged to disclose Information:-

18.10.1 without consulting with the other Party, or

18.10.2 following consultation with the other Party and having taken its views into account

18.11 Each Party shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the other Party to inspect such records as requested from time to time

## **19. INTELLECTUAL PROPERTY RIGHTS**

19.1 Nothing in this Agreement is intended to transfer to Cheltenham any Intellectual Property Rights owned by Tewkesbury as at the Commencement Date

19.2 All or any Intellectual Property Rights in materials developed for the Functions shall vest in Cheltenham but shall be for the benefit of Cheltenham and (to the extent that such rights relate to the Functions carried out in Tewkesbury) of Tewkesbury

19.3 Cheltenham shall on expiry or termination of this Agreement for any reason grant to Tewkesbury a non-exclusive perpetual revocable royalty-free licence to use and

copy materials in the Intellectual Property Rights which vest in Cheltenham for the purposes of providing the Functions in Tewkesbury.

**20. AUDIT REQUIREMENT**

20.1 Cheltenham shall keep and maintain until 6 six years after the expiry or earlier termination of this Agreement full and accurate records of this Agreement including the Functions provided under it all expenditure and payments

20.2 Cheltenham shall on request permit Tewkesbury or its auditor (internal or external) such reasonable access to the records referred to in clause 21.1 as may be required by Tewkesbury in connection with this Agreement

**21. NOTICES**

21.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

21.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by facsimile transmission or electronic mail (if confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 21.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

21.3 For the purposes of clause 21.2, the address of each Party shall be:

For Tewkesbury:  
Borough Solicitor  
Council Offices  
Gloucester Road  
Tewkesbury  
Gloucestershire GL20 5TT

For Cheltenham  
Chief Executive  
Municipal Offices  
Promenade  
Cheltenham  
GL50 9SA

**22. WAIVER / SEVERANCE**

22.1 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

22.2 If at any time a clause or part of a clause or schedule to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect::

22.2.1 that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement;

22.2.2 the parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended Agreement complies with the laws of that jurisdiction.

**23. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

23.1 It is not intended that any third party shall have a right to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 even if the terms are expressed to be for their benefit nor shall any such party have a right of veto over any future variations of this Deed

**24. GOVERNING LAW**

24.1 This Agreement is governed by and shall be interpreted in accordance with English Law

**IN WITNESS** whereof this document has been executed as a deed by the parties hereto but is not intended to have legal effect until it has been unconditionally delivered and dated

The common seal of **Tewkesbury Borough Council** is hereunto affixed

in the presence of:

Authorised Signatory

The common seal of **Cheltenham Borough Council** being affixed hereto and authenticated by the undermentioned person authorised by the Council to act for that purpose:

Authorised Signatory

## **SCHEDULE 1**

### **FINANCIAL PRINCIPLES**

- Chargeable Work account is to be funded by fees payable with any surplus/deficit being retained by Cheltenham for reinvestment into the service
- Cheltenham shall ensure that the Chargeable Work account breaks even on a rolling basis
- Cheltenham to charge Tewkesbury 50% of the cost (excluding recharges) for the Non-Chargeable Activities account
- Cheltenham to charge / pay Tewkesbury 50% of the cost (excluding recharges) / net income (excluding recharges) for the Third Party income account



## SCHEDULE 2

### PART I

#### SERVICE STANDARDS

<b><i>Chargeable account Works</i></b>	<b><i>Service level</i></b>
<b>Building Regulation Work</b>	
1, Plan checking and consultations	Within 21 days
2, Structural engineering checks	Within statutory period for determination (5 or 8 weeks)
3, Site Inspections	Next working day when request received prior to 3pm
4, Preliminary enquiries in connection with future projects	Within 21 days
5, Administration associated with LA controlled submissions	Within 21 days
<b><i>Non-chargeable account works (building control)</i></b>	
<b>Building Act/Legal/Enforcement</b>	
1, Enforcement/Appeals/Disabled Fee/Exempt Works etc.	Within statutory period for determination (5 or 8 weeks)
2, Public Advice/Complaints/Political	10 days
3, Approved Inspector registration	5 working days
<b>Development Control and Conservation</b>	
1, Planning Condition checks as requested	Within 21 days
2, Planning Application Consultations etc.	Within 21 days
<b>Public Safety Services</b>	
1, Action on dangerous structures notified during normal office hours	Assessed within 2 hours
2, Registration of demolition notice	Within 24 hours
3, Fire Authority enforcement checks	Within 21 days
4, MOE, Ingress and Egress (S71/S72)	Within 10 days
5, Emergency Planning	Consultation response within 21 days
6, Emergency callout provision for dangerous buildings	24/7 by either Building Control representative or agreed 3 <sup>rd</sup> party consultee
<b>Other Internal Services</b>	
1, Consultation Service, i.e., housing environmental health	Within 21 days
2, Land charge searches	Within 5 days
3, Licensed premises consultation	Within 21 days

4, Housing returns	Within 21 days
5, Solicitors queries and replies	Within 10 days
<b>Corporate Development Unit</b>	
1, Departmental work for people with disabilities	Within 21 days
<b>Street Naming &amp; Numbering</b>	
1, Naming and Numbering	Response within 10 working days, full application processed within 30 working days (Unless there is an objection)
2, Re-naming and Re-numbering	Response within 10 working days, full application processed within 30 working days (Unless there is an objection)
3, LLPG	Within 7 days of the schedule being issued
<b>Other surveying work outside of trading account</b>	
1, Access audits	Within 21 days

## PART II

### Building Control Shared Service Performance Standards

Level of service	2019/20	2020/21	2021/22	2022/23	2023/24
Consultation on planning applications / conditions / pre-application advice within 21 days.	100%	100%	100%	100%	100%
A dangerous structure report will be assessed within 2 hours of the report being received.	100%	100%	100%	100%	100%
Requests for inspections received by 3pm will be undertaken the next working day.	100%	100%	100%	100%	100%
Issue Completion Certificates within 2 days of works being satisfactorily completed.	100%	100%	100%	100%	100%
Decisions determined within statutory time period.	100%	100%	100%	100%	100%
Quality of service					
Customer satisfaction (in return good or very good).	85%	90%	95%	95%	95%
Expand number of business partners.	17	19	21	23	25

## **SCHEDULE 3**

### **JOINT MONITORING AND LIAISON GROUP**

The Parties will set up a Joint Monitoring and Liaison Group as follows:-

#### **1. PURPOSE**

To oversee the performance and development of the Shared Building Control Service on behalf of Tewkesbury Borough Council and Cheltenham Borough Council

#### **2. MEMBERSHIP AND FREQUENCY OF MEETINGS**

- (1) The Joint Monitoring and Liaison Group will consist of :-
  - 2 Members from Cheltenham Borough Council
  - 2 Members from Tewkesbury Borough Council
  - 1 Client Officer from Cheltenham Borough Council
  - 1 Client Officer from Tewkesbury Borough Council
- (2) The Joint Monitoring and Liaison Group will receive reports from the Building Control Manger and other senior officers of the Councils as necessary to properly fulfil its overall purpose
- (3) The quorum of the Joint Monitoring and Liaison Group will be 4 with at least 1 Member from each Council and 1 Client Officer from each Council in attendance
- (4) The Chairman of the Joint Monitoring and Liaison Group will be a Member of Tewkesbury Borough Council
- (5) The Vice-Chairman of the Joint Monitoring and Liaison Group will be a Member of Cheltenham Borough Council.
- (6) The Joint Monitoring and Liaison Group may invite any Members or persons to attend its meetings but such persons will not be entitled to vote
- (7) The Joint Monitoring and Liaison Group shall meet at least quarterly unless otherwise agreed by the said Joint Monitoring and Liaison Group

#### **3. TERMS OF REFERENCE**

- (1) To review and monitor the performance of the Shared Building Control Service
- (2) To monitor the delivery of the Shared Building Control Service in accordance with the s101 Agency Agreement
- (3) To determine any disputes or differences that arise between the Councils in accordance with the s101 Agency Agreement

- (4) To monitor on a quarterly basis the budgets/financial arrangements of the Shared Building Control Service
- (5) To consider support for capital investment for final approval by both Councils
- (6) To monitor and modify service standards and delivery, and to receive reports on customer satisfaction and complaints and to recommend changes or improvements as appropriate
- (7) To receive reports on cases where conflicts between the interests of the Councils have arisen or are likely to arise.
- (8) To receive reports on any potential expansion of the Shared Building Control Service including increased shared working with other Councils or other public bodies and to make recommendations to their respective Councils accordingly