

DATED

2019

PETERBOROUGH CITY COUNCIL

- and -

CAMBRIDGESHIRE COUNTY COUNCIL

and

[District Council]

Agreement for the delegation of functions under the specified Energy Performance legislation from
Cambridgeshire County Council to [District Council]

and the management of this delegation on behalf of Cambridgeshire County Council by
Peterborough City Council

Clause

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LEGATION AGREEMENT is made theday of2019

BETWEEN

(1) Peterborough City Council of Town Hall, Bridge Street, Peterborough, PE1 1HG (“PCC”) and

(2) Cambridgeshire County Council of Shire Hall, Castle Hill, Cambridge, CB3 0AP (“County Council”) and

(3) Cambridge City Council of Mandela House, 4 Regent Street, Cambridge CB2 1BY (“District Council”)

NOW IT IS AGREED as follows:

1. Background

1.1 The County Council has agreed to enter into arrangements with PCC pursuant to Section 101 of the Local Government Act 1972 and pursuant to all other enabling powers for the discharge of its Trading Standards functions by PCC.

1.2 The County Council wishes to enter into arrangements with the District pursuant to Section 101, 102, 112 and 113 of the Local Government Act, and sections 19 and 20 of the Local Government Act 2000 and the regulations made under these Acts; together with the general power within section 2 of the Local Government Act 2000 and the supporting provisions within section 111 Local Government Act 1972 and pursuant to all other enabling powers for the discharge of their functions relating to energy performance certificates by the District in accordance with the arrangements set out in this delegation agreement (“Agreement”) from the Commencement Date.

1.3 As the County Council’s trading standards functions are currently managed by PCC on behalf of the County Council, PCC shall manage this Agreement on behalf of the County Council.

2. Structure

2.1 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement includes the Schedules.

3. Definitions and interpretation

3.1 In this Agreement, references to any enactment include references to that enactment as for the time being amended, applied, consolidated, re-enacted by or having effect by virtue of any subsequent enactment, and for this purpose 'enactment' means any Act, whether public, general, or local and includes any byelaw, order, rule, regulation, scheme or other instrument having effect by virtue of an enactment.

3.2 In this Agreement, the following expressions have the following meanings unless inconsistent with the context:

“Associated Duties” the associated duties set out Schedule 1;

“Annual Service Report” the report which the District is required to prepare annually in accordance with Schedule 1 of this Agreement.

“Business Day” any day other than a Saturday or Sunday or a public bank holiday in England.

“County Council Functions” means the County Council’s Functions specified at Schedule 1 including the power to do anything that is calculated to facilitate or is conducive or incidental to the discharge of those functions;

“Change of Law” means the coming into effect after the date of this Agreement of:

(a) Law other than any Law which on the date of this Agreement has been published:

(i) in a bill;

(ii) in a draft statutory instrument;

or

(iii) as a proposal in the Official Journal of the European Union;

(b) any guidance; or

(c) any applicable judgment of a relevant court of law which changes a binding precedent;

“Commencement Date”	[2019];
"Confidential Information"	information that, if disclosed, would or would likely prejudice the commercial interests of any person, including Intellectual Property Rights, of either Party and all Personal Data;
“Contract Year”	a period of twelve (12) months, commencing on the Commencement Date and/or each anniversary of the Commencement Date;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
“Data Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of any Data Processor engaged in the performance of its obligations under this Agreement;
“Data Protection Legislation”	this includes: (a) the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR), (b) the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any applicable national implementing Laws as amended from time to time, (c) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (d) the Regulation of Investigatory Powers Act 2000 (where applicable); (e) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI

2000/2699) (where applicable);

(f) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector (where applicable);

(g) [the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (where applicable); and

(h) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable;

“Data Protection Assessment” **Impact** is an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Subject Request” **Access** is a request made by, or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Default” means any material breach of the obligations of the relevant party (including but not limited to fundamental breach);

“Default Notice” means a notice in writing served by one party on the other in accordance with clause 16.3 setting out the details of any Default and the steps required to remedy the Default;

“District Responsibilities” the County Council’s Functions and the Associated Duties set out at Schedule 1:

Data Protection Act 2018;

“DPA”

“Enquiry Phase Personal Date”

the Personal Data to be Processed by or on behalf of the Council, more particularly described in Schedule 2;

“Exempt Information”

any information or class of information relating to this Agreement which may fall within an exemption to disclosure under the FOIA legislation;

“FOIA”

the Freedom of Information Act 2000 and subordinate legislation made under this and including the Environmental Information Regulations 2004;

“ District Manager”

The District manager with responsibility for the District Responsibilities

“DPA”

means the Data Protection Act 2018 (as amended, updated and/or replaced from time to time);

“Information Request”

a request for information made under the FOIA;

“Intellectual Property

confidential business information,

Rights” copyright (including rights in Software), database rights, know-how, rights (whether registrable or otherwise) in design, patents, service marks, and trademarks, trade or business names, trade secrets, applications for any of the foregoing and any similar or analogous rights to any of the above, whether arising from or granted under the Laws of England or any other jurisdiction;.

“Parties” The County Council, PCC and the District;

“Prohibited Act” the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act

- 2010;
- (ii) under the Fraud Act 2006;
- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority;
- (iv) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (v) section 117 of the Local Government Act 1972;

“Request” a request for information made under the FOIA.;

“Software” any and all computer programs in both source and object code form including all modules, routines and sub-routines of such programs and all source and other preparatory materials relating to them, including user requirements, functional specifications, ideas, principles, programming languages, algorithms, flow charts, logic, logic diagrams, orthographic representations, file structures, coding sheets, coding and any manuals or other documentation relating to them and computer generated works;

“Supervising Officer” the PCC manager with responsibility for those regulatory services relevant to this Agreement;

3.3 In this Agreement, except where the context otherwise requires:

- a. the masculine includes the feminine and vice versa; and
- b. the singular includes the plural and vice versa.

4. Duration

- 4.1 This Agreement shall come into effect on the Commencement Date and shall continue for a period of 2 years unless terminated earlier in accordance with the provisions of clause 16.4 or extended in accordance with clause 4.2
- 4.2 The Parties may by written agreement extend the term of this Agreement for a further period or periods of 2 years or for such other period as the Parties may agree in writing.
- 4.3 The conditions and Schedules to this Agreement shall apply for any period of extension of the term of this Agreement agreed by the Parties in accordance with Clause 4.2.
- 4.4. The Parties shall review this Agreement annually during the Term and any changes agreed shall be made in accordance with the variation procedure at clause 11.

5 Delegation of Functions

- 5.1 In consideration of the provisions of this Agreement and pursuant to the above mentioned powers, the County Council delegates it's County Council Functions to the District and the District accepts the delegation of the County Council's Functions described in Schedule 1.
- 5.2 Each Party shall ensure that they make any necessary changes to their respective constitutions required to give effect to this Agreement.

6. The District Responsibilities

- 6.1 Subject to the delegation by the County Council, the District shall be entitled to undertake the District Responsibilities set out in Schedule 1.
- 6.2 The District shall ensure that when undertaking the District Responsibilities it shall do so in accordance with all applicable law.
- 6.3 The District shall ensure that all staff involved in the undertaking the District Responsibilities shall do so with reasonable skill, care and diligence and shall possess such qualifications, skills and expertise as are necessary for the proper supply of the District Responsibilities.

7. Agency

- 7.1 Except as expressly set out in this Agreement, nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

8. Financial arrangements

8.1 In consideration of the District accepting the delegation of the County Council Functions and associated responsibilities PCC and the County Council acknowledge and agree that all fees from third parties for fixed penalty notices issued by the District as a result of the exercise of the County Council's Functions will be received by the District and that the District may retain all such fees.

8.2 The Parties acknowledge and agree that PCC and the County Council shall have no liability to make any payments to the District for the exercise by the District of or the performance by the District of any of the District Responsibilities under this Agreement. The District shall be responsible for all costs associated with or arising from its exercise of or performance of the District Responsibilities.

9. Performance Monitoring

9.1 The District shall provide the County Council and PCC with an Annual Service Report to be submitted by 1st May each Contract Year detailing the information specified at Schedule 1.

10. Intellectual Property Rights

10.1 Any Intellectual Property Rights created as a result of the exercise by the District of or performance by the District of any of the District Responsibilities shall vest jointly in the County Council and in PCC.

11. Variation

11.1 This Agreement may be varied from time to time by agreement between the Parties and any variation must be made in accordance with this clause 11.

11.2 Any Party may request a variation to this Agreement by making a written request to the others.

11.3 On receipt of a written variation request, the relevant Parties shall consider the request and shall use their best endeavours to accommodate and agree such changes in their absolute discretion with a view to confirming the change in writing within 30 days of the request being received.

12. Liabilities

12.1 The County Council and PCC shall not be liable for any acts or omissions of the District under this Agreement and the District shall indemnify the County Council and PCC against any claims which may be made against the County Council and /or PCC by third parties arising from any such act or omission relating to the exercise by the District of or the performance of the District of the District Responsibilities and without limitation to the foregoing the District shall indemnify the County Council and PCC in respect of any liability, loss, damages, costs and expenses it may incur, arising from the breach by the

District of its warranties or obligations under this Agreement or by reason of any misrepresentation, or negligent or tortious act or default by the District its employees or agents (except where such liability, loss, damages costs and expenses arise from the negligence or acts or omissions of the County Council or PCC).

- 12.2 The County Council and PCC reserve the right to recover from the District the cost of any liabilities which have been caused by the District and which are discovered after this Agreement expires or is terminated.
- 12.3 Each Party shall at all times take all reasonable steps within its powers to minimise and mitigate any loss for which it is seeking reimbursement from the other.
- 12.4 This clause 12 shall survive the expiry or termination of this Agreement.

13. Confidentiality

- 13.1 Each Party undertakes to the other to keep confidential all information (whether written, pictorial in machine readable form or oral) and in whatever form received during the continuance of this Agreement or obtained as a result of entering into or performing this Agreement concerning the business or affairs of the other Parties including without limitation the provisions of or (subject as provided for in this clause 13) the subject matter of this Agreement, which shall be deemed 'Confidential Information'

- 13.2 Each Party undertakes to the other not to use the Confidential Information of any of the other Parties except for the purposes of this Agreement and shall not (without the prior written consent of the other Party) disclose the same to any person save to the extent necessary for the performance of this Agreement and except to the extent that such information:
 - a. is required to be disclosed by the law of any relevant jurisdiction;
 - b. is trivial or obvious;
 - c. is already in the public domain at the time of disclosure or thereafter;
 - d. is in the possession of the disclosing Party (as evidenced by written records) otherwise than as a result of a breach of this clause 13;
 - e. becomes known to the disclosing Party from a source other than the other Authority otherwise than as a result of a breach of this clause 13;
 - f. was disclosed after the express prior written approval of the Party to whom such information belongs; or
 - g. is required to be disclosed by the Parties for the purposes of best value or performance assessment;

h. is required to be disclosed to enable any Party to pursue any action in the courts in relation to the District Responsibilities; and

in any event subject to the disclosing Party having notified the other Party in writing prior to making such disclosure.

13.3 Notwithstanding anything contained elsewhere in this Agreement the provisions of this clause 13 shall survive the expiry or termination of this Agreement.

14. Data protection

- 14.1 The Parties shall observe all of their obligations under the Data Protection Legislation that arise in connection with the District Responsibilities.
- 14.2 For the purposes of this Clause, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” “Process” and “Processing” shall have the meaning prescribed under the Data Protection Legislation..
- 14.3 The County Council and PCC instruct and authorise the District to Process the Enquiry Phase Personal Data for the purposes set out in Schedule 8 as a Data Processor.
- 14.4 The District shall:
- 14.4.1 Process the Enquiry Phase Personal Data only on documented instructions from PCC and/or the County Council (unless the District or the relevant Sub-Processor is required to Process the Enquiry Phase Personal Data to comply with applicable laws, in which case the District will notify the County Council and PCC of such legal requirement prior to such Processing unless such applicable laws prohibit notice to the District on public interest grounds). For the purpose of this clause 14.4.1, the Processing detailed in Schedule 2 constitutes documented instructions;
 - 14.4.2 ensure that any individual authorised to Process the Enquiry Phase Personal Data is subject to appropriate confidentiality obligations, is under an appropriate statutory obligation of confidentiality, and complies with clause 14; and
 - 14.4.3 at the option of the County Council and /or PCC, securely delete or return to the County Council or PCC as the case may be any Enquiry Phase Personal Data after the term of the Agreement, and delete any remaining copies. The District will be entitled to retain any Enquiry Phase Personal Data which (a) it has to keep to comply with any applicable law or (b) it subsequently processes as a Data Controller as a result of providing District Responsibilities directly to the Data Subject.
 - 14.4.4 implement appropriate technical and organisational measures to prevent a breach of security, leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Enquiry Phase Personal Data transmitted, stored or otherwise Processed (a “Data Security Incident”);
 - 14.4.5 notify the County Council and /or PCC without undue delay after becoming aware of a Data Security Incident;
 - 14.4.6 taking into account the nature of the Processing of Enquiry Phase Personal Data, provide reasonable assistance to the County Council and /or PCC in:
 - 14.4.6.1 complying with its obligations under the Data Protection Laws relating to the security of Processing the Enquiry Phase Personal Data;
 - 14.4.6.2 responding to requests for exercising Data Subjects’ rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;

14.4.6.3 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects; and

14.4.6.4 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.

- 14.4.7 make available to the County Council and PCC all information necessary to demonstrate compliance with the obligations set out in the notice and
 - 14.4.8 allow for and contribute to audits, including inspections, conducted by the County Council and /or PCC or another auditor mandated by the County Council and/or PCC.
- 14.5 The Parties shall ensure that Personal Data is safeguarded at all times in accordance with the Law, which shall include without limitation obligations to:
- 14.5.1 Process the Personal Data in accordance with Schedule 2;
 - 14.5.2 have policies which are rigorously applied that describe individual personal responsibilities for handling Personal Data;
 - 14.5.3 have agreed protocols for sharing Personal Data with other public authorities and non-public organisations;
 - 14.5.4 perform an annual information governance self-assessment.
- 14.6 To the extent that any Party (including its staff) is acting as a "Data Processor" on behalf of any other Party, that Party shall, in particular, but without limitation:
- 14.6.1 notify the Party acting as "Data Controller" immediately if it considers that any of the Data Controller's instructions infringe the Data Protection Legislation;
 - 14.6.2 shall provide all reasonable assistance to the Data Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Data Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the District Responsibilities;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and;
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
 - 14.6.3 only process such Personal Data, as that term is defined in the Data Protection Legislation, as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the another Party under this Agreement. If it is so required the Data Processor shall promptly notify the

Data Controller before processing the Personal Data unless prohibited by Law;

14.6.4 ensure that it has in place Protective Measures, which have been reviewed and approved by the Data Controller as appropriate to protect against a Data Loss Event having taken account of the:

- (e) nature of the data to be protected;
- (f) harm that might result from a Data Loss Event;
- (g) state of technological development; and
- (h) cost of implementing any measures;

14.6.5 ensure that:

- (i) the Data Processor Personnel do not process Personal Data except in accordance with this Agreement;
- (j) it takes all reasonable steps to ensure the reliability and integrity of any Data Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Provider's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Contract;
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (v) are aware of and trained in the policies and procedures identified in Clauses 14.5 and 14.6.4 above.

14.6.6 not transfer Personal Data outside of the EU unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:

- (k) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Data Controller;
- (l) the Data Subject has enforceable rights and effective legal remedies;
- (m) the Data Processor complies with its obligations under the Data

Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Data Controller in meeting its obligations); and

(n) the Data Processor complies with any reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the Personal Data;

- 14.6.7 at the written direction of the Data Controller, delete or return Personal Data (and any copies of it) to the Data Controller on termination of the Contract unless the Data Processor is required by Law to retain the Personal Data.
 - 14.6.8 shall maintain complete and accurate records and information to demonstrate their compliance with this clause 14.
 - 14.6.9 allow for audits of its Data Processing activity by the Data Controller or the Data Controller's designated auditor.
 - 14.6.10 designate a data protection officer if required by the Data Protection Legislation.
- 14.7 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Data Processor must:
- 14.7.1 notify the Data Controller in writing of the intended Sub-processor and processing;
 - 14.7.2 obtain the written consent of the Data Controller;
 - 14.7.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 14 such that they apply to the Sub-processor; and
 - 14.7.4 provide the Data Controller with such information regarding the Sub-processor as the Data Controller may reasonably require.
- 14.8 The Data Processor shall remain fully liable for all acts or omissions of any Sub-processor. Subject to clause 14.7, either Party shall notify the other Party immediately if it:
- 14.8.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 14.8.2 receives a request to rectify, block or erase any Personal Data;
 - 14.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 14.8.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 14.8.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

- 14.8.6 becomes aware of a Data Loss Event.
- 14.9 The Parties' obligations to notify under clause 14.8 shall include the provision of further information to the other Party in phases, as details become available.
- 14.10 Taking into account the nature of the processing, each Party shall provide the other with full assistance in relation to the other Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.10 (and insofar as possible within the timescales reasonably required by the Parties) including by promptly providing:
- 14.10.1 the other Party with full details and copies of the complaint, communication or request;
 - 14.10.2 such assistance as is reasonably requested by the other Party to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 14.10.3 the other Party, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 14.10.4 assistance as requested by the other Party following any Data Loss Event;
 - 14.10.5 assistance as requested by the other Party with respect to any request from the Information Commissioner's Office, or any consultation by the other Party with the Information Commissioner's Office.
- 14.11 Any Party may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 14.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. Any Party may on not less than 30 Working Days' notice to the other amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 14.13 Each Party shall indemnify and keep indemnified the other Parties against all Losses incurred by it in respect of any breach of this clause by the defaulting Party, except to the extent that such breach was attributable to any act, omission or direction of the non-defaulting Party.

15. FOIA

- 15.1 The Parties recognise that they are public authorities as defined within the FOIA and therefore recognise that information relating to this Agreement may be the subject of an Information Request. The Parties shall assist each other in complying with their obligations under the FOIA, including but not limited to assistance without charge in gathering information to respond to Information Requests related this Agreement or in relation to the District Responsibilities.

- 15.2 Each Party shall be entitled to disclose any information relating to this Agreement and the District Responsibilities in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for Confidential Information.
- 15.3 The Party which receives the Information Request shall circulate the Information Request to the other and shall in good faith consider any representations raised by the other when deciding whether to disclose information that is exempt, however the Party which receives the Information Request shall retain the right to determine at their absolute discretion how to respond to the Information Request.
- 15.4 The Parties acknowledge and agree that any decision made by a Party which receives an Information Request as to whether to disclose information relating to this Agreement pursuant to FOIA is solely the decision of that Party.
- 15.5 Neither Authority will be liable to the other for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

16. Termination

- 16.1 Any Party may terminate this Agreement by giving not less than twelve months' written notice to the other of its intention to do so and such notice shall specify the date on which the Agreement shall terminate.
- 16.2 In the event that any Party commits a Default, a non-defaulting party may serve on the other party a Default Notice.
- 16.3 Any Party may terminate this Agreement in whole or part by giving six (6) months' written notice to the other Parties if any other Party commits a Default:
- 16.3.1 which is capable of remedy and the other party has failed to remedy such a breach within thirty (30) Business Days of receipt of a Default Notice, or such longer period as may be specified by the non-defaulting party; or
- 16.3.2 which is not, in the reasonable opinion of the non-defaulting party, capable of remedy.
- 16.4 Any Party may terminate this Agreement in whole or part with immediate effect by giving written notice to the other Parties if any other Party commits a Prohibited Act.
- 16.5 Upon termination of this Agreement all intellectual and physical properties or any works created prior to or during the provision of the District Responsibilities shall vest in the County Council and PCC and the District shall co-operate in the prompt transfer of such, including any data and electronic file passwords

17. Disputes

- 17.1 In the event of any dispute arising between the Parties the District Manager and Supervising Officer shall use all reasonable endeavours to resolve the matter
- 17.2 If the dispute cannot be resolved by the District Manager and the Supervising Officer the matter shall be escalated through the management structure of each Party until it is resolved.
- 17.3 Where a dispute cannot be resolved internally between the Parties, in accordance with clauses 17.1 or 17.2, it shall be referred to a single arbitrator. Having regard to the nature of the dispute, the appointment of the arbitrator shall be agreed by the Parties or, where such agreement cannot be reached, shall be nominated by the chairman of Local Government Association. Arbitration will be carried out in accordance with the provisions of the Arbitration Act 1996 as amended.

18. Insurance

- 18.1 The District shall effect and maintain employers liability insurance and public liability insurance cover which shall be in a minimum sum of £5,000,000 in respect of any single claim for the duration of this agreement and six years thereafter and adequate building insurance where it allows its premises to be used by staff to work on matters relating to this Agreement.
- 18.2 The District shall effect and maintain professional indemnity insurance in a minimum sum of £5,000,000 in respect of any single claim for the duration of this Agreement and six years thereafter

19. Scrutiny

- 19.1 Scrutiny will be the responsibility of each Party. The relevant committees of each Party charged with audit and the Parties' officers and external auditors shall have the right to inspect any documents relating to this Agreement and to require the appropriate officers of the District to answer any questions raised by them.

20. Audit

- 20.1 The accounts relating to this Agreement shall be the subject of audit by the District and shall be open to inspection by PCC and the County Council.

21. Costs

- 21.1 Except where this Agreement provides otherwise each Party shall pay its own costs relating to or in connection with its negotiation, preparation, execution and implementation.

22. Notices

- 22.1 A Party may only serve notice on the other Parties by either delivering it by hand or sending it by recorded delivery post, addressed to:

a. the Head of Regulatory Services, Peterborough City Council, Sand Martin House, Bittern Way, Peterborough, PE2 8TY, for PCC and the County Council;

and

b. [] for the District; or

c. such other address as the Parties may notify each other from time to time.

22.2 Every notice will be treated as having been served at the end of the day that it is delivered. Notices sent by recorded delivery post shall be deemed to have been delivered on the next Business Day following despatch.

23. Rights of third parties

23.1 No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23.2 For the avoidance of doubt nothing contained in this clause 28 shall affect any right to or remedy of any third party which exists or is available other than under the Contracts (Rights of Third Parties) Act 1999.

24. Entire Agreement

24.1 This Agreement together with the schedules constitutes the entire Agreement between the Parties with respect to its subject matter. Each Party acknowledges that in entering into this Agreement it does not do so on the basis of or in reliance upon any representations (save for fraudulent misrepresentations), promises, undertakings, warranties or other statements (whether written or oral) of any nature whatsoever except as expressly provided in this Agreement and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

25. Governing law

25.1 This Agreement is governed by and shall be construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English courts in respect of any dispute arising from this agreement or its subject matter.

26. Counterparts

26.1 This Agreement may be executed in two or more counterparts, each of which shall be regarded as an original, but all of which together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF the parties hereto have executed and delivered this document as a Deed on the date of this document:

EXECUTED under the Common Seal of
PETERBOROUGH CITY COUNCIL
In the presence of

Duly Authorised Officer

EXECUTED under the Common Seal of
CAMBRIDGESHIRE COUNTY COUNCIL
In the presence of

Duly Authorised Officer

EXECUTED under the Common Seal of
{DISTRICT COUNCIL}
In the presence of

Duly Authorised Officer

Schedule 1: District Responsibilities

Delegated Functions

Under this Agreement:

The County Council delegates the delivery of the following County Council Functions to the District:

1. The Energy Performance of Buildings (England and Wales) Regulations 2012

- (a) The powers of the enforcement authority under part 7 of Energy Performance of Buildings (England and Wales) Regulations 2012 including:
 - (i) power under Regulation 35 to require the production of documents and to require copies of documents,
 - (ii) power under Regulation 36 to give or withdraw a penalty charge notice;
 - (iii) obligation under Regulation 39 to review a penalty charge notice and confirm or withdraw the notice;
 - (iv) the obligation under Regulation 40 to participate in any appeal to the County Court and to repay any amount previously paid as a penalty charge;
 - (v) power under Regulation 41 to recover penalty charges;
 - (vi) power under Regulation 43 to take action for obstruction.

Associated Duties

- 1.1 The District will provide relevant staff training to ensure that all officers exercising the County Council Functions have the necessary levels of competence and knowledge to fulfil those functions in line with legislative requirements.
- 1.2 The District will ensure that all enforcement action is appropriate.
- 1.3 The District shall provide PCC with a written report by 1st May each Contract Year (the Annual Service Report) to enable PCC to comply with its statutory duty under Regulation 34C of the Energy Performance of Buildings (England and Wales) Regulations 2012 which shall include as a minimum, for the period 1st April to 31st March, the following information:
 - 1.3.1 the number of inspections undertaken;
 - 1.3.2 details of all compliance and enforcement activities undertaken
 - 1.3.3 number of complaints received from the public.
 - 1.3.4 and any other information that shall be introduced by future legislative requirements
 - 1.3.5 to be in a form and contain information in accordance with guidance issued by the Secretary of State;

- 1.3.6 identify such agreements as the enforcement authority has entered into with any other enforcement authority under regulation 34A(2) of the Energy Performance of Buildings (England and Wales) Regulations 2012 to act as enforcement authority in relation to local authority buildings in the area of either; and
- 1.3.7 state any changes in the responsibility of enforcement authorities under such agreements.