

DATED

COLLABORATION AGREEMENT

between

Nottingham City Council

and

Nottinghamshire County Council

and

Derby City Council

and

Derbyshire County Council

This agreement is dated

Collaborators

- (1) NOTTINGHAM CITY COUNCIL of Loxley House, Station Street, Nottingham NG2 3NG
(N City)
- (2) NOTTINGHAMSHIRE COUNTY COUNCIL of County Hall, West Bridgford, Nottingham,
NG2 7QP (N County)
- (3) DERBY CITY COUNCIL of (D City) of The Council House, Corporation Street, Derby
DE1 2FS
- (4) DERBYSHIRE COUNTY COUNCIL of (D County) of County Hall, Matlock, Derbyshire
DE4 3AG

together the "Collaborators"

BACKGROUND

- (A) The Collaborators to this Agreement wish to establish a framework to govern their respective rights and obligations in relation to the promotion of improved public transport connection between Nottingham and Derby (the "Objective").
- (B) The Collaborators wish to collaborate in the delivery of the Objective.
- (C) In the delivery of the Objective the Collaborators expect to enter into individual delivery Projects.
- (D) Each Project will be set out in a Project Schedule.
- (E) This Agreement sets out the terms and conditions upon which the Collaborators have agreed to collaborate.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by a party to the other in relation to a Project (if any), as set out in each case in a Project Schedule.

Commencement Date: the date of this Agreement.

Input: in relation to a party, the services, resources, workforce or other tangibles or intangibles that such party provides in accordance with this agreement in relation to a Project, as set out in a Project Schedule.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Project: a project agreed by the Collaborators in accordance with clause 5, in relation to which the Collaborators will collaborate in accordance with this agreement, as further described in a particular Project Schedule.

Project Period: subject to earlier termination in accordance with this agreement, the period from the start date to the end date for a Project, as set out in a Project Schedule.

Project Schedule: a document specifying particulars in relation to a particular Project, agreed by the Collaborators in accordance with clause 5.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this **Agreement** includes the Schedule and any Project Schedule agreed in accordance with clause 5.
- 1.4 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the Schedule.
- 1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 A reference to any **party** shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 References to a document in **agreed form** are to that document in the form agreed by the Collaborators and initialled by them or on their behalf for identification.
- 1.13 A reference to **this Agreement** or to **any other agreement or document referred to in this Agreement** is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14 Where any statement is qualified by the expression **so far as a party is aware or to a party's knowledge** (or any similar expression), that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Where there is a conflict between the terms and conditions of this agreement, and a Project Schedule, the Project Schedule shall prevail (in relation to that Project Schedule only) to the extent of the inconsistency
- 1.17 Any reference to this agreement terminating shall, where the context requires, include a reference to this agreement terminating by expiry.

2. Commencement and duration

- 2.1 This Agreement shall commence on the Commencement Date.
- 2.2 This Agreement shall continue, unless terminated earlier in accordance with this agreement for a period of 5 years from the Commencement Date when it shall terminate automatically without notice.

- 2.3 For the avoidance of doubt any Project shall not automatically terminate under clause 2.2 and each Project shall be subject to its individual Project Period.

3. Collaboration and co-operation

- 3.1 The Collaborators shall co-operate in relation to the Objective.
- 3.2 The Collaborators shall collaborate in relation to each Project Schedule.
- 3.3 Nothing in this agreement shall restrict either party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this agreement.
- 3.4 However, as the Collaborators will be working together in relation to Project where each party may have access to information or Intellectual Property Rights of the other, each party acknowledges that the other party will need to protect such information and Intellectual Property Rights in accordance with clause 11 and clause 14

4. Governance

4.1 Overview

The governance structure defined below provides a structure for the development and delivery of the Objective.

Guiding principles

The following guiding principles are agreed. The governance of the Collaborators in delivering the Objective will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with the Objective's scope and each Project Schedule (and may therefore require changes over time);
- (e) leverage existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and

4.2 Sponsors' board

- (a) The Sponsors' Board provides overall strategic oversight and direction to the Objective. This group will consist of the D2N2 RTI Partnership Steering Group.

4.3 Project Board

- (a) The Project Board will provide strategic management at Project and workstream level. It will provide assurance to the Sponsors' Board that the Objective is being met.
- (b) The Project Board consists of representatives from each of the parties. The Project Board shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Board. The Project Board members shall consist of D2N2 RTI Partnership Core Group.

The Project Board shall meet quarterly.

4.4 Reporting

Project reporting shall be undertaken at three levels:

- (a) Project Board: Minutes and actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.
- (b) Sponsors' Board: Reporting shall be monthly, based on the minutes from the Project Board highlighting: Progress this period; issues being managed; issues requiring help (that is, escalations to the Sponsors' Board) and progress planned next period and/or aligned with the frequency of the Sponsors' Board meetings.
- (c) Organisational: the Project Board members shall be responsible for drafting reports into their respective organisation as required for any formal decisions to be taken in respect of any Project.

5. Proposals and Projects

- 5.1 The Collaborators agree that the terms of this agreement shall apply when any Collaborator ("Proposing Collaborator") wishes to propose to the other Collaborators ("Receiving collaborator") a Project falling within the scope of the Objective.
- 5.2 A Proposing Collaborator may submit a proposal for a proposed Project falling within the scope of the Objective to the Receiving Collaborators at any time. The proposal shall contain high level details of the proposed Project, including an indication of the collaborators' likely respective inputs and any Charges the Proposing Collaborator intends to make for its own inputs (if applicable).
- 5.3 On receipt of a proposal, the Receiving Collaborators shall consider it, provide the Proposing Collaborator with comments and the Collaborators shall then discuss whether

they wish to formalise the proposal so that it becomes a Project. Where possible any discussions should take place at the Project Board meeting and be formally recorded.

- 5.4 Any discussion at clause 5.3 shall include agreement as to who the Lead Authority shall be for the proposed Project.
- 5.5 Where any Collaborator does not agree to the proposed Project then the Collaborators shall work together to form a proposal that is agreeable and considered to meet the Objective. Where it is still not possible to reach agreement then the proposed Project shall not be considered further under this Agreement but it shall not prevent any of the Collaborators working together under separate arrangements.
- 5.6 Where the proposed Project does not directly affect a Collaborator this shall not give reason for that Collaborator to reject the proposal if the proposed Project would still deliver and meet the Objective. The non-affected Collaborator shall continue to be involved in the process set out below but any formalised Project Schedule shall clearly set out any Collaborator that is not affected.
- 5.7 In order to formalise a proposal into a Project:
 - (a) the Lead Authority shall submit to the other Collaborators a draft Project Schedule. Such document shall be based substantially on the template Project Schedule set out in Schedule 1, but it may include additional matters or exclude matters contained in the template that are not relevant to the particular Project;
 - (b) each Collaborator shall propose any amendments to the draft or confirm its agreement to the same;
 - (c) following confirmation of the draft from all Collaborators each Collaborator shall sign the Project Schedule.
- 5.8 A Project Schedule that has been signed by both Collaborators may be amended at any time in accordance with clause 25.
- 5.9 Unless terminated earlier in accordance with this agreement, each Project Schedule has contractual effect during the applicable Project Period.
- 5.10 Each Collaborator shall in relation to the obligations allocated to it in a Project Schedule agreed in accordance with this clause:
 - (a) perform such obligations, including by providing the Inputs in accordance with timeframes or milestones (if any) specified in the Project Schedule;
 - (b) use reasonable care and skill in performing such obligations;
 - (c) perform its obligations so as not to place any other Collaborator in breach of their obligations, including any Project specific third party obligations;

- (d) comply with good industry practice;
- (e) comply with all laws applicable to it;
- (f) obtain and maintain consents, licences and permissions (statutory, regulatory, contractual or otherwise) that are necessary to enable it to comply with such obligations;
- (g) ensure that the Inputs it provides conform with descriptions and specifications (if any) set out in the applicable Project Schedule; and
- (h) if on the other party's premises, comply with that party's health and safety and site regulations made known to it.

5.11 Each party shall ensure that it uses employees or agents in performing its obligations under a Project Schedule who are suitably qualified and experienced.

6. Agency

6.1 Each Collaborator agrees that it has no right to bind the other Collaborators in contract or otherwise in relation to any third parties, and it shall not represent that it has such right.

6.2 Nothing in this agreement constitutes one Collaborator a partner, employer, employee or agent of another Collaborator.

7. Project management

7.1 To enable the Collaborators to deliver the benefits of a Project a Project Team (which may be the Project Board if appropriate) shall be established. The Project Team shall be set out in the Project Schedule and its responsibilities shall be to:

- (a) engage in planning discussions in relation to the Objective from time to time;
- (b) keep the other party informed about its own progress in relation to the Project; and
- (c) facilitate regular discussions in relation to:
 - (i) performance and issues of concern;
 - (ii) new developments and resource requirements;
 - (iii) compliance with deadlines; and
 - (iv) such other matters as may be agreed between the Collaborators from time to time.

7.2 Each Collaborator shall:

- (a) supply to the others information and assistance reasonably requested by it relating to a Project as is necessary to enable each Collaborator to perform its own obligations in relation to the Project; and
- (b) review documentation, including draft specifications or service descriptions or other technical documentation, for use when performing its obligations in relation to a Project (if any), as soon as reasonably practicable at the request of a Collaborator, and notify it of any errors or incorrect assumptions made in any such documents so far as it is aware.

8. Charges

8.1 Except as provided for in clause 8.2, each Collaborator shall:

- (a) not be entitled to charge another Collaborator for the provision of anything (including Inputs) it provides in connection with each Project and this agreement; and
- (b) be otherwise responsible for its own costs incurred in connection with each Project and this agreement, including all Inputs it provides.

8.2 If a Project Schedule provides that a Collaborator is responsible for paying another Collaborators Charges, such Charges shall be invoiced and paid for in accordance with clause 9.

9. Invoicing and payment

9.1 If a Project Schedule provides that a Collaborator will pay another Collaborator's Charges in relation to a Project, the other Collaborator may issue invoices for such Charges:

- (a) in accordance with the invoicing procedure (if any) provided for in the Project Schedule; or
- (b) if no invoicing procedure is provided for in the Project Schedule, at the end of each calendar month.

9.2 Unless otherwise provided in a Project Schedule, the Charges specified in a Project Schedule are exclusive of VAT which shall be included in invoices and payable, if applicable, in addition to the Charges.

9.3 A Collaborator shall pay an invoice issued to it in accordance with this Agreement within 30 days of the date of receiving the invoice.

9.4 If a Collaborator fails to make a payment due under this Agreement by the due date, then, without limiting the other Collaborator's remedies under clause 20 or clause 21, the

defaulting Collaborator shall be liable for any interest which the other Collaborator may incur under any applicable third party agreements.

- 9.5 In the spirit of collaboration the Collaborators agree that interest on overdue payments will only be payable where interest is charged under a relevant third party agreement.
- 9.6 In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

10. Set-off

All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11. Confidentiality

- 11.1 "Confidential Information" means all confidential information (however recorded or preserved) disclosed by a Collaborator or its employees, officers, representatives or advisers (together its "Representatives") to another Collaborator and or their Representatives after the date of this Agreement in connection with the Objective or any Project, including information which:
- (a) relates to the terms of this Agreement or any agreement entered into in connection with the Objective or a Project;
 - (b) would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, or plans , intentions, or market opportunities of the disclosing Collaborator; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Collaborator;
 - (c) is developed by the Collaborators in the course of carrying out this agreement or any Project; and
 - (d) is specified as confidential in any Project Schedule.
- 11.2 The provisions of this clause shall not apply to any Confidential Information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Collaborator or its Representatives in breach of this clause); or
 - (b) was available to the receiving Collaborator on a non-confidential basis before disclosure by the disclosing Collaborator; or

- (c) was, is or becomes available to the receiving Collaborator on a non-confidential basis from a person who, to the receiving Collaborator's knowledge, is not bound by a confidentiality agreement with the disclosing Collaborator or otherwise prohibited from disclosing the information to the receiving Collaborator; or
- (d) the Collaborators agree in writing is not confidential or may be disclosed; or
- (e) is developed by or for the receiving Collaborator independently of the information disclosed by the disclosing Collaborator.

11.3 Each Collaborator shall keep the other Collaborators' Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement in relation to the Objective and any Project ("Permitted Purpose"); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

11.4 A Collaborator may disclose another Collaborator's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement,

and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause.

11.5 A Collaborator may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including but not limited to the Freedom of Information Act 2000), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Collaborator as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other Collaborator in relation to the content of such disclosure.

11.6 Each Collaborator reserves all rights in its Confidential Information. No rights or obligations in respect of a Collaborator's Confidential Information other than those expressly stated in this Agreement are granted to another Collaborator, or to be implied from this Agreement.

- 11.7 On termination of this Agreement, unless such things are needed by it to perform its obligations under a Project Schedule (and only until the end of such time), each Collaborator shall:
- (a) return to the other Collaborators all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Collaborators' Confidential Information;
 - (b) erase all the other Collaborators' Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
 - (c) certify in writing to the Collaborators that it has complied with the requirements of this clause, provided that a recipient Collaborator may retain documents and materials containing, reflecting, incorporating or based on the other Collaborators' Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient Collaborator.
- 11.8 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 11.9 The provisions of this clause 11 shall continue to apply after termination of this Agreement in accordance with clause 22.

12. Announcements

- 12.1 Subject to clause 12.2, no Collaborator shall make, or permit any person to make, any public announcement, communication or circular (**Announcement**) concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the Collaborators, without the prior written consent of the other Collaborators (such consent not to be unreasonably withheld or delayed).
- 12.2 Where an Announcement is required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange), or by any court or other authority of competent jurisdiction, the Collaborator required to make the announcement shall promptly notify the other Collaborators. The Collaborator concerned shall make all reasonable attempts to agree the contents of the announcement before making it.

13. Data protection

Each Collaborator shall, at its own expense, ensure that it complies with and assists the other Collaborators to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).

Where a Project has specific data protection issues in relation to its delivery the Project Schedule shall clearly set these out including the relationship of data controllers and processors and relevant agreements which may need to be place.

14. Intellectual property

- 14.1 This agreement does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a party pursuant to a Project shall be owned by that party ("Created IPR").
- 14.2 Each Collaborator grants to the other Collaborators a non-exclusive, personal, royalty-free licence during the applicable Project Period to use its Created IPR in relation to a Project to the extent necessary for the other Collaborators to carry out their obligations in relation to that Project.
- 14.3 At the end of the applicable Project Period, a Collaborator licensed to use Created IPR under clause 14.2 shall cease to use that Created IPR and shall return any physical embodiment of the Created IPR (including any copies) in its possession or control to the other Collaborator.
- 14.4 Each Collaborator shall immediately give written notice to the other Collaborators of any actual, threatened or suspected infringement of any Collaborator's Intellectual Property Rights (including Created IPR) used in connection with a Project of which it becomes aware.
- 14.5 Where Intellectual Property Rights are granted under any third party agreement in respect of a Project the third party contracting Collaborator shall use reasonable endeavours to ensure that all Collaborators receive equivalent rights to use the Intellectual Property Rights or are not prejudiced by the granting of the Intellectual Property Rights to the third party contracting Collaborator.

15. Anti-bribery

15.1 Each Collaborator shall in relation to this Agreement and each Project:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) have and shall maintain in place throughout the term of this agreement its own policies and procedures, ("Relevant Policies") including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate;
- (c) promptly report to the other Collaborators any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this agreement;
- (d) within 3 months of the Commencement Date, and annually thereafter, certify to the other Collaborators in writing signed by one of its officers, compliance with this clause 15 by it and all persons associated with it under clause 15.2. Each Collaborator shall provide such supporting evidence of compliance as another Collaborator may reasonably request.

15.2 Each Collaborator shall ensure that any person associated with it who is performing obligations in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that Collaborator in this clause 15 ("Relevant Terms"). Such Collaborator shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other Collaborators for any breach by such persons of any of the Relevant Terms.

15.3 Breach of this clause 15 shall be deemed a material breach under clause 20.2 and clause 21.2.

16. Warranties

16.1 Each Collaborator warrants that:

- (a) it has full power and authority to carry out the actions contemplated under this Agreement; and
- (b) its entry into and performance under the terms of this Agreement will not infringe the Intellectual Property Rights of any third party or cause it to be in breach of any obligations to a third party.

16.2 Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the Collaborators with respect to the actions contemplated by this

Agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this Agreement.

17. Indemnity

17.1 Each Collaborator ("Indemnifying Party") shall indemnify the other Collaborators (each an "Indemnified Party") against all directly incurred liabilities, costs, expenses, damages and losses and legal costs and all other reasonable professional costs and expenses suffered or incurred by the Indemnified Party arising out of or in connection with

any claim made against the Indemnified Party for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with:

- (i) the Indemnified Party's use in accordance with this Agreement of Intellectual Property Rights licensed to it by the Indemnifying Party under clause 14.2;
- (ii) the receipt or use by the Indemnified Party of Inputs or other items or services provided by the Indemnifying Party in relation to a Project.

17.2 This indemnity shall not cover the Indemnified Party to the extent that a claim under it results from the Indemnified Party's negligence or wilful misconduct.

17.3 Liability under this indemnity is conditional on the Indemnified Party discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Indemnified Party which may reasonably be considered likely to give rise to a liability under this indemnity ("Claim"), the Indemnified Party shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Indemnifying Party, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Indemnified Party may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Indemnifying Party, but without obtaining the Indemnifying Party's consent) if the Indemnified Party reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- (c) give the Indemnifying Party and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Indemnified Party, so as to enable the Indemnifying Party and its professional advisers to

examine them and to take copies (at the Indemnifying Party's expense) for the purpose of assessing the Claim; and

- 17.4 If a payment due from the Indemnifying Party under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Indemnified Party shall be entitled to receive from the Indemnifying Party such amounts as shall ensure that the net receipt, after tax, to the Indemnified Party in respect of the payment is the same as it would have been were the payment not subject to tax.
- 17.5 Nothing in this clause shall restrict or limit the Indemnified Party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

18. Insurance

During the term of this Agreement and for a period of 6 years thereafter, each Collaborator shall maintain in force, with a reputable insurance company, the following insurances:

- (a) professional indemnity insurance in an amount not less than £1,000,000 (one million pounds);
- (b) public liability in an amount no less than £5,000,000 (five million pounds); and
- (c) employers liability at the prescribed statutory level

and shall, on another Collaborator's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

19. Limitation and exclusion of liability

- 19.1 Nothing in this Agreement shall limit or exclude a Collaborator's liability:
- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;
 - (b) for fraud or fraudulent misrepresentation;
 - (c) for breach of any obligation as to title or quiet possession implied by statute; or
 - (d) for any other act, omission, or liability which may not be limited or excluded by law;
- 19.2 Subject to clause 19.1, no Collaborator shall have any liability to another Collaborator, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the agreement.

- 19.3 Subject to clause 19.4 where a Collaborator ("Contracting Collaborator") has entered into a contract with a contractor for the delivery of any services goods or works for the benefit of the other Collaborators, the Contracting Collaborator shall if required and appropriate for a Project procure that the other Collaborators shall have the necessary rights to seek redress from the contractor. The Contracting Collaborator shall have no liability to the Collaborators for any loss incurred under the contract save where such loss is as a result of the negligent act or omission by the Contracting Collaborator and subject to the limitation at clause 19.5.
- 19.4 A Contracting Collaborator shall ensure that the other Collaborators, where appropriate and necessary to do so, are granted third party rights under any contract entered into.
- 19.5 Subject to clause 19.1, and except as provided in clause 19.6, a Collaborator's total liability to another Collaborator, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £50,000.00 (fifty thousand pounds).
- 19.6 Subject to clause 19.1, a Collaborator's total liability to another Collaborator, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement, for damage to property caused by its negligence shall be limited to £5,000,000.00 (five million pounds).
- 19.7 The Collaborators expressly agree that if any limitation or provision contained or expressly referred to in this clause 19 is held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted in accordance with clause 27.

20. Termination of a Project

- 20.1 The grounds and procedures for terminating the Agreement as a whole specified in clause 21 apply *mutatis mutandis* to a Project Schedule, and a Collaborator to a Project Schedule may terminate it in accordance with such clause.
- 20.2 For the purposes of this clause, notwithstanding clause 21.2, "material breach" in clause 21.1(b) in relation to a Project Schedule means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Collaborator would otherwise derive from:
- (a) a substantial portion of a Project; or
 - (b) any of the obligations set out in clause 5.7. In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

20.3 Termination of a Project Schedule in accordance with this clause shall have the effect that:

- (a) the terminated Project Schedule shall be severed from the Agreement, which shall otherwise remain in full force and effect; and
- (b) the provisions of clause 20 shall otherwise apply (*mutatis mutandis*) in relation to the Project Schedule.

21. Termination of agreement

21.1 Without affecting any other right or remedy available to it, a Collaborator may (subject to clause 21.3) terminate another Collaborators ("Breaching Collaborator") participation in this Agreement with immediate effect by giving written notice to the other Breaching Collaborator:

- (a) if the Breaching Collaborator commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) if the Breaching Collaborator repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (c) if the Breaching Collaborator suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (d) if the Breaching Collaborator commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) if the Breaching Collaborator suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) if any warranty given by the Breaching Collaborator in clause 16 of this Agreement is found to be untrue or misleading.
- (g) in accordance with clause 23.

21.2 For the purposes of clause 21.1(b), Material Breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating Collaborator would otherwise derive from:

- (a) a substantial portion of this Agreement; or

(b) any of the obligations set out in clause 5.7

21.3 Prior to any termination under clause 21.1 the Collaborator intending to serve notice to terminate this Agreement must receive confirmation from all other Collaborators (except the Breaching Collaborator) that they agree with the intention to serve notice to terminate.

21.4 Without affecting any other right or remedy available to it, a Collaborator may terminate this Agreement on giving not less than 12 months' written notice to the other Collaborators or such earlier notice period as agreed between the Collaborators.

22. Consequences of termination

22.1 On termination of this Agreement, the following clauses shall continue in force:

- (a) clause 1 (Interpretation);
- (b) clause 9 (Invoicing and payment);
- (c) clause 10 (Set-off);
- (d) clause 11 (Confidentiality);
- (e) clause 13 (Data protection);
- (f) clause 14 (Intellectual property);
- (g) clause 16 (Warranties);
- (h) clause 17 (Indemnity);
- (i) clause 18 (Insurance);
- (j) clause 19 (Limitation and exclusion of liability);
- (k) clause 20.4 (Termination of a Project);
- (l) clause 22 (Consequences of termination);
- (m) clause 23 (Force majeure);
- (n) clause 26 (Notices);
- (o) clause 27 (Severance);
- (p) clause 28 (No partnership);
- (q) clause 29 (Rights and remedies);
- (r) clause 30 (Waiver);
- (s) clause 32 (Third party rights);
- (t) clause 35 (Entire agreement);
- (u) clause 36 (Mediation);

- (v) clause 37 (Governing law); and
- (w) clause 38 (Jurisdiction).

- 22.2 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Collaborators that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 22.3 On termination of this Agreement, each Project Schedule then in force at the date of such termination shall continue in full force and effect for the remainder of the applicable Project Period, unless earlier terminated in accordance with the terms of this Agreement.
- 22.4 On termination of this Agreement, unless such things are needed by it to perform its obligations under a Project Schedule (and only until the end of such time), each Collaborator shall, and shall use all reasonable endeavours to procure that its Representatives shall, as soon as reasonably practicable:
- (a) return or destroy (as directed by the other Collaborators) any documents, handbooks, or other information or data provided to it by the other Collaborators for the purposes of this Agreement. If reasonably required by the other Collaborators, it shall provide written evidence (in the form of a letter signed by it no later than 30 days after termination of this agreement) that these have been destroyed and that it has not retained any copies of them; and
 - (b) return all of the other Collaborators' equipment and materials, failing which, the other Collaborators may enter the relevant premises and take possession of them. Until these are returned or repossessed, that Collaborator shall be solely responsible for their safe-keeping.

23. Force majeure

No Collaborator shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Collaborator shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the Collaborator not affected may terminate this Agreement by giving 30 days' written notice to the affected Collaborator.

24. Assignment and other dealings

- 24.1 No Collaborator shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this

Agreement without the prior written consent of the other Collaborators (such consent not to be unreasonably withheld or delayed).

25. Variation

25.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Collaborators (or their authorised representatives).

25.2 Any variation of this Agreement agreed by the Collaborators in accordance with clause 25.1 shall be deemed to apply to all future Project Schedules entered into after the date of such variation, but shall not apply to Project Schedules already in force at that date unless such variation specifically so provides.

26. Notices

26.1 A notice given to a Collaborator under or in connection with this agreement shall be in writing and sent to the Collaborator at the address given in this Agreement or as otherwise notified in writing to other Collaborator.

26.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class post or other next working day delivery service.	9.00 am on the second Business Day after posting.

26.3 For the purpose of clause 26.2 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

26.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26.5 A notice given under this Agreement is not valid if sent by email.

27. Severance

- 27.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 27.2 If a Collaborator gives notice to the other Collaborators of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the Collaborators shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. No partnership or agency

- 28.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between any of the Collaborators, constitute any Collaborator the agent of another Collaborator, or authorise any Collaborator to make or enter into any commitments for or on behalf of any other Collaborator.
- 28.2 Each Collaborator confirms it is acting on its own behalf and not for the benefit of any other person.

29. Rights and remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

30. Waiver

- 30.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 30.2 A failure or delay by a Collaborator to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

31. Counterparts

- 31.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 31.2 No counterpart shall be effective until each Collaborator has executed at least one counterpart.

32. Third party rights

- 32.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 32.2 The rights of the Collaborators to rescind or vary this Agreement are not subject to the consent of any other person.

33. Further assurance

At its own expense, each Collaborator shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

34. Costs

Subject to clause 8, each Collaborator shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

35. Entire agreement

- 35.1 This Agreement constitutes the entire agreement between the Collaborators and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 35.2 Each Collaborator agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation based on any statement in this agreement.

36. Mediation

- 36.1 If any dispute arises in connection with this Agreement, the Collaborators will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Collaborators, the mediator will be nominated by CEDR. To initiate the mediation a Collaborator must give notice in writing (ADR notice) to the other Collaborators to the dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 36.2 The mediation will start not later than 30 days after the date of the ADR notice. The commencement of a mediation will not prevent the Collaborators commencing or continuing court proceedings .

37. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

38. Jurisdiction

Each Collaborator irrevocably agrees that, subject to clause 36, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

AS WITNESS the hands of the parties:

SIGNED for and on behalf
of Nottingham City Council

Authorised signatory

SIGNED for and on behalf
of Nottinghamshire County Council

Authorised signatory

SIGNED for and on behalf
of Derby City Council



Authorised signatory



Authorised Signatory

SIGNED for and on behalf
of Derbyshire County Council

Authorised signatory

Schedule 1 Project Schedule template

Part 1 Project Title and Lead Authority:

Part 2 Background

(A) The Collaborators have entered into a collaboration agreement dated [DATE] (**agreement**), allowing the Collaborators to collaborate on Projects (as defined in the agreement) where such Projects fall within the Focus (as defined in the agreement).

(B) In connection with the agreement, the Collaborators have agreed to collaborate in accordance with this Project Schedule.

Part 3 Project provisions

The Collaborators agree that:

1. Structure

- 1.1 This Project Schedule forms part of the agreement.
- 1.2 The terms and conditions of the agreement apply to this Project Schedule together with any additional terms set out in this Project Schedule. Each Collaborator agrees that it shall perform its obligations set out in this Project Schedule in accordance with the agreement.
- 1.3 Unless otherwise defined in this Project Schedule, terms used in this Project Schedule shall have the meaning given to them in the agreement.

2. Description of Project

Include the following:

Any third party funding/grants (attach copy of bid)

Funding/grant terms (attach copy of bid)

3. Term

The Project shall commence on INSERT DATE and, unless terminated earlier in accordance with the agreement, shall continue until INSERT DATE.

4. Project Team

NOTTINGHAM CITY COUNCIL	
DERBY CITY COUNCIL	
NOTTINGHAMSHIRE COUNTY COUNCIL	
DERBYSHIRE COUNTY COUNCIL	

5. Inputs

The Collaborators shall each provide the following Inputs in relation to the Project, in accordance with the following timeframes (if any):

COLLABORATOR	INPUT [set out all of the responsibilities that the collaborator will have including any relevant timeframes]
Nottingham City Council	
Derby City Council	
Nottinghamshire County Council	
Derbyshire City Council	

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6. Value of Project and Charges

Set out detail of the full project value and a breakdown as to how it is being funded

The Charges that are payable by a Collaborator are:

[SPECIFY THE FIRST PARTY'S NAME]	[SPECIFY THE OTHER PARTY'S NAME]
[SPECIFY INCLUDING CURRENCY]	[SPECIFY INCLUDING CURRENCY]

7. Invoicing procedure

[SPECIFY ALTERNATIVE INVOICING PROCEDURE IF DIFFERENT FROM MAIN TERMS]

8. Confidential information

The Collaborators agree that the following information shall be Confidential Information (as defined in clause 11 of the agreement):

9. Additional terms

Part 4 Project Schedule signatures

Signed for and on behalf of Nottingham City Council

Signed for and on behalf of Derby City Council

Signed for and on behalf of Nottinghamshire County Council

Signed for and on behalf of Derbyshire County Council