

Decision under Delegated Powers

Officer Making the Decision

Head of Governance & HR

Recommendation

That the Council enters into the appended shared service agreement with Leicestershire County Council and other participating district councils in Leicestershire to employ a Business Continuity Officer to support the districts, as part of the Resilience Partnership arrangement.

Reason

To ensure that the Council has adequate and effective business continuity arrangements.

Authority for Decision

Responsibility for business continuity is a function which falls under the Head of Governance & HR, who has general delegated authority within the Constitution all operational management matters for those functions and service areas for which he has responsibility.

Decision and Date

Adrian Ward

Digitally signed by Adrian Ward
DN: cn=Adrian Ward, gn=Adrian Ward,
c=GB, United Kingdom, l=GB, United
Kingdom, o=Charnwood Borough
Council, ou=Head of Governance & HR,
e=adrian.ward@charnwood.gov.uk
Reason: I am approving this document
Location:
Date: 2023-05-03 10:52+01:00

Background

The purpose of the shared service agreement is to provide shared business resources and business continuity support to the participating district councils, including Charnwood, to work to the requirements of the Civil Contingencies Act 2004, the National Resilience Standards, and ISO 22301.

The Resilience Partnership will recruit a Business Continuity Officer, who will work with the participating district councils to improve and standardise their business continuity arrangements to ensure the relevant statutory and best practice requirements are met.

Comments from HR

Not applicable.

Financial Implications

Charnwood's financial contribution under the agreement will be £8,241 per annum, fixed for financial years 2023/24, 2024/25 and 2025/26, at which point the agreement will be reviewed.

A review of this agreement wss agreed as part of the 'bleeding stumps' exercise approved in principle by the Senior Leadership Team on the 4th October 2022 and will be included in the Budget process 2023-24.

Risk Management

There are no risks associated with this decision.

Key Decision:

No

Background Papers:

N/A

Draft v1

This Deed is dated 26th April 2023

BETWEEN:

- (1) BLABY DISTRICT COUNCIL** the Council Offices, Narborough Road, Desford, Leicestershire, LE19 2EP
- (2) CHARNWOOD BOROUGH COUNCIL** South field Road, Loughborough, LE11 2TX
- (3) HARBOROUGH DISTRICT COUNCIL** The Symington Building, Adam and Eve Street , Market Harborough, Leicestershire, LE16 7AG
- (4) HINCKLEY AND BOSWORTH COUNCIL** Hinckley Hub, Rugby Road, Hinckley, Leicestershire, LE10 0FR
- (5) LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Glenfield, Leicestershire, LE3 8RA
- (6) MELTON BOROUGH COUNCIL** Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire LE13 1GH
- (7) RUTLAND COUNTY COUNCIL** of Catmose Oakham, Rutland, LE15 6HP

together referred to as the “ **Resilience Partners**”

BACKGROUND

A The purpose of this Agreement is to provide shared business resources and business continuity to the partners and to work to the Civil Contingencies Act 2004 and the National Resilience Standards, and ISO 22301. This will ensure that Business Continuity is embedded in order that critical functions, business continuity, response and recovery capabilities are highly resilient and which will be led by suitably qualified and experienced continuity staff.

B The Resilience Partnership will host the Business Continuity Officer who will be primarily based at No 1 Romulus Court, Meridian East, Meridian Business Park, Leicester LE19 1YG.

1 Definitions:

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 the Partners for the supply of the Services by the Resilience Officer , as set out in.

Deliverables: all documents, products and materials developed by the Business Continuity Officer or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

Indemnifying Partners: Blaby District Council, Charnwood, Harborough, Hinckley and Bosworth, Leicestershire County Council, Melton Borough Council, Rutland County Council

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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, rights in computer software, 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.

LCC: Leicestershire County Council

LLR: Leicester, Leicestershire and Rutland

Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Partners to the Business Continuity Officer .

Resilience Partner or Partners: Means individually or all together

Services: the services, including without limitation any Deliverables, to be provided by the Business Continuity Officer pursuant to the Agreement, as described in Schedule E

Services Start Date: the day on which the Business Continuity Officer is to start provision of the Services, as set out in the Contract Details.

IPRs: all Intellectual Property Rights either subsisting in the Deliverables (excluding any Partners Materials incorporated in them) or otherwise necessary or desirable to enable a Partners to receive and use the Services.

2 Interpretation:

(a) A reference to legislation or a legislative provision:

(i) is a reference to it as amended, extended or re-enacted from time to time and

- (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes fax and email

2.2 The schedules to this Agreement are an integral part of this Agreement and are to have effect as if set out in full in the body of this Agreement. References to this Agreement include the schedules.

Commencement and term

- 3.1 The Agreement shall commence from the employment of the Business Continuity Officer and shall continue for a period of three years. Thereafter, the Agreement shall run on the same terms for further periods of 3 years unless terminated by majority vote of the Partners giving not less than 12 months notice in writing to terminate or unless terminated earlier in accordance with its terms

3 Services

- 4.1 LCC will provide the Partners with a Business Continuity Resource from the commencement date and in accordance with this Agreement.
- 4.2 The District and Borough Team Manager and the Resilience Partnership Manager from LCC will be responsible for the management of the Business Continuity Resource. This will comprise of, amongst other things, effective work planning, performance management, the consideration of resources and guidance as necessary. Work will be reviewed as part of the annual District and Borough visits by the Resilience Partnership Manager.
- 4.3 This arrangement does not in any way interfere with the duties and responsibilities of the Partners concerned under the Civil Contingencies Act or related emergency planning/business continuity legislation and regulations. The Partners take individual corporate responsibilities for the discharge of their functions in accordance with the relevant legislation.
- 4.4 In supplying the Services, as set out in Schedule E the Business Continuity Resource shall:

- (d) (i) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the industry, profession or trade;
- (ii) co-operate with the partners in all matters relating to the Services, and comply with all instructions;
- (iii) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Agreement;
- (iv) ensure that the Services shall conform in all respects with the service description set out in the schedule 1
- (v) comply with all applicable laws, statutes, regulations and codes from time to time in force; and Policies.
- (vi) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Partners premises from time to time

4 Resilience Partners obligations

5.1 The Partners shall:

- (i) Act in good faith and honour all obligations as set out in this Agreement
- (ii) provide such access to their premises and data, and such office accommodation and other facilities as may reasonably be requested by the Business continuity officer and agreed with the Partner in advance, for the purposes of providing the Services;
- (iii) provide such necessary information for the provision of the Services as the Bus Con Officer may reasonably request;

5.2 A failure by a Partner to comply with the terms of the Agreement can only relieve the Business continuity Officer from complying with its obligations under the Agreement.

6 Resilience Partners Materials

6.1 The Business Continuity Officer will transfer the all such materials to the Resilience Partners free from all liens, charges and encumbrances.

6.2 All partners Materials are the exclusive property of the Resilience Partners .

7 Data protection and Freedom of Information

7.1 The parties shall comply with their data protection obligations as set out in the Data Sharing Agreement.

- 7.2 Freedom of Information - The Resilience Partners acknowledge that they are all subject to the provisions of the Freedom Of Information Act 2000 and agree to assist any or all Partners in dealing with any request under the Act in a timely manner

8 Intellectual property

8.1 The Resilience Partners and licensors shall retain ownership of all their IPRs. The Business Continuity Officer and its licensors shall retain ownership of all Intellectual Property Rights in their Materials.

8.2 The Business Continuity Officer grants the Resilience Partners, or shall procure the direct grant to the Resilience Partners of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Business Continuity Officer's IPRs for the purpose of receiving and using the Services during the term of the Agreement and for the duration of any exit assistance services provided under clause 14.

8.3 The Resilience Partners grants the Business Continuity Officer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Resilience Partners Materials for the term of the Agreement for the purpose of providing the Services to the Resilience Partners in accordance with the Agreement.

8.4 Leicestershire County Council shall indemnify the Resilience Partners against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Partners arising out of or in connection with any claim brought against the Partners for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Partners and its licensees and sub-licensees. This clause shall survive termination of the Agreement.

9 Charges and payment

9.1 In consideration for the provision of the Services, the financial contribution to be made by each of the Resilience Partners towards the Business Continuity provision for 2023/24, 2024/25 and 2025/26 are at Schedules A, B and C and are fixed for 3 years. Financial contributions are due annually on 1 April each year and shall be paid to the Leicester and Leicestershire Rutland Resilience Partnership account which shall be hosted by Leicestershire County Council and administered on behalf of the Leicester, Leicestershire and Rutland Resilience Partners by an LLR Resilience Partnership Administrator. Decision point at the end of first two years (March 2025) to then continue and annually thereafter.

9.2. Any under spend from the financial year will be brought to the Resilience Partners for explanation and sanction. The Resilience Partners will then decide whether to redistribute said monies between the Partners on a proportionate basis to the contributions made (as at Schedule D) or re-invest for future identified projects.

9.3 If any Partner wishes to terminate their financial contribution to the arrangement they may do so by giving a minimum of 12 months' notice to the Partners. Once the notice is received the Partners will undertake a full consultation to continue with the remaining partners or will be dissolved.

9.4 The Partners shall fund the annual cost (in the percentage financial contributions set out at Schedule A, B and C) of the post to be employed by Leicestershire County Council with the posts and structure of the team to be agreed. The Partners are also responsible for contributing to any Employment Costs (as defined in Schedule D) arising from this Agreement.

10 Limitation of Liability and Indemnity

10.1 Neither party excludes or limits liability to the other party for any matter for which it would be unlawful for the parties to exclude or limit liability.

10.2 The parties shall indemnify each other in full, from and against any costs, charges, damages, expenses or losses which either may cause or have caused the other, as a result of its breach of any applicable Data Protection Legislation or of the provisions of this Agreement.

11 Insurance

11 During the term of the Agreement and for a period of 6 years thereafter, Leicestershire County Council shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement,

12 Dispute Resolution

Any disputes or grievances arising in or about the operation of the Resilience Partnership or between the Resilience Partners will be referred to the Board who will endeavour to resolve the issue in conjunction with the party who has raised the grievance. If the dispute cannot be

resolved, then the matter will be escalated to the respective Chief Executives of those local authorities involved in the grievance to resolve.

13 Termination

13.1 Without affecting any other right or remedy available to it, the Parties may terminate the Agreement with immediate effect by giving written notice to the other parties if:

- (a) the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 60 days after being notified in writing to do so;

13.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

13.4 Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

14 Exit arrangements

14.1 On termination of the Agreement for whatever reason:

- i. the Business Continuity Officer will return all the Partners Materials.
- ii. the Business Continuity Officer shall, if so requested by any of the Partners provide all assistance reasonably required by the Partners to facilitate the smooth transition of the Services

14.2 The parties further agree that on termination the following shall apply:

14.2.1 All Employment Costs, as set out in Schedule D, and any other costs that may reasonably arise in relation to the County Employees shall be covered by the Partners in the percentages set out in Schedule D

14.2.2 All information belonging to a particular Partner shall be handed back to that Partner on termination or as soon as practicable afterwards.

14.2.3 Any specific work or plan undertaken for one or more Partners shall be the property of that Partner or the Partners for whom the work was undertaken and all information in relation to it shall be handed back to the Partner or Partners for whom the work was undertaken on termination or as soon as practicable afterwards and all intellectual property rights shall vest in the Partner or Partners for whom the work was undertaken.

14.2.4 Any work undertaken by the Business Continuity Officer on behalf of all the Resilience Partners shall remain the property of each and every Resilience Partner and intellectual property rights will be held jointly by all the Resilience Partners.

15 Force majeure.

15.1 Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 60 day`s the party not affected may terminate the Agreement by giving 60 days written notice to the affected party.

16 Confidentiality.

16.1 Each party undertakes that it shall not at any time and for a period of two years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, Partners, clients or Resilience Officers of the other party except as permitted by clause 16.2.

16.2 Each party may disclose the other party's confidential information:

16.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and

16.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

16.2.4 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

17 Entire agreement.

17.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18 Variation.

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

19 Waiver.

- 19.1 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2 A failure or delay by a party to exercise any right or remedy provided under the 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 the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20 Severance.

20.1 If any provision or part-provision of the 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 20 shall not affect the validity and enforceability of the rest of the Agreement.

21 Notices.

21.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:

- 21.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its principal place of business (in any other case); or
- 21.1.2 sent by email to the address specified xxxxxxxx
- 21.1.3 Any notice or communication shall be deemed to have been received:
- 21.1.4 if delivered by hand, at the time the notice is left at the proper address;
- 21.1.5 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 21.1.6 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause , business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

22 Third party rights.

- 22.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

23 Governing law.

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

24 Jurisdiction.

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a Deed

By affixing the Common Seal

OF BLABY DISTRICT COUNCIL

In the presence of

(Authorised Signatory)

Executed as a Deed

By affixing the Common Seal

OF CHARNWOOD BOROUGH COUNCIL

In the presence of

(Authorised Signatory)

Executed as a Deed

By affixing the Common Seal

OF HARBOROUGH DISTRICT COUNCIL

In the presence of

(Authorised Signatory)

Executed as a Deed

By affixing the Common Seal

OF HINCKELY AND BOSWORTH BOROUGH COUNCIL

In the presence of

(Authorised Signatory)

Executed as a Deed

By affixing the Common Seal

OF LEICESTERSHIRE COUNTY COUNCIL

In the presence of

(Authorised Signatory)

Executed as a Deed

By affixing the Common Seal

OF MELTON BOROUGH COUNCIL

In the presence of

(Authorised Signatory)

Executed as a Deed

By affixing the Common Seal

OF RUTLAND COUNTY COUNCIL

In the presence of

(Authorised Signatory)

SCHEDULE A

FINANCIAL CONTRIBUTIONS 2023/2024

Partner	Business Continuity
	£
Blaby DC	£8,241
Charnwood BC	£8,241
Harborough DC	£8,241
Hinckley & Bosworth BC	£8,241
Leicestershire County Council	-
Melton BC	£8,241
Rutland County Council	£8,241
TOTAL	£49,446

SCHEDULE B

FINANCIAL CONTRIBUTIONS 2024/2025

Partner	Business Continuity
	£
Blaby DC	£8,241
Charnwood BC	£8,241
Harborough DC	£8,241
Hinckley & Bosworth BC	£8,241
Leicestershire County Council	-
Melton BC	£8,241
Rutland County Council	£8,241
TOTAL	£49,446

SCHEDULE C

FINANCIAL CONTRIBUTIONS 2025/2026

Partner	Business Continuity
	£
Blaby DC	£8,241
Charnwood BC	£8,241
Harborough DC	£8,241
Hinckley & Bosworth BC	£8,241
Leicestershire County Council	-
Melton BC	£8,241
Rutland County Council	£8,241
TOTAL	£49,446

SCHEDULE D

EMPLOYMENT COST PROVISIONS

Definitions

The Definitions from the Agreement are the same for the purposes of this Schedule D.

“Employment Costs” means any reasonable costs, claims, liabilities and expenses (including reasonable legal expenses) incurred after the date of the commencement of this Agreement in connection with or as a result of:-

- the redundancy of any County Employee (including, but not limited to, redundancy and notice pay and any resulting payments in respect of pension) where the redundancy is agreed to and approved by the Board and has not resulted solely by Leicestershire County Council acting as the employer;
- the transfer of any County Employee under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) to any new service provider;
- the termination of employment of any County Employee for whatever reason (including, but not limited to, notice pay and any payments in respect of pension agreed by the Board) where the termination is agreed to and approved by the Board and has not resulted solely by Leicestershire County Council acting as the employer; and
- any claim or demand by any County Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising out of the termination of employment of any County Employee (including a redundancy termination) where such termination has been agreed and approved by the Board and has not resulted solely by Leicestershire County Council acting as the employer including without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race or disability, age, sexual orientation, religion or religious belief, discrimination on the grounds of protected characteristics under the Equalities Act 2012, personal injury, a protective award or a claim or demand of any other nature.

- any claim or demand by any County Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising out of the performance of their duties for the LLR Resilience Partnership including without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race or disability, age, sexual orientation, religion or religious belief, discrimination on the grounds of protected characteristics under the Equalities Act 2012, personal injury, a protective award or a claim or demand of any other nature, including under TUPE where any such claim does not arise solely as a result of the unreasonable or unlawful action of Leicestershire County Council acting as the employer unless the course of action was approved and agreed by the Board. Where any such claim or demand is solely the result of the actions of any employee of Leicestershire County Council (other than a County Employee) all claims, awards and/or expenses will be defended solely by Leicestershire County Council as employer and there will be no liability for contribution by any of the remaining Indemnifying Partners.
- any pension deficit applicable to the County Employees in relation to their participation in the Local Government Pension Scheme that results when the LLR Resilience Partnership is terminated or dissolved for whatever reason so long as such deficit figures are agreed and approved by the Board prior to such termination or dissolution.
- The Resilience Partners each agree to indemnify Leicestershire County Council in the proportions set out at paragraph 4 for any Employment Costs above £1,000 per case incurred in respect of the County Employees.
- In respect of the indemnity given above, Leicestershire County Council shall give written notice to each of the Resilience Partners as soon as is practicable of the details of any potential Employment Costs but Leicestershire County Council shall have the exclusive right to defend, conduct and/or settle any matter provided that if the Employment Costs are likely to exceed £10,000 per case Leicestershire County Council shall consult with the Resilience Partners and shall at all times keep them informed of all material matters.
- The Resilience Partners shall provide all reasonable assistance and documentation required by Leicestershire County Council in connection with the defence, conduct or settlement of any matter covered by the indemnity above.
- The Resilience Partners each agree to indemnify Leicestershire County Council based on the percentage of funding contribution to the Partnership