



2014

(1) **WIRRAL METROPOLITAN BOROUGH COUNCIL**

and

(2) **WIRRAL CHAMBER OF COMMERCE**

**FIRST DRAFT FOR DISCUSSION WITH THE COUNCIL**

**COLLABORATION AGREEMENT**

**DWF LLP  
1 Scott Place  
2 Hardman Street  
Manchester  
M3 3AA**

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**THIS AGREEMENT** is dated

2014 and made between:

- (1) **WIRRAL METROPOLITAN BOROUGH COUNCIL** of Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED (the **Council**);
- (2) **WIRRAL CHAMBER OF COMMERCE** of Egerton House, 2 Tower Road, Birkenhead CH41 1FN (the **Chamber**).

**BACKGROUND:**

- (A) The parties agree to enter into this Agreement to promote and encourage the use of business support services provided by both the Council and the Chamber to businesses located in Wirral.
- (B) The Council enters into this Agreement pursuant to section 1 of the Localism Act 2011 which provides a power for the Council to do anything which individuals generally may do, and section 111 of the Local Government Act 1972 which provides a power for the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Council's functions.
- (C) The parties agree that the provisions contained in this Agreement are intended to govern the relationship between the parties in relation to the collaboration.

**IT IS AGREED**

**1. Interpretation**

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2 The Schedules form 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 Schedules.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to any party shall include that party's employees, representatives and permitted assigns.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax and e-mail.
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.10 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.

1.11 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 [insert date following Cabinet approval and call-in] January 2015 and shall continue, unless terminated earlier in accordance with this Agreement, until 31 December 2018 when it shall terminate automatically without notice.

## 3. **Council Obligations**

3.1 The Council will fund six (6) of its Council employees who will work to deliver the collaboration objectives and the outputs.

3.2 The Council's team will represent the Council's business engagement activities and will proactively raise awareness of the Council and the Chamber's business support services. Its general activities will include:

- (a) visiting businesses in Wirral to assess their needs and to assist these businesses with the removal of any barriers to growth;
- (b) increasing membership of the Business Wirral online procurement portal and business membership of the Chamber;
- (c) organising business networking and conference events;
- (d) delivering business support workshops;
- (e) providing information on available commercial property and land in Wirral;
- (f) providing weekly business news broadcasts;
- (g) identifying and delivering access to finance support for businesses with investment proposals;
- (h) providing support services to enable businesses to export and access new markets; and
- (i) acting as the first point of contact for all business related issues facing companies in Wirral.

## 4. **Chamber Obligations**

4.1 The Chamber will:

- (a) provide office space for the current Invest Wirral staff;
- (b) design all marketing materials for the collaboration;

- (c) fund marketing materials to raise awareness of the parties' business support services;
- (d) ensure that the Chamber CEO will provide day-to-day support to the Team Leader (a Council officer) of the new business support team and to the wider team during any absence of the Team Leader; and
- (e) ensure that Chamber employees will promote and raise awareness of the business support services to their members.

## 5. **General Obligations**

5.1 The parties agree that the activities and work carried out by both parties must be carried out in:

- (a) a good and workmanlike manner;
- (b) accordance with good industry practice;
- (c) accordance with the law; and
- (d) a manner which is not likely to cause harm to others.

## 6. **Collaboration Objectives**

6.1 The parties agree that their collaboration objectives are as follows:

- (a) improve the quality of business support for businesses in Wirral to lead to a generation of increased employment opportunities, increased investment and business growth in Wirral and improvement of the economic prosperity of Wirral;
- (b) create a single point of contact for the provision of business support services in Wirral to reduce confusion in the business community and increase the number of businesses in Wirral accessing the business support services;
- (c) share information and resources to ensure a professional and comprehensive service is provided to businesses in Wirral;
- (d) support the continued growth and development of a strong and influential Chamber of Commerce in Wirral by creating a collaborative and powerful business support service provider to serve Wirral businesses; and

(together these shall be known as the **Collaboration Objectives**).

## 7. **Outputs**

7.1 The parties agree to work together collaboratively to deliver the outputs set out in Schedule 1 of this Agreement.

## 8. **Joint Working**

8.1 The parties agree to work together collaboratively to deliver the agreed outputs detailed at Schedule 1 of this Agreement.

- 8.2 Both parties agree to act in good faith to each other to deliver the Collaboration Objectives.
- 8.3 The parties may decide to disclose (subject to procurement, data protection and confidentiality restrictions) to each other all relevant information, data, documents, reports and opinions with respect to the work carried out as part of the collaboration.
- 8.4 The parties agree to take on, manage and account to each other for the performance of their respective roles and responsibilities.
- 8.5 The parties agree to each deploy appropriate resources to the collaboration and one party shall not be expected to disproportionately complete the work involved.
- 8.6 Regular meetings will take place between the Team Leader (Council Officer) of the new business support team and a senior officer from the Council to ensure operational tasks adhere to Council protocols and to ensure the interests of the Council are represented.
- 8.7 The Chamber CEO will have regular meetings with the Director of Regeneration and Planning of the Council to ensure that the strategic objectives of both parties are aligned.
9. **Branding**
- 9.1 Council employees that are part of the collaboration will have joint Council/Chamber branded business cards and e-mail signatures. The name **Invest Wirral** will no longer be used by the Council team responsible for the current provision of business support services. The new team will be known as the **Business Support Team** sitting in Wirral Chamber.
- 9.2 All marketing material promoting any joint Council/Chamber services must include both the Council's and the Chamber's logos. Final sign off for marketing materials will be given by the CEO of the Chamber and the Team Leader (Council Officer) of the new business support team to ensure both organisations are represented fairly.
10. **Governance**
- 10.1 Both parties recognise that they must act in accordance with:
- (a) their own policies;
  - (b) statutory functions;
  - (c) constitutions; and
  - (d) legal obligations.
- 10.2 The Council's Director of Regeneration and Planning will have ultimate responsibility for the activities of the new Business Support team. All activities will be agreed in collaboration with the CEO of Wirral Chamber of Commerce.
- 10.3 If the Chamber would like to add or amend the agreed activities carried out by the team, permission should be sought from the Council.

## 11. Procurement

11.1 Both parties recognise that the Council is a contracting authority for the purposes of the Public Contracts Regulations 2006 (the **Regulations**). The Council shall ensure that any procurements are concluded in accordance with the Council's constitution and/or the formal procurement procedures specified in the Regulations.

11.2 Any procurement procedures will be carried out in accordance with the following principles:

- (a) the Council shall treat all bidders equally, transparently and without discrimination;
- (b) the confidential information of bidders for Council contracts shall remain confidential to the Council (and will not be shared with the Chamber), as the Council cannot allow a situation whereby any confidential information submitted by third party bidders is accessed or viewed by Chamber employees;
- (c) evaluation of any bids must take place in accordance with the disclosed evaluation criteria and must be completed by Council employees;
- (d) Council employees will not discuss applications in communal spaces or with any employees of the Chamber at all. All procurement matters will be conducted in Council buildings outside of Egerton House; and
- (e) confidentiality agreements will be signed by the Council employees involved in any procurement processes to safeguard against any leakage of confidential information.

11.3 The parties agree that the Chamber may wish to bid to provide certain services that are put to the market by the Council and the Chamber will be treated the same as any other bidder to provide services.

11.4 In the event that the Chamber bids for any contract being procured by the Council, Council employees shall ensure that:

- (a) they do not in any way assist the Chamber in any aspect of the procurement process, including (but not limited to) the preparation of any documents related to the procurement process; and
- (b) any employees working in collaboration with the Chamber do not assess, evaluate or approve any documents submitted by the Chamber.

## 12. Loans and Grants

12.1 Both parties acknowledge that the Council, may offer loans or grants to businesses in Wirral. The parties further acknowledge that the Chamber may be eligible to apply for a loan or grant from the Council and shall be treated in the same as any other applicant for such loans and grants from the Council.

12.2 Both parties shall have in place appropriate safeguards and decision-making protocols to ensure that a conflict of interest does not arise whereby a Council employee or elected member makes, or assists with the preparation of, an application for a loan or grant which he or she will subsequently evaluate or approve.

13. **Dispute Resolution Procedure**

13.1 If any dispute arises out of, or in connection with this Collaboration Agreement, the parties shall follow the procedure set out at Schedule 2.

14. **Termination**

13.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party.

15. **Data Sharing**

15.1 The parties shall comply with the data sharing arrangements set out in Schedule 4 (Data Sharing).

16. **Freedom of Information**

16.1 The parties acknowledge that the Freedom of Information Act 2000 (“**FOIA**”) applies to the Council. The Council has obligations and responsibilities under FOIA to disclose, on written request, recorded information held by the Council. Although reasonable endeavours will be used to hold confidential any information provided as part of the collaboration, if required, the Council may have to disclose information in response to a request, unless the Council decides that one of the statutory exemptions under FOIA applies. The decision as to which information will be disclosed is reserved to the Council, notwithstanding any consultation with the Chamber.

16.2 The parties accept that this will apply to projects on which the Council works with the Chamber as part of the collaboration.

16.3 In certain circumstances, and in accordance with the Code of Practice issued under section 45 of FOIA or the Environmental Information Regulations 2004, the Council may consider it appropriate to ask the Chamber for its views as to the release of any information before a decision on how to respond to a request is made. In dealing with requests for information under FOIA, the Council must comply with a strict timetable and the Council would, therefore, expect a timely response to any consultation within two working days.

17. **Marketing and Publicity**

17.1 The consent of both parties is necessary before any press announcements or publications are made relating to the collaboration.

17.2 Both parties agree to review and approve/reject the content of any press releases/publicity before they are communicated to third parties.

18. **Conflicts of Interest and Gifts and Hospitality**

18.1 The parties accept that Council employees may be requested to attend events, dinners and conferences funded by the Chamber, where there is a genuine need for Council employees to exchange or impart information or represent the Council when engaging businesses.

18.2 This hospitality will be corporate rather than person and Council employees shall ensure that they comply with both the Council's Conflict of Interest Policy and the Gifts and Hospitality Policy and Procedure set out in Schedule 3.

**19. Entire Agreement**

19.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

19.2 The parties may not rely on other documents, oral agreements or representations as to the operation of the collaboration unless such obligations are covered in the agreement.

19.3 Each party 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.

**20. No Partnership**

20.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership between the parties, or authorise any party to make or enter into any commitments for or on behalf of the other, except to the extent that such commitments are set out in the Agreement and relate exclusively to the collaborative work undertaken by both parties under this Agreement.

**21. Governing Law and Jurisdiction**

21.1 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.

21.2 Each party irrevocably agrees that, subject to clause 13 (Dispute Resolution Procedure), the courts of England 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).

**22. Third Party Rights**

22.1 A person or entity which 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.

**23. Counterparts**

23.1 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.

24. **Variation**

24.1 No variation of this Agreement shall be effective unless it is signed by the parties (or their authorised representatives).

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## **SCHEDULE 1**

### **Agreed Outputs**

The new business support partnership will work to deliver the following outputs each year:

1. create and safeguard 925 full time jobs;
2. facilitate £16 million in private sector investment; and
3. engage with 500 businesses in Wirral.

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## SCHEDULE 2

### Dispute Resolution Procedure

1. If any dispute arises out of, or in connection with this Collaboration Agreement, the parties shall follow the procedure set out below.
2. Either party shall give to the other written notice of the dispute, setting out its nature and full particulars, together with relevant supporting documents. On receipt of this written notice, the other party shall attempt in good faith to resolve the dispute.
3. If the parties are unable to resolve the dispute within 30 days of receipt of the written notice as detailed in (1) above, the parties shall attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start no later than 14 days after the date of the ADR Notice.
4. If the mediation is not resolved within 28 days after service of the ADR Notice, the dispute shall be finally resolved by the courts of England and Wales.

**SCHEDULE 3**

**The Council's Conflict of Interest, and Gifts and Hospitality Policies and Procedures**

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**SCHEDULE 4**

**Data Sharing**

[To be inserted]

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**SIGNATURE PAGE**

Executed as a Deed )  
by the affixing of the Common Seal of )  
**WIRRAL METROPOLITAN BOROUGH COUNCIL** )  
in the presence of: )

.....  
Authorised Signatory

.....  
Name (in block capitals)

Executed as a Deed )  
by **WIRRAL CHAMBER OF COMMERCE** )  
acting by a director in the presence of: )

.....  
Director

.....  
Witness Signature

.....  
Witness Name (in block capitals)

.....  
Witness Address