

For General Release

REPORT TO:	CABINET MEMBER FOR FINANCE & RESOURCES
SUBJECT:	Microsoft Enterprise Software Agreement Contract Variation
LEAD OFFICER:	Matthew Wallbridge Head of ICT & Transformation
CABINET MEMBER:	Councillor Simon Hall Cabinet Member for Finance and Resources
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT The provision of a Microsoft enterprise software license agreement is vital to the council as it enables the Council to administer back office functions and the licenses are required to transform the ICT estate enabling efficiencies from the application of new technology.	
AMBITIOUS FOR CROYDON & WHY ARE WE DOING THIS: Delivering high quality public services and improving value for money.	
FINANCIAL IMPACT: The current contract and proposed increases will be funded from the existing revenue and capital budgets held within the ICT and Resource Departments. The original awarded contract value of the Microsoft enterprise software license agreement, procured via Insight Direct (UK) Limited is £2,200,000, this was a key decision published in June 2016 (Reference 3116FT made on 6 June 2016). The total anticipated maximum cost of the variation is £1,136,969 bringing the total contract value to £3,336,969.	
KEY DECISION REFERENCE NO.: 3116FT – 6 June 2016	

1. RECOMMENDATIONS

The Leader of the Council has delegated to the Cabinet Member for Finance and Resources the power to make the decisions set out in the recommendations below:

- 1.1 The Cabinet Member for Finance and Resources in consultation with the Leader of the Council is recommended to:
- 1.2 Approve a variation to the contract with Insight Direct (UK) Ltd for the provision of a Microsoft Enterprise software license agreement to increase the number of user licenses and to also incorporate Azure IAAS hosting and usage licenses in accordance with Regulation 29 of the Councils Contracts & Tenders Regulations.

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| 1.3 | Note the total anticipated maximum cost of the variation is £1,136,969 bringing the total contract value to £3,336,969 |
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2. EXECUTIVE SUMMARY

- 2.1 This report recommends varying the contract with Insight Direct (UK) Ltd for the provision of a Microsoft Enterprise software license agreement to increase the number of user licenses and to also incorporate Azure IAAS hosting and usage licenses contract with Specialist Computer Centre Plc (SCC) which end on 30/06/2018. This will ensure that the Council is correctly licensed under the Enterprise Subscription Agreement.
- 2.2 The Procurement Strategy for the report titled “Microsoft Office Enterprise Software” which detailed the procurement approach was approved by the Contracts & Commissioning Board on 03/03/16, CCB Ref: CCB1103/15-16. The award was approved by the Contracts & Commissioning Board on 27/04/16 CCB reference CCB1133/16-17 for a contract value of £2,200,000.

CCB Approval Date	CCB ref. number
24/05/2018	CCB1357/18-19

3. DETAIL

3.1 Background

- 3.2 The Council currently licenses Microsoft software under an Enterprise Subscription Agreement with Insight Direct (UK) Ltd. There is a continuing requirement to license Microsoft software products so that the Council is able to continue to use and maintain existing products (such as Office 365). New cloud based Microsoft software products such as CRM Online and Business Intelligence are also being implemented as part of the ongoing ICT transformation (“Transformation”) bringing new functionality and the requirement to maintain upgrade rights to support the transformed ICT environment. These solutions and systems are critical across the organisation to deliver key services for Croydon residents and the new cloud based approach will further enable efficiencies and improved ways of working which support the council’s financial strategy.

- 3.3 Since the contract was awarded, user numbers have increased as, initial estimates were underestimated. Although the subscription entitles the Council to vary license numbers up and down, the increased user numbers are anticipated to remain for the remaining duration of the agreement which will therefore result in a total overall increase in the contract value.

- 3.4 The original annual value of the agreement was £740,482 and, during the course of the following two years, additional licences and products have been added, as detailed in the table below. Extrapolating this to year 3, including

annualising the additional costs, the annual charge will be £1,042,872. This will ensure that the Council is correctly licensed under the Enterprise Subscription Agreement.

See Summary below.

Year 1 - Annual contract value	£740,482	Year 2 Annual contract value	£940,596	Estimated Annual contract value Year 3	£1,026,471
Year 1 – Additional products ordered	£217,961	Year 2 – Additional products ordered	£85,875	Year 3 additional costs	£16,401
Year 1 – Total spend	£958,443	Year 2 – Total spend	£1,026,471	Year 3 – Total spend	£1,042,872
Total Contract Value					£3,027,786

- 3.4 As part of the ICT strategy to increase use of cloud hosting, the council had purchased a number of Azure IAAS hosting licenses at a cost of £189,183. CRM and My Account are reliant on the cloud hosting. These licenses are to be migrated into this agreement and the agreement with SCC terminated. It is estimated that by the end of the agreement (30/06/2019) that there would be additional licenses required costing approximately £120,000 if the usage continues to grow as it is. The total contract cost for Azure would therefore be £309,183.

Year 1	£16,800
Year 2	£39,365
Year 3	£133,018
Estimated additional cost required based on migration estimates.	£120,000
Total	£309,183

- 3.6. New products are needed to support the ongoing Transforming of the IT infrastructure. The Azure licences are key to the Council's move to cloud based services. It is therefore proposed to incorporate licences for the Azure platform into the Agreement for the remaining term. There were no requirements for this products when the agreement was entered into.
- 3.7 The variation to incorporate the Azure hosting licences into the agreement is an interim arrangement and will allow time for future cloud hosting requirements to be fully scoped and incorporated into the future procurements planned for the recommissioning of ICT services and which is subject to other reports to CCB.

4. CONSULTATION

- 4.1 Consultation has taken place with legal, finance, departmental tech boards, ICT colleagues within the borough and Capita our IT Supplier.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 Original Financial risk assessment considerations can be found in the original CCB report (Section 3 of 31.16.FT Microsoft Enterprise Software Agreement).

5.2 The effect of the decision

The agreement period is for three years from 01/07/2016 to 30/06/2019.

Details	Internal Capital	Revenue	Period of funding	Period of funding
ICT Licensing- CFA136	£3,087,969	£0	2016/17 to 2018/19	3 years
Digital Enabling Funding		£249,000	2016/17	1 Years
TOTAL	£3,087,969	£249,000	£3,336,969	

5.3 Risks

A financial health check was performed on Insight, no concerns were identified.

5.4 Options

The existing contract is being varied. Other options were considered including; Running a new procurement for the Azure licensing. This was discounted at this time as the ICT services recommissioning programme will be including the scope within the programme next year. This contract variation is considered an interim arrangement.

5.5 Future Savings/Efficiencies

If in future the number of users' decreases, the subscription model allows the council to reduce the number of licenses being paid for annually

(Approved by: Ian Geary, Head of Finance, Resources & Accountancy)

6. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 6.1 The Solicitor to the Council comments in respect of the recommendation to vary the current contract to increase the number of licenses and move to cloud based services consideration must be given to Regulation 72 of the Public Contract Regulations (PCR) 2015. A contract may be modified i.e. varied where

the modifications are not considered 'substantial' (Reg.72 (1) (e)).

6.2 In terms of what might be considered a "substantial change" is defined in Regulation 72(8) as any change, irrespective of value, which meets one or more of these conditions:

- Materially alters the character of the original contract/framework;
- Would have allowed other potential suppliers to participate or be selected, or another tender to be accepted;
- Changes the economic balance in favour of the contractor;
- Extends the scope of the contract/framework "considerably";
- A new contractor replaces the original contractor, other than where the change arises from a review or option clause in the original contract or from corporate changes such as merger, takeover or insolvency.

6.3 There is a risk that a contract with extension into cloud based services, particularly given the significant increase in the contract value of the variation, could be argued to:

- materially altering the original contract/framework
- extend the scope 'considerably'
- change the economic balance in favour of the contractor

6.4 Authorities that wish to procure for services that may need expanding must consider carefully the terms of the advertisement, contract and related procurement documents. If challenged by a third party in this respect there is a risk that the contract variation might be found to be ineffective. The risk of challenge may be mitigated by publishing a VEAT notice in which the Council sets out why it considers the award of the contract, without prior publication of a contract notice, to be permitted by Part 2 PCR 2015, and then waiting at least 10 days before entering into the contract variation. However, a VEAT notice is only effective in providing protection where the legal justification for the direct award is sound and able to withstand any increased scrutiny that may be brought about by its publication. A VEAT will not offer the intended protection where it is issued in bad faith or where the proper due diligence is lacking, regardless of whether in good faith or not.

Approved by: Sean Murphy, Head of Commercial and Property Law & Deputy Monitoring Officer, on behalf of the Director of Law & Monitoring Officer.

7. HUMAN RESOURCES IMPACT

7.1 There are no immediate HR implications that arise from the recommendations in this report which would impact Croydon Council staff.

Approved by: Sue Moorman, Director of Human Resources.

8. EQUALITIES IMPACT

- 8.1 An Initial Equality Analysis was undertaken to assess the likely adverse impact the contract award would have on protected groups compared to non-protected groups. The analysis concluded that a full equality analysis will not be required as entering into a license agreement would not have any adverse impact on protected groups compared to non-protected groups.

9. ENVIRONMENTAL IMPACT

- 9.1 The nature of the requirement for the varied contract should not lead to any environmental impact.

10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 None Identified

11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 11.1 This contract variation is required in order to allow to retain contractual compliance for licenses. It is the most effective way to utilise the new license services for the IT Infrastructure.

12. OPTIONS CONSIDERED AND REJECTED

- 12.1 The option of tendering for additional licenses was considered but rejected as the existing agreement allows for volumes to changed or additional licenses to be added.

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BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972 – None