Brent	**Decision for Deputy Leader & Cabinet Member for Finance and Resources**
	Report from the Corporate Director, of Finance and Resources

Approval to waive Contract Standing Orders to permit procurement of Merchant Acquiring through a Direct Award

Wards Affected:	All
Key or Non-Key Decision:	Non-Key Decision
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendix A is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
List of Appendices:	One Appendix A: (Exempt) Annual cost breakdown
Background Papers:	N/A
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1.0 Executive Summary

1.1. This report concerns the procurement of Merchant Acquiring. This is a key contract for the council, which is essential for collecting income and debt via debit and credit card payments.

1.2 The purpose of this report is to seek member approval to waive Contract Standing Orders to enable a direct award of a contract for Merchant Acquiring.

2.0 Recommendation(s)

That the Cabinet Member for Finance and Resources having consulted with the Leader:

2.1. Approves an exemption pursuant to Contract Standing Order 84(a) of the requirement to tender a contract for Merchant Acquiring for a period of up to 18 months in accordance with paragraph 13 of Part 3 of the Constitution.

3.0 Detail

3.1 Contribution to Borough Plan Priorities & Strategic Context

3.1.1 This service is a key part of the council's support systems, and essential for the council to be able to collect payments by card as people expect in 2026. The contract helps enable the goals set out in the Customer Access Strategy to strive to make the online customer journey accessible, user-friendly and straightforward, as customers expect to be able to pay for services online using their cards.

3.1.2 The Customer Access Strategy also recognises that not everyone can get online. In these cases, this service enables the council to provide a broader set of solutions, by being an essential component of both telephone and face to face payments.

3.1.3 Finally, this contract is an essential enabler of the Cashless Parking strategy set out in the Parking Policy, as cashless payments are only made by card. Whilst there are alternative to card payment for cashless payment for future consideration none of these have anything near the same level of customer use and acceptance as card payments.

3.2 Background

3.2.1 Merchant Acquiring is an essential contract from a financial perspective as it is necessary to enable residents and customers to pay the council by debit and credit card, over £100m a year is collected by the council using this contract.

3.2.2 This is a complex contract to re-procure, involving both a complex, technical procurement, and multiple council departments with differing specifications. If awarded to a different supplier then there is significant work to transition several of the council's financial systems to use the new supplier which would not be possible for technical and operational reasons before the existing contract expires. The Council cannot risk the disruption to this service as this would impact income collection via e-commerce, online or telephone payments from residents and customers.

Therefore, Officers intend to use this time in an effective way to plan a new procurement exercise and procure compliantly a suitably experienced supplier to deliver and support the transition to a possible new supplier of merchant acquiring services.

3.2.3 In order to assess value for money, the council has compared the proposed cost of this contract against the CCS framework. Given a significant cost of change to move to a new supplier, the current proposal is believed to offer good value over the next 18 months.

4.0 Stakeholder and ward member consultation and engagement

4.1 Not relevant

5.0 Financial Considerations

5.1 The proposed contract has an annual value of £0.72m. With the cost of the contract valued at £1.08m over the full 18 month contract term.

5.1 This contract represents the continuation of an existing service provision, and therefore the contract will be funded by existing budget.

6.0 Legal Considerations

6.1 In accordance with paragraph 13 of Part 3 of Brent’s Constitution, the Leader has delegated certain functions to Cabinet members to be exercised within their portfolio area in consultation with the Leader. This delegation includes agreement of waivers of Contract Standing Orders for Medium and High Value Contracts subject to their being no breach of the Council’s own procedures or domestic law.

6.2 The services Officers are proposing to procure are valued at £1,080,000 over the contract term and the proposed contract is thus classified as a Medium Value Contract under Contract Standing Orders. Contract Standing Orders provide that a Medium Value Contract should be procured by way of a tender process but for the reasons detailed in the body of the report, Officers do not consider it is possible to procure the contract by way of a tender process.

6.3 The Contract is above the Procurement Act 2023 (“PA23”) threshold for services. A direct award above threshold is lawful only where a direct award justification in Schedule 5 applies (section 41). Officers rely on paragraph 13 of Schedule 5 (extreme and unavoidable urgency): the award is strictly necessary to maintain an essential income-collection service, an interruption to which would have serious consequences, and a compliant procedure cannot be completed within the time available. Subject to those facts being correct, the direct award is not considered to place the Council in breach of domestic law.

6.4 In reaching any decision to waive Contract Standing Orders, the Cabinet Member in consultation with the Leader should have regard to the reasons Officers have set out in Section 3 of the report.

7.0 Equity, Diversity & Inclusion (EDI) Considerations

7.1 Pursuant to s149 Equality Act 2010 (the "Public Sector Equality Duty"), the Council must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

7.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

7.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.

7.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications.

8.0 Climate Change and Environmental Considerations

8.1 This contract award is not expected to significantly impact positively or adversely on the council's environmental considerations, to a significant extent the environmental impact of card payments remain the same regardless of who the merchant acquirer is as all contracts use the Visa and Mastercard schemes.

9.0 Human Resources/Property Considerations (if appropriate)

9.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from the procurement of the contract

10.0 Communication Considerations

10.1 No communication considerations.

<u>Report sign off:</u> ***Minesh Patel*** Corporate Director, Finance and Resources