

TERMS AND CONDITIONS

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THIS AGREEMENT is made the day of

2018

BETWEEN

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, Lincolnshire LN1 1YL (the “Council”)

and

(2) [Insert name and address] (the “Client”)

WHEREAS

The Client requires the provision of services and the Council has agreed to provide the same on the terms and conditions set out below.

IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

1.1 Unless the context otherwise requires the following provisions shall have the meanings given to them below:-

Agreement means the formal written agreement entered into between the Council and the Client for the provision of the Services.

Charges means the amounts payable by the Client to the Council for the Services rendered or additional services as set out in clause 5.

Client's Personal Data means the Personal Data supplied by the Client to the Council and/or Personal Data collected by the Council on behalf of the Client for the purposes of or in connection with the Agreement.

Commencement Date means the [insert date].

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.

Controller takes the meaning given in the GDPR.

Council means Lincolnshire County Council, its officers and agents.

Data Protection Legislation means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Officer takes the meaning given in the GDPR.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Council under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject takes the meaning given in the GDPR.

Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.

DPA means the Data Protection Act 2018.

Environmental Information Regulations means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

GDPR means the General Data Protection Regulation (*Regulation (EU) 2016/679*).

ICT means information and communications technology.

ICT Environment means the Client's system and the Council system.

Information has the meaning given under section 84 of the FOIA and includes Personal data as defined under Data Protection Legislation.

Information Commissioner's Office means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in the DPA.

Intellectual Property Rights means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

Joint Controllers means where two or more Controllers jointly determine the purpose and means of processing.

Law means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Council is bound to comply.

LED means the Law Enforcement Directive (*Directive (EU) 2016/680*).

Party or Parties means each of the parties to the Agreement.

Personal Data takes the meaning given in the GDPR.

Personal Data Breach takes the meaning given in the GDPR.

Processing takes the meaning given in the GDPR.

Processor takes the meaning given in the GDPR.

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it including those outlined in Part B of Schedule 2.

Request for Information shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

Services are as set out in Schedule 1.

Staff means all directors, officers, employees, agents, consultants and contractors of the Council and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.

Sub-processor means any third party appointed to process Personal Data on behalf of the Council related to this Agreement.

Working Day means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 The interpretation and construction of the terms and conditions shall be subject to the following provisions:-

- (a) References to gender shall be taken to include both feminine and masculine gender.
- (b) References to words in the singular can include the plural and vice-versa.
- (c) References to individuals shall be treated as including the organisation they represent.
- (d) References to Clauses, Conditions, Paragraphs and Schedules are references to the conditions, paragraphs and schedules of the Agreement.
- (e) Clause headings are for ease of reference only and shall not affect the construction of the Agreement.
- (f) Reference to any enactment order, regulation or other similar instrument shall be construed (subject to the provisions of this Agreement) as a reference to an enactment, order, regulation or instrument for the time being in force, or as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

2. **Period of Agreement**

2.1 This Agreement shall take effect on the Commencement Date and shall automatically be extended for an additional calendar year on the anniversary of the Commencement Date unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated.

3. Obligations of the Client

3.1 In order to secure an effective Service, the Client shall provide all information reasonably requested by the Council within such timescales as required by the Council. The Client acknowledges and accepts that timescales may vary according to the specific Service provided.

3.2 The Client shall comply with the following:-

(a) Provide clear and detailed instructions of its requirements as set out in Schedule 1.

(b) Provide all information and documentation to support delivery of the Services.

4. Obligations of the Council

The Council shall:

4.1 Use reasonable endeavours to resolve any issues relating to the Services upon notification from the Client.

4.2 Deploy appropriately qualified or trained or experienced staff for all Services provided.

4.3 Monitor work performed on behalf of the Client and use reasonable endeavours to ensure that the Services meet the requirements set out in Schedule 1.

5. Charging Arrangements

5.1 The costs of the Services are:

[Insert details of the Council's charges]

6. Payment of the Charges

6.1 The Council shall issue an invoice to the Client on a quarterly (three calendar monthly) basis, within fourteen (14) days of the last day of each quarterly period.

6.2 Subject to clause 6.3, the Client shall make payment within 30 days from the date of each invoice issued in accordance with 6.1 above.

6.3 If the payment of any sum due shall be delayed by the Client other than due to legitimate dispute, the Council shall be entitled to charge interest at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged. The Council shall also be entitled to charge for administration costs in addition to any interest charged at a rate of £20 per delayed invoice per month or part thereof and all such amounts shall be payable to the Council as a debt.

7. VAT

7.1 All Charges are exclusive of VAT which will be levied additionally.

8. Variations

- 8.1 Subject to the provisions of this clause 8, either Party may request a variation to the Agreement provided that such variation does not amount to a material change to the Agreement. Such a change is hereinafter called a "Variation".
- 8.2 Either Party may request a Variation by notifying the other Party in writing of the "Variation" and giving the receiving Party sufficient information to assess the extent of the Variation and to consider whether any change to the Charges is required in order to implement the Variation. The Party issuing the notice shall specify a time limit within which the receiving Party shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation except in cases of urgency, where notice shall be given as soon as reasonably practicable and responded to by the receiving Party within three (3) Working Days of receipt. If the receiving Party accepts the Variation it shall confirm the same in writing.
- 8.3 In the event that the receiving Party is unable to accept the Variation to the Services, or where the Parties are unable to agree a change to the Charges:-
- (a) the Agreement shall continue without the Variation; or
 - (b) subject to the matter being referred to dispute resolution, the Agreement may be terminated with immediate effect, except where the Council has already delivered all or part of the Services or where the Council can show evidence of substantial work being carried out to fulfil the requirements of the Agreement and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 13.
- 8.4 A request for a Variation by the Client shall be given due consideration by the Council but shall not constitute an automatic right to an amendment of provision by the Client.
- 8.5 Notwithstanding the provisions contained in this clause 8, in the interests of an effective, responsive service, the Council reserves the right to review aspects of the Agreement during the term thereof and implement reasonable changes taking into account the views of the Client before doing so.

9. Liability

- 9.1 Each Party shall indemnify the other against any claim for or in respect of death or personal injury of any person if and to the extent that it is caused by the negligence of such Party or any employee of such Party.
- 9.2 The Parties agree that it is reasonable that the Council shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions given to the Council by the Client which are incomplete, incorrect, inaccurate, illegible, or arising from their late arrival or non-arrival, or any other fault of the Client. The Parties also agree that it is fair and reasonable for risk to be allocated and in the context of the price being charged to the Client and the nature of the losses which the Client might suffer, that the Council's liability be limited in the manner set out in this clause 9.
- 9.3 The Council shall not be liable to the Client for any representation (unless fraudulent), implied warranty, condition or other term, any duty at common law, or any express terms of this Agreement, for any special, indirect or consequential loss including but not limited to loss of business, loss of contracts, loss of anticipated savings or revenue, or

goodwill, or loss of or damage to or corruption of data or software.

- 9.4 The Council's liability for any other direct loss which the Client may suffer under or in connection with this Agreement shall not in any event exceed the amount payable under the Agreement in each instance of the Agreement giving rise to each incidence or series of related incidents causing loss or damage.

10. Protection of Information

10.1 Confidentiality

- (a) The Council and the Client shall keep confidential all Confidential Information obtained under or in connection with the Agreement and shall not divulge any Confidential Information to any third party without the written consent of the Party in whom the ownership of the Confidential Information is vested unless obliged to do so under the FOIA.
- (b) The provisions of this clause shall not apply to:-
- (i) Any information in the public domain otherwise than by breach of the Agreement;
 - (ii) Information obtained from a third party who is free to divulge the same;
 - (iii) Any information which the Parties are required to disclose pursuant to a statutory obligation or a court order;
 - (iv) Information which is independently developed without access to the other Party's Confidential Information;
 - (v) Information which was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner.
- (c) The Council and the Client shall divulge Confidential Information only to those employees, servants or agents who are directly involved with the Agreement and shall ensure that such employees, servants or agents are aware of and comply with these obligations as to confidentiality.
- (d) The provisions of this clause shall survive the termination or expiry of the Agreement howsoever arising.
- (e) Notwithstanding the foregoing, the receiving Party shall be entitled to make any disclosure required by law or other regulatory authority.

10.2 Freedom of Information Act 2000 (FOIA)

- (a) Each of the Parties acknowledges that the other Party is subject to the requirements of the FOIA and the EIR and each Party shall assist and cooperate with the other (at their own expense) to enable the other Party to comply with these information disclosure obligations.
- (b) Where a Party receives a "request for information" under either the FOIA or EIR (as defined under those Acts) in relation to information which it is holding on behalf of the other Party, it shall (and shall procure that its sub-contractors and agents shall):-

- (i) transfer the request for information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
 - (ii) provide the other Party with a copy of all information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as may be agreed) of the other Party requesting that information; and
 - (iii) provide all necessary assistance as reasonably requested to enable the other Party to respond to a request for information within the time for compliance set out in the EIR or section 10 of the FOIA, as relevant.
- (c) If either Party determines that information must be disclosed pursuant to clause 10.2 (b), it shall notify the other Party of that decision at least two (2) Working Days before disclosure.
- (d) Each Party shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a request for information.
- (e) Each Party acknowledges that the other Party may be obliged under the FOIA to disclose Information:-
- (i) without consulting with the other Party/Parties, or
 - (ii) following consultation with the other Party/Parties and having taken its/their views into account.

10.3 Data Protection

- (a) The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Council is the Processor. The only processing that the Council is authorised to do is listed in Schedule 2 by the Client and may not be determined by the Council.
- (b) The Council shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.
- (c) The Council shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:-
- (i) a systemic description of the envisaged processing operations and the purpose of the processing;
 - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- (d) The Council shall, in relation to any Personal Data processed in connection with

its obligations under this Agreement:-

- (i) process that Personal Data only in accordance with Schedule 2, unless the Council is required to do otherwise by Law. If it is so required the Council shall promptly notify the Client before processing the Personal Data unless prohibited by Law;
- (ii) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but failure to reject shall not amount to Approval by the Client of the adequacy of the Protective Measures), having taken account of the:-
 - I. nature of the data to be protected;
 - II. harm that might result from a Data Loss Event;
 - III. state of technological development; and
 - IV. cost of implementing any measures;
- (iii) ensure that:-
 - I. the Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 2);
 - II. it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:-
 - (A) are aware of and comply with the Council's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Council or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (iii) not transfer Personal Data outside of the EU unless prior written consent of the Client has been obtained and the following conditions are fulfilled:-
 - I. the Client or the Council has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
 - II. the Data Subject has enforceable rights and effective legal remedies;
 - III. the Council complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Client in meeting its obligations); and

- IV. the Council complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (iv) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement unless the Council is required by Law to retain the Personal Data.
- (e) Subject to clause 10.3 (f), the Council shall notify the Client immediately if it:-
 - (i) receives a Data Subject Request (or purported Data Subject Request);
 - (ii) receives a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (iv) receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (v) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (vi) becomes aware of a Data Loss Event.
- (f) The Council's obligation to notify under clause 10.3 (e) shall include the provision of further information to the Client in phases, as details become available.
- (g) Taking into account the nature of the processing, the Council shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 10.3(e) (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:-
 - (i) the Client with full details and copies of the complaint, communication or request;
 - (ii) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Request within the relevant timescales set out in the relevant Data Protection Legislation;
 - (iii) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (iv) assistance as requested by the Client following a Data Loss Event;
 - (v) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- (h) The Council shall maintain complete and accurate records and information to demonstrate its compliance with this clause 10.3. This requirement does not apply where the Council employs fewer than 250 staff, unless the Client determines:-

- (i) that the processing is not occasional;
 - (ii) the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (iii) the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- (i) The Council shall allow for audits of its Processing activity by the Client or the Client's designated auditor.
 - (j) Each Party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
 - (k) Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Council shall:-
 - (i) notify the Client in writing of the intended Sub-processor and Processing;
 - (ii) obtain the written consent of the Client;
 - (iii) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 10.3 such that they apply to the Sub-processor; and
 - (iv) provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
 - (l) The Council shall remain fully liable for all acts or omissions of any Sub-processor.
 - (m) The Council may, at any time on not less than thirty (30) Working Days' notice, revise this clause 10.3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
 - (n) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Client amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
 - (o) The Council acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data, the Client may be irreparably harmed (including harm to its reputation). In such circumstances, the Client may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
 - (p) In the event that through failure by the Council to comply with its obligations under the Agreement, the Personal Data is transmitted or Processed in connection with the Agreement is either lost or sufficiently degraded so as to be unusable, the Council shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Council.
 - (q) The provision of this clause 10.3 shall apply for the duration of the Agreement

and indefinitely after its expiry.

11. Equal Opportunities

- 11.1 Throughout the term of the Agreement, the Council shall not discriminate on the grounds of gender, sexual orientation, marital status, religion, race, disability, colour, ethnic and national origin nationality or any other grounds prohibited by statute in terms of employment and service delivery. The Council shall and ensure its staff shall comply with all relevant legislation including but not limited to the Equality Act 2010.
- 11.2 The Council shall have in place throughout the term of the Agreement an equal opportunities policy in relation to its obligations under this clause.

12. Termination of the Agreement

- 12.1 Without prejudice to any other provision contained in the Agreement, either Party may terminate the Agreement without cause by giving the other Party no less than six (6) months written notice.
- 12.2 This Agreement may be terminated forthwith by either Party on written notice if the other Party is in material breach of the terms of the Agreement and in the event of a breach being capable of being remedied fails to remedy the breach within thirty (30) days of receipt of notice thereof in writing. The right of termination under this clause 12.2 may furthermore only be invoked after exhausting the complaints / dispute resolution process as set out in clause 13.
- 12.3 Either party may terminate the Agreement forthwith on written notice if the other party shall become insolvent or bankrupt or make an arrangement with its creditors or go into liquidation.
- 12.4 The Council may terminate the Agreement if the Client fails to pay any amount due to the Council within ninety (90) days of the date of the invoice sent to the Client.
- 12.5 Termination of the Agreement shall not prejudice any rights of either Party which have arisen on or before the date of termination.

13. Complaints / Dispute Resolution

- 13.1 If the Client is dissatisfied with the Services provided it shall submit a complaint in writing to Lincolnshire County Council, County Offices Lincoln, LN1 1YG edulincs@lincolnshire.gov.uk within five (5) Working Days of the matter coming to the attention of the Client.
- 13.2 Upon receipt of a written complaint by the Council as referred to in clause 13.1 the matter shall be dealt as follows:-
- (a) **Stage 1:** Any complaint shall be investigated by the service manager of the Council responsible for the provision of that service.
 - (b) **Stage 2:** Should the matter remain unresolved after the expiry of a period of twenty (20) days, the complaint shall be referred to mediation in accordance with the provisions set out in clause 13.3.
- 13.3 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other reputable mediation body to appoint a Mediator.
- (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution or other reputable mediation body to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.
- (e) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

13.4 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

14. Force Majeure

14.1 Neither Party shall be liable for failure to perform its obligations under the Agreement if such failure results from circumstances beyond the Party's reasonable control including but not limited to industrial action, fire, flood, riot, war, Act of God, lightning, aircraft impact, explosion, civil commotion, malicious damage, storm, tempest, earthquake, legal enactment or governmental or other regulation. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure and to ensure that any failure is kept to a minimum.

14.2 Any act, event, omission, happening or non-happening shall only be considered as force majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees.

14.3 If either Party shall become aware of circumstances identified in clause 14.1 above which give rise to or which are likely to give rise to any failure or delay on its part, it shall forthwith notify the other Party by the most expeditious method then available and shall inform the other Party of the period it is estimated that such failure or delay shall continue.

14.4 Where as a result of any event beyond the reasonable control of a Party as described in this clause the Agreement has not been performed for a period exceeding two (2) months or it appears impossible or unlikely that the whole or a substantial part of the Agreement shall be capable of performance for a period exceeding two (2) months, then the non-defaulting Party may elect to terminate the Agreement upon two (2) weeks' written notice without any liability on that Party.

15. Notices

15.1 Any notice to be served on either Party by the other under this Agreement shall be sent by prepaid recorded delivery or registered post to the address of the relevant Party shown at the head of the Agreement or electronic mail (provided that a confirmatory copy is at the same time despatched by recorded post) prior to 4.00 pm on any weekday except for Christmas Day Good Friday and any statutory bank holiday. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

15.2 Each of the Parties shall give notice to the other of the change or acquisition of any address or telephone or e-mail address at the earliest possible opportunity but in any event within forty-eight (48) hours of such change or acquisition.

16. Assignment

16.1 The Client shall not assign, transfer, novate or in any other way dispose of this Agreement or any part of it without the prior written approval of the Council.

16.2 The Council shall be permitted to assign, transfer, novate, sub-contract or in any other way dispose of this Agreement or any part of it without the prior written approval of the Client. Sub-contracting any part of this Agreement shall not relieve the Council of any of its obligations or duties under this Agreement.

17. Waiver

17.1 The failure by either Party to enforce at any time or for any period one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

18. Severance

18.1 If any provision of this Agreement is declared by a court or other competent authority to be unlawful, void or unenforceable, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if such provision had not originally been contained in it. In the event of any such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in the place of the provision so deleted.

19. Remedies Cumulative

19.1 Except as otherwise expressly provided by the Agreement all remedies available to either Party for breach of the Agreement cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

20. Survival

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

21. Third Party Rights

21.1 The Contracts (Rights of Third Parties) Act 1999 does not apply in relation to this Agreement or any agreement, arrangement, understanding, liability or obligation under or in connection with this Agreement.

22. Governing Law and Jurisdiction

22.1 Subject to the provisions of Clause 13, the Client and the Council accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

IN WITNESS OF the hands of the Parties or their duly authorised representatives

**Signed for and on behalf of
the COUNCIL**

)
)
)

Authorised Officer:_____

Print name:_____

**Signed for and on behalf of
the CLIENT**

)
)
)

Authorised
Signatory:_____

Print name:_____

SCHEDULE 1
SPECIFICATION

SCHEDULE 2

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Council shall comply with the instructions of the Client with respect to processing as set out in this Schedule:
2. The Council shall comply with any further written instructions with respect to processing by the Client.
3. Any such further instructions shall be deemed to be incorporated into this Schedule as if originally forming part thereof.

A. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

<i>Description</i>	<i>Details</i>
Identity of the Client and the Council	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Council is the Processor in accordance with clause 10.3.
Subject matter of the processing	The processing is needed in order to ensure that the Council can effectively deliver the Agreement.
Duration of the processing	Duration of the Agreement.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> <p>The purpose of the processing of Personal Data is to enable the provision of public services which includes:</p> <p style="background-color: yellow;">[DELETE THOSE WHICH DO NOT APPLY]</p> <ul style="list-style-type: none"> • maintaining the Client's own accounts and records • supporting and managing employees • promoting services provided by the Client • marketing local tourism • carrying out health and public awareness campaigns • managing property • providing leisure, cultural and/or heritage services • provision of education • carrying out surveys • licensing and regulatory activities • local fraud initiatives

	<ul style="list-style-type: none"> • the provision of social services • crime prevention and prosecution offenders including the use of CCTV • corporate administration and all activities we are required to carry out as a data controller and public authority • undertaking research • the provision of all commercial services including the administration and enforcement of parking regulations and restrictions • the provision of all non-commercial activities including refuse collections from residential properties, • internal financial support and corporate functions • managing archived records for historical and research reasons • data matching under local and national fraud initiatives • statutory obligation • recruitment assessment • [insert others where none of the above apply]
Type of Personal Data	<p>The type of Personal Data which is Processed under this Agreement may include:</p> <ul style="list-style-type: none"> • Personal details e.g. name, address, date of birth, NI number, telephone number, images, biometric data; • family detail e.g. personal details of relatives, legal guardians and friends; • financial details e.g. pay, bank details, credit/debit card details • lifestyle and social circumstances e.g. physical or mental health details, racial or ethnic origin, trade union membership, political affiliation, political opinions, offences (including alleged offences), religious or other beliefs of a similar nature, criminal proceedings, outcomes and sentences; • employment and education details; • student and pupil records; • business activities; • case file information.
Categories of Data Subject	<p>Categories of Data Subject may include:</p> <ul style="list-style-type: none"> • customers of the service • suppliers • staff • temporary workers • persons contracted to provide a service • claimants

	<ul style="list-style-type: none"> • volunteers • agents • service users • patients • complainants, enquirers or their representatives • professional advisers and consultants • students and pupils • carers, representatives or legal guardians • landlords • recipients of benefits • witnesses • offenders and suspected offenders • licence and permit holders • traders and others subject to inspection • people captured by CCTV images • representatives of other organisations • members of the public • users of a particular website
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>Upon termination or expiry of the contact all Personal Data shall be returned to the Client, unless instructed otherwise.</p> <p>If the Client does not request the Personal Data to be returned then it shall be deleted or destroyed within thirty (30) calendar days and the Council shall confirm in writing that the data has been securely deleted or destroyed.</p>

B. MINIMUM INFORMATION SECURITY CONTROLS

The minimum security controls detailed within this Schedule are to be in place at all times when processing Information for the purpose of or in connection with the delivery of the Services. Such Information includes Personal Data and other Confidential Information or data.

1. GENERAL

1.1 The Council shall have a security policy in place which sets out management commitment to information security, defines information security responsibilities, and ensures appropriate governance.

1.2 All Staff shall complete data protection and information security training commensurate with their role.

2. ICT INFRASTRUCTURE

Boundary Firewall and Internet Gateways

2.1 Information, applications and devices shall be protected against unauthorised access and disclosure from the internet, using boundary firewalls, internet gateways or equivalent network devices.

Secure Configuration

2.2 ICT systems and devices shall be configured to reduce the level of inherent vulnerabilities and provide only the services required to fulfil their role.

User Access Control

2.3 User accounts shall be assigned to authorised individuals only, managed effectively, and they shall provide the minimum level of access to applications, devices, networks, and Personal Data.

2.4 Access control (username & password) shall be in place. A password policy shall be in place which includes provisions to ensure:-

- (a) avoidance of the use of weak or predictable passwords;
- (b) all default passwords are changed;
- (c) robust measures are in place to protect administrator passwords; and
- (d) account lock out or throttling is in place to defend against automated guessing attacks.

2.5 End user activity shall be auditable and include the identity of end-users who have accessed systems.

Malware Protection

2.6 Mechanisms to identify detect and respond to malware on ICT systems and devices shall be in place and shall be fully licensed, supported, and have all available updates applied.

Patch Management and Vulnerability Assessment

2.7 Updates and software patches shall be applied in a controlled and timely manner and shall be supported by patch management policies.

2.8 The Council shall adopt a method for gaining assurance in its organisation's vulnerability assessment and management processes, for example by undertaking regular penetration tests.

2.9 Software which is no longer supported shall be removed from ICT systems and devices.

Cloud Services

2.10 The Council shall ensure that the controls applied to the use of cloud services satisfactorily supports the relevant security principles set out in the National Cyber Security Centre Cloud Security Principles:
<https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles>

3. PROTECTING INFORMATION

Electronic Information

3.1 Electronic copies of Information shall be encrypted at rest to protect against unauthorised access.

3.2 When transmitting Information over the internet, over a wireless communication network e.g. Wi-Fi, or over an untrusted network the Council shall use an encrypted communication protocol.

3.3 The Council shall only use ICT which is under its governance and subject to the controls set out in this Schedule.

Hard Copy Confidential Information

3.4 Hard copy Confidential Information shall be stored securely when not in use and access to it shall be controlled.

3.5 Hard copy Confidential Information shall be transported in a secure manner commensurate with the impact a compromise or loss of information would have and which reduces the risk of loss or theft.

Secure Destruction of Information

3.6 Electronic copies of Information shall be securely destroyed when no longer required, including Information stored on servers, desktops, laptops or other hardware and media.

3.7 Hard copy Information shall be securely destroyed when no longer required.

3.8 Secure destruction means destroying Information so it cannot be recovered or reconstituted.

3.9 A destruction certificate may be required by the Client to provide the necessary assurance that secure destruction has occurred.

4. SECURITY INCIDENTS/PERSONAL DATA BREACH

4.1 The Council shall notify the Client immediately of any fact or event which results in, or has the potential to result in, the compromise, misuse, or loss of Client Information, ICT services or assets.

4.2 The Council shall notify the Client immediately of any Personal Data breach if the breach relates to Personal Data processed on behalf of the Client.

4.3 The Council shall fully co-operate with any investigation that the Client requires as a result of such a security incident or Personal Data breach.

5. COMPLIANCE

5.1 The Council shall inform the Client of any non-compliance with the controls set out in this Schedule. Any deficiencies in controls shall be subject to a documented risk management process and where appropriate a remediation plan shall to be implemented with the aim of reducing, where possible, those deficiencies.

5.2 Independent validation which has been used as evidence of appropriate security controls by the Council shall be maintained by the Council for the duration of the Agreement.

5.3 The Council shall inform the Client of any expired or revoked evidence used as independent validation.