

Appendix 1: UK Shared Prosperity Fund Order Form

UK Shared Prosperity Fund Agreement [D N 6 5 8 0 9 2]

This Order Form is issued subject to the provisions of the Framework Agreement ref DN658092 entered into between Gedling Borough Council (the Council) and the Provider on 7th of March 2024. The Provider agrees to supply the services specified below subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Framework Agreement.

Date	7 th of March 2023	Order Number	DN658092
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FROM

Council	Gedling Borough Council
Council's Address	Civic Centre, Arnot Hill Park, Nottingham NG5 6LU
Invoice Address	Creditors Team Civic Centre, Arnot Hill Park, Nottingham NG5 6LU
Contact Ref:	Name: Nathan Wall Address: EGR Civic Centre, Arnot Hill Park, Nottingham NG5 6LU Phone: E-mail: 07815675988

TO

Provider	Futures Advice Skills and Employment Limited
Provider's Address	57 Maid Marian Way, Nottingham NG1 6GE
Account Manager	Name: Janine Walker Phone: 07867 333910 E-mail: Janine.walker@the-futures-group.com

This Order Form is subject to the Call Off Contract terms which form part of the Framework Agreement.

1. TERM
(1.1) Commencement Date: 1 st of October 2023
(1.2) Term: has the meaning set out in the Call-Off Contract Terms and Conditions
(1.3) Expiry Date: this Contract shall expire on 31 March 2025 unless terminated earlier in accordance with the Call-Off Terms and Conditions.

2. Services to be provided
The Services as set out in more detail in paragraphs 3 and 4 of the Specification
3. CHARGES AND PAYMENT
Payment terms as set out in clause 10 of the Call Off Contract.
4. MONITORING

(4.1) In accordance with clauses 8, 23 and 24 of the Call-Off Terms and Conditions, clause 9 of the Framework Agreement and paragraph 6 of the Specification


(4.2) The KPIs for the Call-Off Contract are set out in the table below:

KPI Description	Output Target	KPI Evidence Required
Number of economically inactive people engaging with keyworker support services	50	<p>In terms of reporting and monitoring the provider must collect details of individuals which can be provided as evidence to LA on request. Reporting should include a list of data collected for audit purposes including headline info about individual e.g. name, location, type of support given etc.</p> <p>Reporting:</p> <ul style="list-style-type: none"> • Informal- monthly updates with local delivery lead on progress, risks, mitigations, what it going well and general improvements • Quarterly – outputs and outcomes- detailed in the Specification. This will be shown as follows:- <ul style="list-style-type: none"> ○ The total for the reporting period, cumulative to date and target ○ Identified risks and mitigations (RAG rated) ○ Commentary on what is going well and things to be improved. <p>In terms of communications and branding the provider must:</p> <ul style="list-style-type: none"> • Produce a communications plan which must be signed off by all lead local authorities, this should be reviewed at all project board meeting to ensure it remains relevant. • Any communication/branding must include the HM Govt and Levelling up logos and be signed off by the lead local authorities/or lead local authority if specifically for a district/borough area. • Develop an understanding of key local methods of communication working closely with the lead local authorities and their communications teams to ensure effective and relevant communication specifically for all businesses in each locality.
Number of economically inactive people supported to engage with the benefits system	25	
No. of socially excluded people accessing support	50	
No. of people supported to access basic skills	25	
Number of people accessing mental and physical health support leading to employment	25	
No. of people supported to engage in job-searching	60	
No. of people receiving support to gain employment	25	
No. of people receiving support to sustain employment	20	
Number of economically inactive individuals in receipt of benefits they are entitled to following support	20	
No. of active or sustained participants in community groups as a result of support	20	
Increased employability through development of interpersonal skills	20	


Increased proportion of participants with basic skills (English, maths, digital and ESOL)	25	<ul style="list-style-type: none"> • Ensure messaging is consistent with strong and high quality branding that is aligned across the area to demonstrate coordinated and coherent business support across Nottinghamshire. • Identify a named key point of contact for each district.
Number of people engaging with mainstream healthcare services	20	
Number of people sustaining engagement with keyworker support and additional services	20	
5. DATA PROTECTION		
See schedule 2		
6. TERMINATION		
As set out in the Call off Contract		
7. FORMATION OF CONTRACT		
(7.1) The Council shall enter into a Contract by sending this Order Form to the Provider for the provision of the Services referred to in the Order Form.		
(7.2) The Provider shall enter into the Contract by completing and returning a signed copy of the Order Form to the Council.		
(7.3) The Contract shall be formed when the Council acknowledges receipt of the signed copy of the Order Form.		

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding Call Off Contract with the Council to provide the Services. The Parties hereby acknowledge and agree that they have read the Framework Agreement and the Order Form and by signing below agree to be bound by the terms of this Call Off Contract.

For and on behalf of the Provider:

Name and Title	Jennie Willock CEO
Signature	
Date	2 April 2024

For and on behalf of the Council:

Name and Title	Nathan Wall EGR Manager
Signature	
Date	20 / 03 / 2024

Schedule 1 Call-off Terms and Conditions

PARTIES

The Parties are the relevant Commissioning Body, as included in the Order Form, and the Provider as detailed in the Framework Agreement.

BACKGROUND

The Commissioning Body has selected the Provider to provide the Services and the Provider is willing and able to provide the Services in accordance with the terms and conditions of this Call-Off Contract.

GENERAL PROVISIONS

1. DEFINITIONS

Other than as expressly defined in this Call-Off Contract and unless the context otherwise requires, the expressions defined in the Framework Agreement and used in this Call-Off have the meaning set out in the Framework Agreement.

Achieved KPI: in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in section 4.2 of the Order Form).

Charges: the price (exclusive of any applicable VAT) which shall become due and payable by the Commissioning Body to the Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in **Error! Reference source not found.**

Commissioning Body Premises: the premises identified by the Commissioning Body to the Provider from time to time which are to be made available for use by the Supplier for the provision of the Services on the terms set out in this Call-Off Contract.

Contract Period: the period commencing on the Service Commencement Date up to and including 31 March 2025 unless terminated earlier accordance with the Law or the provisions of the Call-Off Contract.

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Deliverables: those deliverables detailed in the Specification.

Dispute Resolution Procedure: the dispute resolution procedure in clause 18 of the Framework Agreement.

Draft Quarterly Charges Statement: the statement of Charges claimed by the Provider for the relevant quarter, to be provided to the relevant Commissioning Body in accordance with **Error! Reference source not found.** of the Framework Agreement.

Final Quarterly Charges Statement: the final, agreed statement of Charges payable by the relevant Commissioning Body to the Provider for the relevant quarter.

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Provider's or any Sub-Contractor's organisation;
or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Framework Agreement: the framework agreement for the provision of the Services between the Commissioning Bodies and the Provider dated 7 March 2024.

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

KPI: the key performance indicators set out in section 4.2 of the Order Form.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable right within the meaning of Sections 2 to 5 of the European Union (Withdrawal) Act 2018, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply.

Maximum Quarterly Charges: the maximum amount payable by the relevant Commissioning Body to the Provider for any relevant quarter, as set out in paragraph **Error! Reference source not found.** of **Error! Reference source not found.**

Output Target: the delivery target for each KPI as set out against the relevant KPI in section 4.2 of the Order Form.

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with.

Replacement Provider: any third party service provider appointed by the Commissioning Body to supply any services that are substantially the same as or similar to any of the Services and which the Commissioning Body receives in substitution for any of the Services following the expiry, termination or partial termination of the Call-Off Contract.

Service Commencement Date: the service commencement date set out in the Order Form.

Services: the services to be supplied as specified in the Specification.

Service Levels: the service levels for the Services, as set out in the Specification.

Target KPI: 90% the Output Target for each KPI in each quarter.

Termination KPI Delivery Failure: means either:

- (a) the Provider failing to achieve at least 50% of the Output Target for one or more KPIs in any one quarter; or
- (b) the Provider failing to achieve at least 90% of the Output Target for the same KPI in two or more consecutive quarters.

UK Shared Prosperity Fund Grant: the grant provided by the Department for Levelling Up, Housing and Communities to each Commissioning Body for local investment, as more fully described in paragraph 1.1 of the Specification and in the amounts set out in Table 2, at paragraph 5 in the Specification.

Variation: has the meaning given to it in clause 28.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

2. INTERPRETATION

The interpretation and construction of the Call-Off Contract shall be subject to the following provisions:

- (a) the rules of interpretation set out in the Framework Agreement apply to this Call-Off Contract.

- (b) any clauses and Schedules of the Framework Agreement referred to in this Call-Off Contract form part of this Call-Off Contract and shall have effect as if set out in full in the body of the Call-Off Contract;
- (c) references in the Call-Off Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Call-Off Contract so numbered.

3. CONTRACT PERIOD

The Call-Off Contract shall take effect on the Service Commencement Date and shall continue for the Contract Period, unless it is otherwise terminated in accordance with the provisions of the Call-Off Contract.

4. PROVIDER'S STATUS

At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Call-Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Call-Off Contract.

5. THE COMMISSIONING BODY'S OBLIGATIONS

Except as otherwise expressly provided, the obligations of the Commissioning Body under the Call-Off Contract are obligations of the Commissioning Body in its capacity as a contracting counterparty and nothing in the Call-Off Contract shall operate as an obligation on, or in any other way fetter or constrain, the Commissioning Body in any other capacity, nor shall the exercise by the Commissioning Body of its duties and powers in any other capacity lead to any liability under the Call-Off Contract (howsoever arising) on the part of the Commissioning Body to the Provider.

6. MISTAKES IN INFORMATION

The Provider shall be responsible for the accuracy of all drawings, documents and information supplied to the Commissioning Body by the Provider in connection with the supply of the Services and shall pay the Commissioning Body any extra costs occasioned by any discrepancies, errors or omissions therein.

SUPPLY OF SERVICES

7. SERVICES

- 7.1 The Provider shall supply the Services during the Contract Period in accordance with the Commissioning Body's requirements as set out in the Specification in consideration for the payment of the Charges.
- 7.2 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Commissioning Bodies before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Call-Off Contract.
- 7.3 The Provider will:
 - (a) provide the Services in accordance with the Service Levels;
 - (b) at all times comply with the Specification, Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (c) at all times perform its obligations under the Call-Off Contract in accordance with the Law and Good Industry Practice.
- 7.4 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 7.5 Timely supply of the Services shall be of the essence of the Call-Off Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

8. KPIs

- 8.1 Where any Service is subject to a specific KPI, the Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 8.2 The KPIs will be monitored, and any failures to achieve the Target KPIs will be addressed, in accordance with **Error! Reference source not found.**
- 8.3 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within this Call-Off Contract.
- 8.4 The Provider shall provide records of and quarterly reports summarising the Achieved KPIs as provided for in paragraph 6.2 of the Specification.
- 9. THE SITES AND THE COMMISSIONING BODY ASSETS**
- 9.1 The Commissioning Body shall in accordance with the remaining provisions of this clause 8 arrange for the Provider (and its Sub-Contractors) to have access to such parts of the Commissioning Body's Premises as the Provider reasonably requires for the purposes only of providing the Services. The Provider's right of access will terminate upon termination of this agreement.
- 9.2 The Provider will ensure that:
- (a) in order to gain access to the Commissioning Body's Premises, the Provider Personnel comply with the requirements set out in the Specification, along with any additional requirements as may be notified to the Services from time to time;
 - (b) where using the Commissioning Body's Premises they are kept properly secure and the Provider will comply and cooperate with any security requirements notified to it from time to time regarding the security of the same; and
 - (c) only those of the Provider Personnel that are duly authorised to enter upon the Commissioning Body's Premises for the purposes of providing the Services, do so.
- 9.3 The Provider shall notify the Commissioning Body immediately on becoming aware of any damage caused by the Provider, its agents, employees or Sub-Contractors to any property of the Commissioning Body, to any of the Commissioning Body's Premises or to any property of any other recipient of the Services in the course of providing the Services.
- 9.4 The Provider shall indemnify the Commissioning Body against all and any damage to the Commissioning Body Premises caused by the same.

PAYMENT AND CHARGES

10. CHARGES

- 10.1 In consideration of the Provider's performance of its obligations under the Call-Off Contract, the Commissioning Body shall pay the Charges in accordance with clause 11 and **Error! Reference source not found.**
- 10.2 The Commissioning Body shall, in addition to the Charges and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Call-Off Contract.
- 10.3 The Charges may be reviewed and or altered during the Contract Period by the Commissioning Body if variations to the Order are agreed. At the end of the Contract Period there will be a Charges reconciliation and any deficit shall be invoiced to the Commissioning Body in accordance with clause 11 and if there is a surplus it shall (at the Commissioning Body's discretion) either be returned to the Commissioning Body or be deducted from the Charges for a new Order.

11. PAYMENT AND VAT

- 11.1 The Provider shall ensure that each invoice is submitted in accordance with the payment profile set out in **Error! Reference source not found.** of the Framework Agreement and contains all appropriate references and a detailed breakdown of the Services and Deliverables supplied and that it is supported by any other documents reasonably required by the Commissioning Body to substantiate the invoice.

- 11.2 Where the Provider submits an invoice to the Commissioning Body in accordance with clause 11.1, the Commissioning Body will consider and verify that invoice within 7 days.
- 11.3 The Commissioning Body shall pay the Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Commissioning Body has determined that the invoice is valid and undisputed.
- 11.4 Where the Commissioning Body fails to comply with clause 11.3, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Commissioning Body.
- 11.5 Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 11.2 to clause 11.4 of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 11.2 to clause 11.4 of this agreement.

In this *clause 11.5*, "Sub-Contract" means a contract between two or more Providers, at any stage of remoteness from the Commissioning Body in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 11.6 The Provider shall add VAT to the Charges at the prevailing rate as applicable.
- 11.7 The Provider shall indemnify the Commissioning Body on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Commissioning Body at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Call-Off Contract. Any amounts due under this clause 11.7 shall be paid by the Provider to the Commissioning Body not less than five Working Days before the date on which the tax or other liability is payable by the Commissioning Body.
- 11.8 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Call-Off Contract under clause 36 for failure to pay undisputed sums of money.

12. RECOVERY OF SUMS DUE

- 12.1 Wherever under the Call-Off Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Commissioning Body in respect of any breach of the Call-Off Contract), the Commissioning Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Call-Off Contract.
- 12.2 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 12.3 The Provider shall make any payments due to the Commissioning Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Commissioning Body to the Provider.
- 12.4 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

13. CONFLICTS OF INTEREST

- 13.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Commissioning Body), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Commissioning Body under the provisions of the Call-Off Contract.
- 13.2 The Provider shall promptly notify the Commissioning Body (and provide full particulars to the

Commissioning Body) if any conflict referred to in clause 13.1 above arises or is reasonably foreseeable.

- 13.3 The Commissioning Body reserves the right to terminate the Call-Off Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Commissioning Body, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Commissioning Body under the provisions of the Call-Off Contract. The actions of the Commissioning Body under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioning Body.

14. PREVENTION OF BRIBERY

Clause 19 (Prevention of Bribery) of the Framework Agreement applies to this Call-Off Contract.

15. DISCRIMINATION

- 15.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 15.2 The Provider shall take all reasonable steps to secure the observance of clause 15 by all servants, employees or agents of the Provider and all Providers and Sub-contractors employed in the execution of the Call-Off Contract.

INFORMATION

16. CONFIDENTIALITY

Clause 11 (Confidentiality) of the Framework Agreement applies to this Call-Off Contract.

17. DATA PROTECTION

Clause 12 (Data Protection) of the Framework Agreement applies to this Call-Off Contract.

18. FREEDOM OF INFORMATION

Clause 19 (Prevention of Bribery) of the Framework Agreement applies to this Call-Off Contract.

19. PUBLICITY

Clause 14 (Publicity) of the Framework Agreement applies to this Call-Off Contract.

20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 The Commissioning Body shall retain ownership of all Intellectual Property created by the Provider or any Staff or Sub-Contractor of the Provider:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 20.2 The Commissioning Body hereby grants, or shall procure the direct grant, to the Provider of a royalty free and non-exclusive licence of the Intellectual Property, and shall allow the Provider to use the Intellectual Property for any purpose relating to the exercise of the Services Provider provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party.
- 20.3 The Provider shall indemnify the Commissioning Body against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Commissioning Body's acts or omissions.

21. RECORDS AND AUDIT ACCESS

Clause 10 (Records and Audit Access) of the Framework Agreement applies to this Call-Off Contract.

22. REPLACEMENT OF CORRUPTED DATA

If, through any Default of the Provider, data transmitted or processed in connection with the Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Commissioning Body in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

CONTROL OF THE CONTRACT

23. PROVISION OF INFORMATION AND MEETINGS

- 23.1 The Provider shall submit Management Information to the Commissioning Body in accordance with the Specification.
- 23.2 The Authorised Representatives and representatives from the other Commissioning Bodies shall meet quarterly in accordance with paragraph 9 of the Specification to review the Management Information and the Provider's performance under the Call-Off Contracts, such meetings shall be at a time and location to be agreed between the parties Authorised Representatives.
- 23.3 The Commissioning Body may share the Management Information supplied by the Provider with the other Commissioning Bodies.
- 23.4 The Commissioning Body may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one month's written notice of any changes.

24. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 24.1 If the Commissioning Body is of the reasonable opinion that there has been a material breach of the Call-Off Contract by the Provider, then the Commissioning Body may, without prejudice to its rights under clause 36, do any of the following:
- (a) without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Commissioning Body that the Provider will once more be able to supply all or such part of the Services in accordance with the Call-Off Contract;
 - (b) without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - (c) charge the Provider for and the Provider shall pay any costs reasonably incurred by the Commissioning Body (including any reasonable administration costs) in respect of the supply of any part of the Services by the Commissioning Body or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Commissioning Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 24.2 If the Provider fails to supply any of the Services in accordance with the provisions of the Call-Off Contract and such failure is capable of remedy, then the Commissioning Body shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten Working Days of the Commissioning Body's instructions or such other period of time as the Commissioning Body may direct.
- 24.3 If the Provider:
- (a) fails to comply with clause 24.2 above and the failure is materially adverse to the interests of the Commissioning Body or prevents the Commissioning Body from discharging a statutory duty; or
 - (b) persistently fails to comply with clause 24.2 above,
- the Commissioning Body may terminate the Call-Off Contract with immediate effect by giving the Provider notice in writing.

25. RIGHTS AND REMEDIES

The rights and remedies provided under this Call-Off Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

26. TRANSFER AND SUB-CONTRACTING

- 26.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Call-Off Contract or any part of it without prior Approval. Sub-contracting any part of the Call-Off Contract shall not relieve the Provider of any of its obligations or duties under the Call-Off Contract.
- 26.2 Provided that the Commissioning Body has given prior written consent, the Provider shall be entitled to novate the Call-Off Contract following the novation of the Framework Agreement where:
- (a) the specific change in contractor was provided for in the procurement process for the award of the Framework Agreement;
 - (b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.
- 26.3 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 26.4 Where the Commissioning Body has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Commissioning Body, be sent by the Provider to the Commissioning Body as soon as reasonably practicable.
- 26.5 The Commissioning Body may assign, novate or otherwise dispose of its rights and obligations under the Call-Off Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established to substantially perform any of the functions that had previously been performed by the Commissioning Body; or
 - (c) any private sector body which substantially performs the functions of the Commissioning Body,

provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Call-Off Contract.

27. WAIVER

Clause 25 (Waiver) of the Framework Agreement applies to this Call-Off Contract.

28. VARIATION

- 28.1 Subject to the provisions of this clause 28, the Commissioning Body may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 28.2 The Commissioning Body may request a Variation by sending an email, or an amended Order Form to the Provider, giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within 2 Working Days (or such other time specified in the email/amended Order Form, such time limits shall be reasonable having regard to the nature of the Order).
- 28.3 If the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Charges, the Commissioning Body may:
- (a) agree that the Parties continue to perform their obligations under the Call-Off Contract without the Variation; or
 - (b) terminate the Call-Off Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

28.4 If the Parties agree the Variation and any variation in the Charges, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Call-Off Contract. Any changes to the Charges shall be reconciled in accordance with clause 10.3.

29. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Call-Off Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Contract.

30. SEVERANCE

Clause 23 (Severance) of the Framework Agreement applies to this Call-Off Contract.

31. LIABILITY, INDEMNITY AND INSURANCE

31.1 Nothing in the Call-Off Contract shall be construed to limit or exclude either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under clause 11.7;
- (e) any claim under clause 33; or
- (f) any claim under the indemnity in clause 20.3.

31.2 Subject to clause 31.3, the Provider shall indemnify and keep indemnified the Commissioning Body in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Call-Off Contract, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Commissioning Body or by breach by the Commissioning Body of its obligations under the Call-Off Contract.

31.3 Subject to clause 31.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); or
- (f) any indirect or consequential loss or damage.

31.4 The Commissioning Body may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Commissioning Body arising from the Provider's Default; and
- (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Call-Off Contract as a result of a Default by the Provider.

31.5 Nothing in the Call-Off Contract shall impose any liability on the Commissioning Body in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Commissioning Body to the Provider that may arise by virtue of either a breach of the Call-Off Contract or by negligence on the part of the Commissioning Body, or the

Commissioning Body's employees, servants or agents.

32. INSURANCES

- 32.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £10 million pounds in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £10 million pounds in relation to any one claim or series of claims;
 - (c) professional indemnity insurance with a limit of indemnity of not less than £5 million pounds in relation to any one claim or a series of claims,
- 32.2 (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Call-Off Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 32.3 The Provider shall give the Commissioning Body, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 32.4 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Commissioning Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 32.5 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Call-Off Contract.
- 32.6 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Call-Off Contract.

33. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Parties acknowledge and agree that the Call-Off Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Commissioning Body and keep the Commissioning Body indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Commissioning Body is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Call-Off Contract.

34. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Call-Off Contract;
- (b) the Call-Off Contract is executed by a duly authorised representative of the Provider;
- (c) in entering the Call-Off Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Commissioning Body before execution of the Call-Off Contract and it will advise the Commissioning Body of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;

- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Call-Off Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call-Off Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Call-Off Contract; and
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

DEFAULT, DISRUPTION AND TERMINATION

35. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

35.1 Without affecting any other right or remedy available to it, the Commissioning Body may terminate this Call-Off Contract with immediate effect by giving written notice to the Provider if:

- (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Provider with one or more other companies or the solvent reconstruction of the Provider;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
- (g) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 35.1(a) to clause 35.1(g) (inclusive); or
- (i) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 35.2 The Provider shall notify the Commissioning Body immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (Change of Control). the Commissioning Body may terminate the Call-Off Contract by notice in writing with immediate effect within six Months of:
- (a) being notified that a Change of Control has occurred; or
 - (b) where no notification has been made, the date that the Commissioning Body becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

36. TERMINATION ON DEFAULT

- 36.1 The Commissioning Body may terminate the Call-Off Contract by giving written notice to the Provider with immediate effect if the Provider commits a material breach and if:
- (a) the Provider has not remedied the material breach to the satisfaction of the Commissioning Body within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (b) the material breach is not, in the opinion of the Commissioning Body, capable of remedy.
- 36.2 For the purposes of clause 36.1, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:
- (a) a substantial portion of this Call-Off Contract; or
 - (b) failure to meet the Service Levels three or more times during a one month period.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

- 36.3 The Commissioning Body may terminate the Call-Off Contract by giving written notice to the Provider with immediate effect if:
- (a) the Provider repeatedly breaches any of the terms of this Call-Off Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Call-Off Contract;
 - (b) the Provider commits a Termination KPI Delivery Failure;
 - (c) any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - (d) any warranty given by the Provider in clause 34 of this Call-Off Contract is found to be untrue or misleading.
- 36.4 If the Commissioning Body fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Commissioning Body in writing of such failure to pay. If the Commissioning Body fails to pay such undisputed sums within 60 Working Days of the date of such written notice, the Provider may terminate the Call-Off Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Commissioning Body exercising its rights under clause 12.

37. TERMINATION ON NOTICE

The Commissioning Body may terminate this Call-Off Contract on 1 April 2024 by serving not less than 1 months' notice in writing to the Provider.

38. CONSEQUENCES OF TERMINATION OR EXPIRY

- 38.1 Where the Commissioning Body terminates the Call-Off Contract under clause 36 and then makes other arrangements for the supply of Services, the Commissioning Body may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Commissioning Body throughout the remainder of the Contract Period.

The Commissioning Body shall take all reasonable steps to mitigate such additional expenditure. Where the Call-Off Contract is terminated under clause 36, no further payments shall be payable by the Commissioning Body to the Provider until the Commissioning Body has established the final cost of making those other arrangements.

38.2 Except as otherwise expressly provided in the Call-Off Contract:

- (a) termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations accrued under the Call-Off Contract before termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Call-Off Contract shall not affect the continuing rights, remedies or obligations of the Commissioning Body or the Provider under clause 10, clause 11, clause 12, clause 13, clause 16, clause 17, clause 18, clause 20, clause 21, clause 25, clause 31, clause 32, clause 33, clause 38, clause 40, and clause 43.1.

39. DISRUPTION

39.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Commissioning Body, its employees or any other Provider employed by the Commissioning Body.

39.2 The Provider shall immediately inform the Commissioning Body of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.

39.3 In the event of industrial action by the Staff, the Provider shall seek the Commissioning Body's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Call-Off Contract.

39.4 If the Provider's proposals referred to in clause 39.3 are considered insufficient or unacceptable by the Commissioning Body acting reasonably then the Commissioning Body may:

- (a) require the Provider to provide alternative proposals; or
- (b) undertake the services itself and recover from the Provider the additional costs incurred in the process.

39.5 Subject to clause 39.6, nothing in this clause shall release the Provider from the proper performance of its obligations under the Call-Off Contract.

39.6 If the Provider is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of normal business by direction of the Commissioning Body, an appropriate allowance by way of extension of time will be approved by the Commissioning Body. In addition, the Commissioning Body will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

40. RECOVERY ON TERMINATION

40.1 On the termination of the Call-Off Contract for any reason, the Provider shall:

- (a) immediately return to the Commissioning Body all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted Providers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) assist and co-operate with the Commissioning Body to ensure an orderly transition of the provision of the Services to any Replacement Provider and/or the completion of any work in progress; and
- (c) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Commissioning Body for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Commissioning Body or the Replacement Provider to conduct due diligence.

40.2 If the Provider fails to comply with clause 40.1(a), the Commissioning Body may recover

possession thereof and the Provider grants a licence to the Commissioning Body or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or Sub-Contractors where any such items may be held.

- 40.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 40.1(b) and clause 40.1(c) free of charge. Otherwise, the Commissioning Body shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

41. FORCE MAJEURE

Neither party shall be in breach of this Call-Off Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Call-Off Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Call-Off Contract by giving 5 Working Days' written notice to the affected party.

42. ENTIRE AGREEMENT

- 42.1 This Call-Off Contract 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.

- 42.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Call-Off Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Call-Off Contract, provided that nothing in this clause 42 shall operate to exclude any liability for fraud.

- 42.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Call-Off Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Call-Off Contract;
- (b) the Order Form except and Provider terms and conditions contained within or annexed to it;
- (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement except Schedule 1, part 2, Appendix B (the Provider's Tender);
- (d) any other document referred to in the clauses of the Call-Off Contract;
- (e) Framework Agreement Schedule 1, part 2 Appendix B (the Provider's Tender); and
- (f) any Provider terms and condition contained within or annexed to the Order Form.

- 42.4 This Call-Off Contract 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.

43. NOTICES

- 43.1 Except as otherwise expressly provided within this Call-Off Contract, no notice from one Party to the other shall have any validity this Call-Off Contract unless made in writing by or on behalf of the Party sending the notice.

- 43.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by e-mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 43.3. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or sooner where the other Party acknowledges receipt of such letters, or or e-mail.

- 43.3 For the purposes of clause 43.2, the address of each Party shall be:

- (a) For the Commissioning Body:

Address: Gedling Borough Council, Civic Centre, Arnot Hill Park, Nottingham Road, Arnold, Nottingham, NG5 6LU

For the attention of: Nathan Wall

Tel: 07815675988

E-mail: Nathan.wall@gedling.gov.uk

(b) For the Provider:

Address: [address]

For the attention of: [name of Provider's representative]

Tel: [tel no.]

E-mail: [email]

43.4 Either Party may change its address for service by serving a notice in accordance with this clause.

44. GOVERNING LAW AND JURISDICTION

44.1 This Call-Off Contract 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 and Wales.

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

This Call-Off Contract was entered into by the parties on the date stated in the Order Form.

Schedule 2 - Data processing agreement

1. Parties

The Parties to this Agreement are:

(a) Gedling Borough Council, Civic Centre, Arnot Hill Park, Nottingham Road, Arnold, Nottingham, NG5 6LU ("the Council"); and

(b) XXXXX ("the Service Provider").

2. Introduction

2.1 This Agreement is to ensure the protection and security of data passed from the Council to the Service Provider for Processing or data accessed by the Service Provider on behalf of the Council for Processing or otherwise received by the Service Provider for Processing on the Council's behalf;

2.2 The UK GDPR place certain obligations upon a Controller to ensure that any Processor it engages provides sufficient guarantees to ensure that the Processing of the data carried out on its behalf is secure and protects the rights of the Data Subject;

2.3 This Agreement exists to ensure that there are sufficient security guarantees in place and that the Processing carried out by the Processor on the Controller's behalf complies with obligations under Article 28 of the UK GDPR;

2.4 This Agreement further defines certain service levels to be applied to all data related services provided by the Processor.

3. Definitions

In this agreement;

Agreement: this contract.

Data Protection Legislation: (i) the UK GDPR, and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy.

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

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor 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 Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer and Processing shall have the same meanings as assigned to those terms in the UK GDPR;

Good Industry Practice: means in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances;

Law: means any 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 Processor is bound to comply;

Party: a party to this agreement

Processor Personnel: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

Protective Measures: 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 the such measures adopted by it including those outlined in this agreement.

The Supplier's Personnel: all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this agreement.

UK GDPR: means the UK General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);

4. Application of this Agreement

This Agreement shall apply to:

4.1 All personal data sent by the Council to the Service Provider for Processing from 1 April 2024;

4.2 All personal data accessed by the Service Provider on the authority of the Council for Processing purposes from 1 April 2024 and 31 March 2025

4.3 All personal data otherwise received by the Service Provider for Processing purposes on the Council's behalf from 1 April 2024.

5. Data Processing

5.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor unless otherwise specified in Schedule 1. The only processing that the Processor is authorised to do is listed in Schedule 1 by the Controller and may not be determined by the Processor.

5.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

5.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data. More detail on security measures to have in place are detailed in Annex B.

5.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

(a) process that Personal Data only in accordance with Schedule 1 unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller 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;

(c) ensure that the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);

(d) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

i. are aware of and comply with the Processor's duties under this clause;

ii. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

iii. 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 Controller or as otherwise permitted by this Agreement; and

iv. have undergone adequate training in the use, care, protection and handling of Personal Data; and

(e) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 44 and 46) as determined by the Controller;

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Processor 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 its best endeavours to assist the Controller in meeting its obligations); and

iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(f) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

5.5 Subject to clause 5.6, the Processor shall notify the Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) 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

(f) becomes aware of a Personal Data Breach.

5.6 The Processor's obligation to notify under clause 5.5 shall include the provision of further information to the Controller in phases, as details become available.

5.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 5.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

(a) the Controller with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Controller following any Personal Data Breach;

(e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

5.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

5.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

5.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

5.11 Before allowing any Sub-processor (except those business support organisations already identified in the bid) to process any Personal Data related to this Agreement, the Processor must:

(a) notify the Controller in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Controller;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and

(d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

5.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

5.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause 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).

5.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

5.15 For the purposes of this Agreement, the provisions that provide the legal basis for this processing of Personal Data under Article 6(1) of the UK GDPR are listed below:

(a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose.

7. Obligations of the Service Provider

7.1 All information and data coming into possession of the Service Provider will be treated in the strictest confidence and in accordance with the UK General Data Protection Regulation and associated Data Protection Legislation and the Freedom of Information Act 2000.

7.2 The Service Provider represents the Council and therefore is to act in the interest of the Council at all times, providing a professional service.

7.3 The Service Provider agrees that it shall ensure that it complies at all times with the Data Protection Legislation, and, in particular, the Supplier shall ensure that any disclosure of Personal Data made by it to the Council is made with the Data Subject's consent or is otherwise lawful.