BACK OFFICE SERVICES AGREEMENT

The Local Authority and the new mutual may decide that the Local Authority should continue to provide back-office support servicesto the new mutual, such as HR, accounting and administration, as it will already have these services in place.

In that case, a Back-Office Services Agreement should be signed by the parties, covering the obligations of the Local Authority as service provider and the mutual as recipient of the services, and addressing key issues such as termination and dispute resolution.

This template Back-Office Services Agreement provides standard terms for the provision of the service by the Local Authority.

As the Local Authority carries out the services for the mutual, it will handle data collected by the mutual in the course of delivering the transferred service. This template Agreement therefore contains important provisions on data sharing and data protection.

This template has been prepared to provide general guidance and information to organisations considering or undertaking mutualisation. It is intended to be a starting pointonly and should not be considered a finalised legal document or as constituting legal advice. It is the responsibility of your organisation to seek legal advice and to ensure that the document is reviewed and signed off by your legal team.

The template contains a breakdown of drafting assumptions which highlight areas where additional drafting and legal advice may be required. Additional drafting is not limited to these areas and you should seek further legal guidance where you deem necessary.

Whilst we have endeavoured to ensure that the information in the template is correct, no warranty, express or implied, is given as to the templates accuracy, timeliness, completeness or fitness for a particular purpose and we do not accept any liability for errors or omissions. Neither the Department for Digital, Culture, Media and Sport, nor Bates Wells Braithwaite shall be liable to you or anyone else for any decisions made or action taken in reliance on this document, or for any damage arising from its use.

DRAFTING ASSUMPTIONS

In preparing this Agreement we have made a number of assumptions regarding the circumstances within which this Agreement will be used and these are set out in detail below. Please be aware that where the circumstances between the Council and the Mutual differ from our assumptions this Agreement may not be appropriate for use in its current form and additional drafting may be required. In such circumstances the Parties should seek legal advice. The capitalised terms used in these drafting assumptions are the same as in the Agreement (unless the context requires otherwise).

|  |  |  |
| --- | --- | --- |
| **Category** | **Assumption** | **Additional Drafting** |
| SERVICES | We have assumed that this Agreement will be used in circumstances where limited core services are to be provided by the Council following the Transfer Date (as defined in the template Transfer Agreement) and that the Mutual will be free to procure all other services it requires to operate the Undertaking (as defined in the template Transfer Agreement) and to provide the Agreed Activities/Services (as defined in the template Funding Agreement or Services Agreement as applicable) free of the Council's involvement. This Agreement is drafted to cater for the provisions of ICT and HR and Payroll services only. |  |
| DURATION | We have provided for a term of two years only, because in most cases this Agreement is for the short term only in order to allow the Council sufficient time to make any changes required to reorganise its services internally and/or the Mutual sufficient time to source its own providers. It may be that the Council is able to complete this process in a shorter time and, if this is the case, the term of the Agreement will need to be amended accordingly. | Where Support Services are to be provided for a longer period of time this Agreement will not be suitable and additional drafting will be required. In particular we would expect to see more sophisticated termination provisions and the ability for either Party to terminate the Agreement by provision of a reasonable period of notice. |
| TERMINATION FOR POOR SERVICE | This Agreement seeks to weigh the Council's ability to provide the Support Services to an appropriate standard within its current resource limits with the Mutual's need to ensure the standard of service it receives is sufficient and compliant with legal requirements and best practice (as it would seek to ensure if it obtained the Support Services from a third party provider). We have also provided the Mutual with a right to terminate either Support Service independently in the event that the standard of service is materially below that set out in the Agreement or such Support Service(s) cease to be provided for an agreed period of time. This seeks to recognise that the provision of ICT and HR and Payroll services is critical to the Mutual's ability to operate the Undertaking. |  |
| DATA PROTECTION | This Agreement assumes that the Council is either providing the Support Services directly by itself as a processor for the Mutual, or that the Council has appropriate contractual arrangements in place with any thirty party Sub-Contractors. Data protection law requires there to be a written agreement in place between processors and the organisations instructing them as controllers. The agreement must contain certain provisions (described in Article 28 of the General Data Protection Regulation 2016/679. This Agreement contains those provisions.  It is particularly important that Paragraph 14 of the Data Protection Schedule is completed in all cases to reflect the specific processing to be undertaken by the Council on behalf of the Mutual. |  |

|  |  |
| --- | --- |
| DATED [insert date] |  |

**BACK OFFICE SERVICES AGREEMENT**

**[THE COUNCIL     ]**

**and**

**[THE MUTUAL     ]**

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This **AGREEMENT** is made this day of 2019

**BETWEEN**

**(1) [LOCAL AUTHORITY]** of [Address] (**"Council"**); and

**(2) [MUTUAL]** of[Address (Company Number: [])(**"the Mutual"**),

each a "**Party"**, together the "**Parties"**

**BACKGROUND:**

1. The Council agrees under this Agreement to provide the Support Services to the Mutual.
2. The Council has the necessary skill, knowledge and experience to perform the Support Services. The Council is entering into this Agreement in accordance with its statutory powers to do so, in particular under the Local Authority (Goods and Services) Act 1970 and the Local Authorities (Goods and Services) (Public Bodies) Order 1975 (SI No.193). In reliance upon that skill, knowledge and experience, the Mutual wishes the Council to provide the Support Services and the Council agrees to provide the Support Services on the following terms.
3. **Definitions and Interpretations**
   1. The provisions of Schedule 1 shall apply.
4. **Contract Period**
   1. Subject to the earlier termination of this Agreement in accordance with its provisions, this Agreement will commence on the Commencement Date and shall continue for [two years] when, unless the Parties agree otherwise in writing, it shall expire ("**Contract Period**").
5. **Council's Obligations** 
   1. The Council shall:
      1. provide, and shall use reasonable endeavours to procure that any Sub-Contractor shall provide, the Support Services to the Mutual in accordance with the Specification;
      2. perform, and shall use reasonable endeavours to procure that any Sub-Contractor shall perform, the Support Services with reasonable care and skill in accordance with best practice in the relevant industry, profession or trade;
      3. co-operate, and shall use reasonable endeavours to procure that any Sub-Contractor shall co-operate, with the Mutual in all matters relating to the Support Services;
      4. comply, and shall use reasonable endeavours to procure that any Sub-Contractor shall comply, promptly with the Mutual's reasonable instructions regarding the Support Services;
      5. appoint an Agreement Manager who shall have full authority to represent the Council and any Sub-Contractor on matters relating to the Support Services [subject to any approval the Council is required to obtain from any Sub-Contractor in respect of any part of the Support Services that have been sub-contracted to a third party provider in accordance with clause 18 of this Agreement];
      6. inform, and shall use reasonable endeavours to procure that any Sub-Contractor shall inform, the Mutual as soon as reasonably practicable of any actual or potential problems concerning the provision of the Support Services and any instances which may preclude the Council from meeting its contractual obligations; and
      7. comply, and shall use reasonable endeavours to procure that any Sub-Contractor shall comply, with all applicable statutory and regulatory requirements in respect of, or related to, provision of the Support Services.
6. **The Mutual's Obligations**
   1. The Mutual shall:
      1. co-operate with the Council and any Sub-Contractor in all matters relating to the Support Services;
      2. appoint an Agreement Manager who shall have full authority to represent the Mutual on all matters relating to the Support Services;
      3. provide for the Council, and for any Sub-Contractor, in a timely manner and at no charge, access to the relevant data, materials, premises and any associated facilities (and subject to any explicit conditions contained in the Specification) as is reasonably required by the Council and any Sub-Contractor for the purposes of this Agreement; and
      4. provide for the Council, and for any Sub-Contractor, such information as the Council may reasonably require to enable it or any Sub-Contractor to deliver the Support Services in accordance with this Agreement.
   2. If the Council's performance (or any Sub-Contractor's performance) of its obligations under this Agreement is prevented or delayed by any act or omission of the Mutual, its agents, subcontractors, consultants or employees, the Council shall not be liable for any costs, charges or losses sustained or incurred by the Mutual that arise directly or indirectly from such prevention or delay.
7. **Payment and Fee**
   1. In consideration of the provision of the Support Services by the Council, the Mutual shall pay the Council the annual charges set out in Schedule 3 ("**the Fee**") in four equal instalments paid quarterly in arrears.
   2. The Council shall invoice the Mutual for the portion of the Fee at the end of each quarter for the Support Services provided to the Mutual in the preceding quarter.
   3. The Mutual shall pay each invoice submitted by the Council within 30 days of receipt to a bank account nominated in writing by the Council.
   4. If the Mutual fails to make a payment due to the Council under this Agreement by the due date, then, without limiting the Council's remedies under clause 15 (Termination), the Mutual shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.4 will accrue each day at 1% a year above the Bank of England's base rate from time to time, but at 1% a year for any period when that base rate is below 0%.
   5. Notwithstanding clause 5.3 (and including any invoice raised in accordance with clause 5.6) and clause 5.4, the Mutual shall be entitled to withhold payment of the Fee in the event that, in the reasonable opinion of the Mutual, the Council or any Sub-Contractor fails to perform the Support Services in accordance with the standard set out at 3.1.1 or 3.1.2 of this Agreement, or in the event of any other material breach of this Agreement, until satisfactory rectification arrangements are agreed in writing and no interest shall accrue until such arrangements are agreed.
   6. If the Agreement is terminated, then pursuant to clause 16 the Council shall promptly produce an invoice for any outstanding portion of the Fee, up to and including the date this Agreement is terminated.
8. **Support Service Review and Variations**
   1. The Parties shall review the Support Services annually. Any variations to the Support Services or any provisions of this Agreement must be agreed by both Parties and shall be recorded in writing and signed by both Parties.
9. **Freedom of Information and Data Protection**
   1. Both Parties shall comply with all applicable requirements of the Data Protection Legislation.
   2. The Council agrees to comply with the Data Processing Schedule at Schedule 4.
   3. Each Party acknowledges that the other Party is subject to the requirements of the Data Protection Legislation and that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Each Party shall, where reasonable, assist and co-operate with the other Party to enable it to comply with its relevant statutory obligations and the Council shall use reasonable endeavours to procure such assistance and co-operation from any Sub-Contractor.
10. **Confidential Information** 
    1. Each Party shall during the Contract Period and thereafter keep secret and confidential all Confidential Information disclosed to it as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
    2. Subject to clause 8.3, each Party may disclose the other Party's Confidential Information:
       1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 8;
       2. to the Council's Sub-Contractors to which provision of any part of the Support Services has been sub-contracted and who need to know such information for the purposes of carrying out any of the Council's obligations under or in connection with this Agreement. The Council shall ensure that any Sub-Contractor to whom Confidential Information is disclosed is required to comply with this clause 8; or
       3. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
    3. Neither Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
    4. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Confidential Information which:
       1. at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party;
       2. is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving Party from the disclosing Party under any obligations of confidence; or
       3. is at any time after the date of this Agreement acquired by the receiving Party from a third party having the right to disclose the same to the receiving Party without breach of the obligations owed by that Party to the disclosing Party.
11. **Bribery and Corruption**
    1. Neither Party shall give, offer or give or agree to give any representative of the other Party any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to this Agreement or for showing favour or disfavour to any person in relation to this Agreement.
12. **Anti-Slavery and Human Trafficking**
    1. In performing its obligations under the Agreement, the Council shall:
       1. comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including but not limited to the Modern Slavery Act 2015;
       2. have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance;
       3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
       4. include in its contracts with Sub-Contractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 10.
13. **Indemnities and Limitation of Liability**
    1. Subject to clause 11.3 of this Agreement, the Council shall indemnify and hold harmless the Mutual in respect of all liabilities, costs, expenses, damages and losses suffered or incurred by the Mutual arising out of, or in connection with, the Council's provision of the Support Services or the Mutual's receipt or use of the Support Services.
    2. Nothing in this Agreement shall limit or exclude either Party's liability for:
       1. death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
       2. fraud or fraudulent misrepresentation; or
       3. any other liability which cannot be limited or excluded by Applicable Laws (as defined in Schedule 4 (Data Processing Schedule)).
    3. Subject to clause 11.2 and 11.4:
       1. neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement; and
       2. subject to clause 11.4, the liability of either Party to the other under this Agreement shall be limited to the total value of the Fee payable from the Mutual to the Council in accordance with Schedule 3.
    4. No amount awarded or agreed to be paid under the indemnity in Paragraph 12 of Schedule 4 (Data Processing Schedule) shall count towards the cap on the Council's liability under clause 11.3.2.
    5. Neither Party may benefit from any limitation or exclusion set out in this clause 11 in respect of any liability arising from its deliberate default.
    6. The Parties shall at all times take all reasonable steps to minimise and mitigate any loss for which the other Party is entitled to bring a claim against them pursuant to this Agreement including pursuant to the indemnities.
    7. The rights of the Mutual under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Applicable Laws.
14. **Insurance**
    1. During the Term of this Agreement [and for a period of one year following the expiry or earlier termination of the Contract Period] the Council shall maintain in force a full and comprehensive insurance policy of an appropriate level to cover liabilities that may arise under or in connection with its performance of the Support Services.
    2. The Council shall (on request) supply to the Mutual a copy of such an insurance policy and evidence that the relevant premiums have been paid.
15. **Force Majeure**
    1. Neither Party (provided that it has complied with clause 13.2) (the "**Affected Party**") shall be deemed to be in breach of this Agreement, or otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations hereunder to the extent that such delay or non-performance is due to a Force Majeure Event.
    2. The Affected Party shall:
       1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than five working days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
       2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
    3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than two weeks, the Party not affected by the Force Majeure Event may terminate this Agreement immediately by giving written notice to the Affected Party.
16. **Dispute Resolution Procedure**
    1. If any dispute arises out of this Agreement, which either Party notifies the other Party as requiring formal resolution, the Parties shall refer the dispute to the Chief Executives of each Party who shall meet within two weeks of such referral (or at such other time as the Parties may agree) in order to seek to resolve the dispute.
    2. If the Parties cannot resolve their dispute in accordance with clause 14.1, they will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution model mediation procedure or such or dispute resolution procedure as the Parties agree in writing.
    3. Nothing in the Dispute Resolution Procedure shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms.
17. **Termination**
    1. Without prejudice to any other right or remedy it may possess, either Party shall be entitled to immediately terminate this Agreement by written notice if the other Party:
       1. commits a material breach of this Agreement which, where capable of remedy, is not remedied within thirty (30) days of the terminating Party serving written notice of such breach on the other Party or such longer period as is agreed between the Parties;
       2. commits a serious and fundamental breach of this Agreement; or
       3. a resolution is passed for the voluntary or compulsory liquidation of the other Party or a receiver or administrator is appointed over all or part of the other Party's business or assets or any analogous action or proceeding takes place in any jurisdiction.
    2. If the Mutual has the right to terminate this Agreement in accordance with clause 15.1, it may choose to terminate the delivery of either one or both of the Support Services provided by the Council under this Agreement. In the event that the Mutual chooses to terminate only one of the Support Services, the provisions of this Agreement shall remain in force but the definition of the "Support Services" shall be varied to refer only to the service that the Council will continue to deliver and the Fee at Schedule 3 shall be varied so that the Mutual shall only be liable to pay the Council the portion of the Fee that relates to the Support Services which will continue to be provided by the Council. The Parties shall evidence the changes to the Support Services and the Fee pursuant to this clause 15.2 in writing in accordance with clause 19.1. The Mutual shall, at its discretion, be entitled to arrange for the terminated services to be provided by an alternative provider, and the Council shall co-operate with the transfer of the terminated services in accordance with clause 16 of this Agreement. The Mutual's rights under this clause 15.2 may be exercised without prejudice to any of its remedies under the Agreement or to any rights of action which shall accrue or shall have already accrued to the Mutual.
18. **Consequences of Termination**
    1. On termination or expiry of this Agreement:
       1. the Council shall immediately deliver any data, materials or other property of the Mutual provided to it in its performance of the Agreement and shall, on the written request of the Mutual, destroy any copies; and
       2. the Council shall, if so requested by the Mutual, provide all assistance reasonably required by the Mutual to facilitate the smooth transition of the Support Services to the Mutual or to any replacement supplier appointed by the Mutual and the Council shall use reasonable endeavours to procure that any Sub-Contractors also provide such assistance to the Mutual.
    2. The following clauses shall continue in force: clause 1 (Definitions and Interpretations), clause 7 (Freedom of Information and Data Protection) including Schedule 4, clause 8 (Confidentiality), clause (Dispute Resolution Procedure), clause 16 (Consequences of Termination), clause 19 (General), Schedule 1 (Definitions and Interpretation), and parts of Schedule 4 (Data Processing Schedule) as applicable and as expressly stated, including (without limitation) at paragraph 13 of Schedule 4).
    3. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
19. **Notices**
    1. A notice given under this Agreement will be sent for the attention of the person, and to the address given in this clause (or such other address as the relevant Party may have notified to the other Party in accordance with this clause) and will be:
       1. delivered personally; or
       2. delivered by commercial courier; or
       3. sent by pre-paid first-class post, registered post or recorded delivery.
    2. The addresses for service of notice are:
       1. **Council**

Address: [*Insert address*]

For the attention of: *[Insert name and/or position*]

* + 1. **Mutual**

Address: [I*nsert address*]

For the attention of: [*Insert name and/or position*]

* 1. A notice is deemed to have been received:
     1. if delivered personally, at the time of delivery; or
     2. if delivered by commercial courier, at the time of signature of the courier's receipt; or
     3. if sent by pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
     4. if deemed receipt under the previous paragraphs of this Clause is not within business hours (meaning any time other than 9.00 am to 5.30 pm Monday to Friday on a Business Day), when business next starts in the place of receipt.
  2. It is sufficient, to prove service by post, that the envelope containing the notice was properly addressed and posted.
  3. A notice under this Agreement will not be valid if sent by e-mail.

1. **Assignment**
   1. Neither Party shall assign the whole or any part of this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).
   2. Notwithstanding 18.1, the Council shall be permitted to subcontract the provision of the Support Services to any Approved Sub-Contractor or any other Sub-Contractor to which the Mutual has provided its prior agreement in writing. The Council shall not otherwise subcontract any of its obligations under this Agreement without first obtaining the prior written consent of the Mutual.
   3. In the event that the Council sub-contracts any of its obligations under this Agreement in accordance with clause 18.2 it shall at all times remain liable for the actions and omission of any Sub-Contractor.
2. **General**
   1. No amendment or addition to this Agreement shall be made unless made in writing and signed by the Parties.
   2. If there is any inconsistency between any of the provisions in clauses 1 to 18 of this Agreement and the provisions set out in any Schedule to this Agreement, the provisions in clauses 1 to 18 of this Agreement shall prevail.
   3. A person who is not a Party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Agreement.
   4. No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right or remedy.
   5. If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
   6. Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
   7. The Parties agree to submit to the jurisdiction of the English courts and agree that the Agreement is to be governed and construed according to English law.
   8. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single Agreement.

This Agreement has been entered into on the date stated at the beginning of it.

**THE COMMON SEAL** of

**[The Council]**

was affixed in the presence of:

………………………………………

Authorised Signatory

Signed by

for and on behalf of

**the Mutual**

………………………………………

[Director]

1. **- Definitions and Interpretation**
2. In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the meanings given to them below:

|  |  |
| --- | --- |
| **"Affected Party"** | a Party to this Agreement who is affected by a Force Majeure Event as set out in clause 13.1; |
| **"Agreement Manager"** | [insert name] for the Mutual and [insert name] for the Council or such other person as is notified to the other in writing, each of whom shall have the authority contractually to bind that Party on matters relating to the Support Services and this Agreement; |
| **"Applicable Laws"** | all regional, national and international laws, rules, regulations and standards including those imposed by any governmental or regulatory authority which apply from time to time to the person or activity in the circumstances in question; |
| **"Approved Sub-Contractor"** | [insert name] and any other Sub-Contractor agreed between the Parties in writing prior to the commencement of the Contract Period (including, without limitation, any Approved Sub-Processors specified in paragraph 5 of Schedule 4 (Data Processing Schedule); |
| **"Business Day"** | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; |
| **"Commencement Date"** | [*Insert start date*]; |
| **"Confidential Information"** | any information which ought reasonably to be considered confidential however conveyed or presented:   * + - 1. that relates to the Support Services or to the business, affairs, operations, customers, beneficiaries, processes, budgets, pricing, policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party, including the disclosing Party's Intellectual Property Rights;       2. together with all information derived by the receiving Party from any such information;   and any other information clearly designated by the providing Party as being confidential to it (whether or not it is marked "confidential"); |
| **"Contract Period"** | has the meaning given in clause 2; |
| **"Data Protection Legislation"** | as applicable, (a) the General Data Protection Regulation (EU) 2016/679 ("**GDPR**"); (b) the Data Protection Act 2018; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (d) all other Applicable Laws and regulations relating to the processing of personal data and privacy, including statutory instruments (and in each case any re-enactment or amendment); |
| **"Force Majeure Event"** | any event or occurrence which is outside the reasonable control of the Party concerned (and which is not attributable to any act or omission by the Party concerned including failure to take preventative action). This definition does not include any industrial action occurring amongst the Council's staff or any staff of any Sub-Contractor; |
| **"Specification"** | the description or specification of the Support Services provided at Schedule 2; |
| **"Sub-Contractor"** | any Sub-Contractor appointed to deliver the Support Services in accordance with clause 18.2, including any Approved Sub-Contractor; and |
| **"Support Services"** | the services provided by the Council pursuant to and in accordance with this Agreement and as specified in the Specification. |

1. In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto.
2. In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, body corporate, government, governmental body, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
3. In this Agreement, words importing the singular only shall include the plural and vice versa.
4. Except where an express provision of this Agreement states the contrary, each and every obligation of a Party under this Agreement is to be performed at that Party's cost.
5. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
6. **- Specification**
   * 1. **- ICT Services**
7. [*to be inserted by the Parties*]
   * 1. **- HR and Payroll Services**
8. [to be inserted by the Parties]

1. **- Fee**

|  |  |
| --- | --- |
| **SERVICE** | **Fee (per annum)** |
| ICT Services | [£insert] (exclusive of VAT) |
| HR and Payroll Services | [£insert] (exclusive of VAT) |

1. **- Data Processing Schedule**
2. **Definitions**
   1. For the purpose of this Data Processing Schedule, in addition to the definitions set out in the main body of this Agreement, the following terms shall have the following meanings:

|  |  |
| --- | --- |
| **"Protected Data"** | any personal data processed by the Council on behalf of the Mutual in connection with this Agreement; |
| **"Security Breach"** | a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Protected Data. This includes breaches that are the result of both accidental and deliberate causes. |

* 1. The terms "**process**", "**processing**", "**controller**", "**processor**", "**data subject**" and "**personal data**" shall have the meanings given to them in the relevant Data Protection Legislation.

1. **Status of Parties**

The Parties acknowledge and agree that for the purposes of the Data Protection Legislation, the Mutual is the controller of Protected Data and the Council is a processor of Protected Data.

1. **Specific Processing**

Paragraph 14 of this Data Processing Schedule sets out the scope, nature and purpose of processing by the Council, the duration of the processing and the types of Protected Data and categories of data subjects.

1. **Processor Obligations**
   1. The Council shall process Protected Data only on the documented instructions of the Mutual. These may be specific instructions or instructions of a general nature as set out or provided for in:
      1. this Agreement (including this Data Processing Schedule); or
      2. as otherwise notified by the Mutual to the Council during the term of this Agreement.

For the avoidance of doubt, this does not prevent the Council processing Protected Data where it is required to do so under applicable EU or UK law and, in such circumstances, the Council shall notify the Mutual of that legal requirement unless Applicable Laws prohibit such notification on important public interest grounds (and those grounds are met).

* 1. The Council shall inform the Mutual immediately if, in its opinion, an instruction issued in accordance with paragraph 4.1 of this Data Processing Schedule would result in either the Mutual or the Council breaching the Data Protection Legislation.
  2. All Protected Data shall be treated as strictly confidential by the Council and may not be copied, disclosed or processed in any way (i) without the express authority of the Mutual or (ii) unless required by Applicable Laws or any relevant regulatory body.
  3. The Council warrants that all individuals who it authorises to process Protected Data, including employees, are obliged to protect the confidentiality of such Protected Data.
  4. The Council warrants that it, and its employees and agents, will comply at all times with their applicable obligations under Data Protection Legislation and shall not perform its/their obligations under the Agreement in such a way as to cause the Mutual to breach any of its obligations under the Data Protection Legislation.
  5. Where the Council processes Protected Data on behalf of the Mutual it shall:
     + 1. process Protected Data only to the extent, and in such manner, as is necessary in order to comply with its obligations under the Agreement;
       2. implement appropriate technical and organisational measures to protect the Protected Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure in compliance with obligations set out in the Data Protection Legislation, including (without limitation), where appropriate:
          1. the pseudonymisation and encryption of Protected Data;
          2. ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services;
          3. restoring the availability and access to Protected Data in the event of a physical or technical incident; and
          4. regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring security of the processing.
       3. in furtherance of its obligations under paragraph 4.6(b) of this Data Processing Schedule, implement and maintain as a minimum the security measures set out in the Annex of this Data Processing Schedule (Security Annex);
       4. if so requested by the Mutual, and within a reasonable timeframe, supply clear and full details of the technical and organisational measures in place to safeguard and keep secure the Protected Data, and otherwise make available to the Mutual all information necessary to demonstrate compliance with the obligations set out in the Agreement and/or the Data Protection Legislation;
       5. on reasonable prior notice, permit persons authorised by the Mutual to enter into any premises on which Protected Data is processed and to inspect the Council's systems to ensure that sufficient security measures are in place and that the Council's obligations under this Agreement are complied with (noting that this paragraph will survive termination or expiry of the Agreement);
       6. not process or transfer Protected Data outside the UK or European Economic Area unless the prior written consent of the Mutual has been obtained and the following conditions are fulfilled:
          1. the Mutual or the Council has provided appropriate safeguards in relation to the transfer, as required under the relevant Data Protection Legislation;
          2. the data subject has enforceable rights and effective legal remedies;
          3. the Council complies with its obligations under the relevant Data Protection Legislation by providing an adequate level of protection to any Protected Data that is transferred; and
          4. the Council complies with reasonable instructions notified to it in advance by the Mutual with respect to the processing of the Protected Data;

* 1. maintain complete and accurate records and information to demonstrate its compliance with this Data Processing Schedule; and
  2. upon the Mutual's request, take reasonable steps to demonstrate such compliance and/or shall, upon receipt of reasonable prior notice from the Mutual, allow for audits by the Mutual or the Mutual's designated auditor.

1. The Mutual acknowledges that the Council may rely on third Parties as sub-processors of Protected Data in accordance with clause 18.2 of the Agreement. By entering into the Agreement, the Mutual approves, subject to paragraphs 6 and 7 below, the use of those sub-processors set out below:

|  |  |
| --- | --- |
| **Sub-processor** | **Specification of processing** |
| [***insert details of any sub-processor already in place at the beginning of the contract***] | [***insert details of processing e.g. cloud hosting***] |

("**Approved Sub-Processors**")

1. Subject to paragraph 5, the Council will not engage or replace any sub-processor (including any Approved Sub-Processor) without the Mutual's consent. For the avoidance of doubt, the Council remains fully liable to the Mutual for the performance of the obligations of any sub-processor (including any Approved Sub-Processor) appointed by the Council to assist with the performance of the Support Services.
2. When engaging a sub-processor pursuant to paragraph 5 or paragraph 6 (for the avoidance of doubt including Approved Sub-Processors), the Council shall ensure it has a binding written agreement with the sub-processor which imposes data protection obligations on the sub-processor which are not less onerous than those set out in this Data Processing Schedule on the sub-processor, in particular requiring it to give sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will comply with the Data Protection Legislation.
3. **Complaints and Rights of Data Subjects**
   1. The Council shall ensure that it protects the rights of data subjects under the Data Protection Legislation and shall:
      * 1. promptly notify the Mutual in writing (within no more than ***two*** working days) if it receives:
           1. a request from a data subject to have access to his or her Protected Data;
           2. a request from a data subject to exercise any of his or her rights under Articles 15 – 22 of the GDPR; or
           3. a complaint or request relating to the Mutual's obligations under Data Protection Legislation; and
        2. provide the Mutual with full co-operation and assistance in relation to any such complaint or request made, including by:
           1. promptly providing the Mutual with full details of any complaint or request and any additional information requested by the Mutual;
           2. taking all steps necessary to enable the Mutual to comply with a request from a data subject within the relevant timescale set out in the Data Protection Legislation and in accordance with the [Mutual]'s reasonable instructions;
           3. providing the Mutual with any Protected Data it holds in relation to a data subject (within the timescales required by the Mutual);
           4. using appropriate technical and organisational measures, as far as possible, to assist the Mutual to respond to requests from data subjects to exercise their rights;
           5. ensuring that (other than as set out above) no reply or other communication is made in response to such complaint or request unless approved by the Mutual; and
           6. taking such remedial steps as the Mutual reasonably requires to prevent such complaints recurring and to obtain further information about the complaint.
4. **Security Breaches** 
   1. The Council shall notify the Mutual without undue delay after becoming aware of any Security Breach and in any event no later than ***12*** hours after becoming aware of the Security Breach, and shall include in that notification a full description of:
      * 1. the nature of the Security Breach including details of the Protected Data and categories and approximate numbers of data subjects affected;
        2. categories and approximate numbers of Protected Data affected;
        3. the likely consequences of the Security Breach;
        4. risks to affected data subjects; and
        5. the measures taken or proposed to be taken by the Council to address the Security Breach, including, where appropriate, measures to mitigate its possible adverse effects (including those effects it may have on the Mutual and data subjects).
   2. The Council shall take such remedial steps as the Mutual reasonably requires to prevent such Security Breaches recurring and to obtain further information about the Security Breach and/ or its perpetrator(s).
   3. The Council shall provide all reasonable assistance to the Mutual in the event that the Mutual is required to notify any relevant regulatory authority and/or affected data subjects.
5. **Data Protection Impact assessments and Consultations**

The Council shall provide reasonable assistance to the Mutual with any data protection impact assessments and prior consultations with the Information Commissioner's Office which the Mutual reasonably considers to be required by the Data Protection Legislation, in each case solely in relation to Protected Data and taking into account the nature of the relevant processing activity and information available to the Council.

1. **Duration of processing**
   1. The Council shall process the Protected Data as required under the Agreement in accordance with this Data Processing Schedule until the sooner of:
      * 1. the Agreement expiring or being terminated for any reason; or
        2. the Mutual reasonably requesting (orally or in writing) that the Council stops processing Protected Data.
   2. The Council agrees that, on termination or expiration of the Agreement or in the event that it is notified by the Mutual that it is not required or permitted to further process any Protected Data, the Council shall:
      * 1. transfer a copy of all Protected Data held by it to the Mutual in a format reasonably requested by the Mutual; and/ or (at the Mutual's request)
        2. unless legally required to retain the information, destroy all such Protected Data (including back-ups and copies) using a secure method which ensures that it cannot be accessed by any third party and shall provide the Mutual with written confirmation of secure disposal.
2. **Indemnity**

The Council is responsible for and shall indemnify and keep indemnified at its own expense the Mutual against all costs, claims, damages or expenses incurred by the Mutual, or for which the Mutual may become liable (including, but not limited to, any fines and/ or penalties imposed by courts or regulators on the Mutual), arising out of or in connection with any failure by the Council or its employees, agents or subcontractors to comply with any of the Council's obligations under this Data Processing Schedule. Any limitations and/or exclusions of liability set out in the Agreement shall not apply to this indemnity under this paragraph 12.

1. For the avoidance of doubt, the provisions of this Data Processing Schedule shall survive termination or expiry of the Agreement for any reason for as long as the Council processes any Protected Data.
2. **Specification of Processing:**

**Subject matter of processing:** The Support Services being provided by the Council to the Mutual.

**Nature and** **purpose of processing:** That which is necessary to provide the Support Services, including in particular (but not limited to) [the provision of ICT services (including the hosting of databases containing personal data), and of HR and payroll services].

**Duration of the processing:** As set out in paragraph 11 of this Data Processing Schedule.

**Types of Protected Data:** [*SPECIFY – e.g. names, genders and dates of birth; contact details (email, postal and telephone); communication preferences; records of correspondence; financial information; employment information*]

**Categories of data subject:** [*SPECIFY – e.g. (past, present and prospective) the Mutual's employees, officers directors, workers and contractors; volunteers; donors to/ supporters of the Mutual; members of the public or contacts who communicate with the Mutual* etc.]

[***Affix Security Annex***]