

- (1) WEST SUSSEX COUNTY COUNCIL**
- (2) ADUR DISTRICT COUNCIL**
- (3) ARUN DISTRICT COUNCIL**
- (4) CHICHESTER DISTRICT COUNCIL**
- (5) CRAWLEY BOROUGH COUNCIL**
- (6) HORSHAM DISTRICT COUNCIL**
- (7) MID SUSSEX DISTRICT COUNCIL**
- (8) WORTHING BOROUGH COUNCIL**

**COLLABORATION AGREEMENT
RELATING TO
PROCUREMENT OF SUPPORTED HOUSING
CONTRACTS IN WEST SUSSEX 2020 TO 2025**

Orbis Public Law
West Sussex County Council
County Hall
Chichester
PO19 1RQ
(Legal Reference: AC801.4698)

outcome of the procurement process WSCC will enter into Contract/s with the chosen providers (“**the Service Providers**”) on behalf of the Parties (the “**Project**”);

- C. This Agreement sets out the undertakings given by each of the Parties and the general arrangements between the Parties in relation to the procurement arrangements, contract management and other related matters to the delivery of the Services under the Contract.
- D. The District Councils each appoint WSCC as their agent to carry out the responsibilities in respect of the procurement exercise, management of the Contract and delivery of the Project respectively, subject to the terms of this Agreement.

1. Key principles of Joint Working

- 1.1. The Parties agree to adopt the following principles when carrying out the Project:
 - (a) collaborate and co-operate to ensure that activities are delivered and actions taken as required;
 - (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
 - (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
 - (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
 - (e) adopt a positive outlook. Behave in a positive, proactive manner;
 - (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU and UK procurement rules, data protection and freedom of information legislation;
 - (g) act in a timely manner. Recognise the time-critical nature of the Project and respond accordingly to requests for support;
 - (h) manage stakeholders effectively;
 - (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the Project objectives; and
 - (j) act in good faith to support achievement of the Project objectives and comply with these principles.

2. Roles and Responsibilities

- 2.1. The Parties shall undertake the roles and responsibilities to deliver the Project as set out in Appendix A of this Agreement and in particular shall consult with one another to agree the competitive procurement process to be carried out by WSCC for the appointment of the Service Providers, together with the terms and conditions

of the service Contract itself before the invitation to tender for the new Contract is issued.

- 2.2. The Parties financial contributions to the Contract are as set out in Appendix B to this Agreement.

3. Length of Agreement

- 3.1. This Agreement shall commence on the 11th September 2020 and shall expire upon the earlier of:

- (a) expiration or termination of the Contracts;
- (b) the date on which each Party agrees in writing to its termination; or
- (c) the date on which only one Party remains a party to this Agreement in accordance with clause 6.

- 3.2. Termination of a Party's interest under this Agreement shall have no effect on any rights or remedies of any Party already accrued, prior to the date upon which such termination takes effect.

4. Contractual Relationship between the Parties and the Service Providers of the Contracts

- 4.1. WSCC will enter into the Contracts on behalf of itself and the District Councils. Accordingly, the District Councils will have no direct contractual relationship with the Service Providers.

- 4.2. WSCC will under the Contracts act as a prime contractor for the delivery of the Services to District Councils and will be responsible for ensuring delivery of the Services to the Parties by the Service Providers and management of the Contracts.

- 4.3. The parties agree that the terms and conditions of the Contract between WSCC and the Service Providers shall be largely that of West Sussex standard terms and conditions of services save for any particular amendments the District Councils reasonably request to these standard terms or any additional specific terms and conditions reasonably requested to be included in the Contracts to reflect the different parties requirements (such requests not to be unreasonably refused). For the avoidance of doubt, the Parties agree that, as the lead commissioner, WSCC shall retain ultimate discretion over the terms and conditions to be included in the Contract.

- 4.4. Save as expressly provided in this Agreement or otherwise agreed in writing no Party shall:

- (a) incur any liabilities on behalf of another Party;
- (b) make any representations or give any warranty on behalf of another Party;
- (c) enter into any contract or obligation on behalf of another Party; or

- (d) commit to any expenditure as a result of which another Party shall be required to reimburse it.

5. Variations to this Agreement

- 5.1. Any variation to this Agreement will only be effective if it is made in writing and signed by duly authorised representatives of all the Parties.

6. Termination of this Agreement/Leaving the Collaboration

- 6.1. A Party may terminate their involvement in this Agreement upon giving the other Parties no less than six (6) months written notice, such notice to expire at the end of a contract year (31 March). For the avoidance of doubt, a Party may not terminate the Agreement before the 31st March 2023. It is acknowledged by the Parties that it is the intention that this Agreement will remain in place for the duration of the Contracts and any Party's withdrawal from the Agreement should be due to exceptional circumstances. Where any Party is considering withdrawing from the Agreement it shall, prior to serving notice under this clause convene a meeting between all Parties to discuss the reasons for withdrawal and any reasonable solutions.

- 6.2. Each Party acknowledges that its withdrawal from this Agreement may result in the remaining Parties incurring additional costs. These additional costs could include, but are not limited to, the costs of undertaking a variation of Contract/s or a re-procurement of the Services, any outstanding Contract/s price payable, costs that may result from any consequential delay in the service commencement of the Contract/s and potential increased costs arising from any re-apportionment of contributions over a reduced number of Parties where the Contract/s do not provide for a possible variation in the level of Services and price. The withdrawing Party shall indemnify the remaining Parties against any such costs, liabilities or expenses.

- 6.3. Where any Party withdraws from this Agreement:

- (a) save as otherwise set out in this Agreement, its obligations in relation to the Agreement and delivery of the Project shall cease from the date of expiry of the notice given under clause 6.1;
- (b) this shall not affect any accrued right or remedies under this Agreement;
- (c) clause 9 (Dispute Resolution) shall remain in force in respect of any of the matters arising from the performance of or withdrawal of any Party under this Agreement.

- 6.4. If WSCC wish to withdraw from this Agreement under clause 6.1 and no longer act as the lead commissioner for the Contract/s and the District Councils would like the Contract to continue, WSCC shall do all things necessary to novate (transfer) the Contracts to the relevant District Councils. If the circumstances require it, one of whom shall act as lead commissioner on behalf of itself and any other Parties for the remainder of the Contract period. The Parties would consider this as a last resort and the novation and any required variation to the Contracts would be subject

to the terms and conditions of the Contract and agreement between the District Councils.

7. Information

- 7.1. The Parties shall comply in all respects with the requirements of the Data Protection Act 2018 in so far as they apply to the Project and shall provide sufficient guarantees in respect of the security measures taken with regard to all information concerning service users. WSCC shall ensure that the Contract contains sufficiently robust data protection provisions in order to protect the data of the District Councils service users where it is provided to or processed by the Service Provider in order to deliver the Services.
- 7.2. The Parties shall take all reasonable steps to ensure that all information concerning service users is treated as confidential and must not divulge or allow to be divulged such information except to the extent permitted under this Agreement or the Contract. The Parties shall, where identified as being necessary, enter into a Data Sharing Agreement in substantially the form as set out in Appendix D (Data Sharing Agreement)
- 7.3. The Parties acknowledge that the other Parties are subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") and shall, where reasonable, assist and co-operate with the other Party at their own expense to enable each Party to comply with its information disclosure obligations and nothing in this Agreement shall inhibit a party in complying with its obligations under the FOIA.
- 7.4. Each Party shall use all reasonable endeavours to ensure that any formal public statements made by a Party as to each other's activities or the terms or performance of the Agreement and/or the Contract shall only be made after consultation with the other Parties. No Party shall make use of another Party's logo without their express permission
- 7.5. Each Party shall comply and shall ensure that its employees, officers, representatives and any other people or companies involved in the Joint Working and particularly the procurement exercise for the Housing Support Services comply with and are actively aware of the requirements of confidentiality, non-disclosure and Conflict of interests as set out in Appendix C.

8. Costs and Expenses

- 8.1. Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this Agreement. For the avoidance of doubt WSCC has agreed to deliver its roles and responsibilities under this Agreement at its own cost and shall not levy any charge to the District Councils in respect of the procurement exercise or management of the Contract.

9. Dispute Resolution

- 9.1. Where any dispute arises between the Parties in connection with this Agreement, all Parties will use their best endeavours to resolve that dispute on an informal basis.
- 9.2. Where any dispute is not resolved under clause 9.1, any party may convene a meeting between the three Parties to attempt to resolve the dispute.
- 9.3. If any dispute is not resolved under clauses 9.1 or 9.2, the dispute may be referred to the relevant Executive Directors or Chief Operating Officers of the Parties who will co-operate in good faith to resolve the dispute within ten (10) working days of the referral of the dispute.

10. Counterparts

- 10.1. This Agreement may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart
- 10.2. Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

11. Entire Agreement

- 11.1. This Agreement, together with the appendices and all other documents attached or referred to in this Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes any prior agreement, arrangement or understanding between the Parties regarding its subject matter.
- 11.2. No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the Parties prior to the date of this Agreement, except as expressly set out in this Agreement.

12. Governing law and jurisdiction

- 12.1. This Agreement shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 9, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which the parties have caused this agreement to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
WEST SUSSEX COUNTY COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
ADUR DISTRICT COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
ARUN DISTRICT COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
CHICHESTER DISTRICT COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
CRAWLEY BOROUGH COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
HORSHAM DISTRICT COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
MID SUSSEX DISTRICT COUNCIL
in the presence of:

EXECUTED as a DEED
by the affixing of the **COMMON SEAL of**
WORTHING BOROUGH COUNCIL
in the presence of:

APPENDIX A – ROLES AND RESPONSIBILITIES OF THE PARTIES

A1 The Procurement process

WSSC will:

- (a) in accordance with the Constitution of WSSC and in compliance with relevant EU procurement laws and the Public Contracts Regulations 2015, through the agreed competitive process, select and award contract to Service Providers to deliver the Services across the local authority areas of West Sussex;
- (b) ensure that the Contracts and all contractual and tender documentation make adequate and appropriate provision for the District Councils, including for example, but not limited to, ensuring any Contract notice identifies WSSC as purchasing on behalf of itself and the District Councils including any specific requirements of the individual Parties (as agreed pursuant to clause 4.3) in the Contract terms and conditions;
- (c) make available to the District Councils upon reasonable request any and all information relating to the procurement, selection process and contract award to ensure that the District Councils are in compliance with their respective statutory duties;
- (d) provide reasonable procurement resources and project management time and support in its role as lead commissioner for the purposes of meeting the objectives of the Project.

The District Councils will:

- (a) liaise with and provide any information and / or assistance reasonably required to prepare the procurement and contractual documents to WSSC;
- (b) each appoint an appropriate officer who will be an evaluation panel member for the procurement exercise relevant to the contract being procured for their geographical area and will attend any evaluation meetings as required.

A2 Contract Management after Award

WSSC will;

- (a) Ensure there is a named contract officer for the Contracts who will act as contract lead and liaise with the Service Provider and the District Council accordingly.
- (b) Be responsible for the administration and management of the Contract to include:
 - Making administrative arrangements for contract review meetings and ensuring minutes are circulated
 - Liaise with Service Providers where needed in relation to strategic contract management, negotiation or strategic compliance issues
 - Ensure payments are made to the Service Providers in accordance with agreed terms of the Contract

- Issue, on behalf of the Parties and as agreed in advance by the Parties, any notices required to be served under the Contracts including serving of any default or remediation notices or termination notices.
 - Initiate and conduct any dispute resolution process with the Service Providers if required by a Party.
 - Consult with the other Parties in respect of any proposed variations to the Contracts (including the Service Specification and any change to the Contract price) whether proposed by one of the Parties or the Service Provider/s and obtain prior written agreement from all Parties or each relevant Party in respect of any variation(s) affecting the service delivery to or contribution of that Party before agreeing any variation to the Contract with the Service Provider/s.
 - Ensure the Service Provider/s submits monthly, quarterly and annual contract management reports (as applicable) to all Parties (as set out in the Service Specification in the Contracts).
- (c) be responsible for ensuring the Services are delivered by the Service Provider/s to all Parties in accordance with all terms and conditions of the Contract/s, including the Service Specification and any particular requirements specific to a Party.

The District Council's will:

- (a) Ensure payments are made in accordance with Appendix B to WSCC
- (b) Ensure there is a named contact for their authority for the Service Provider/s to liaise with during the mobilisation period prior to the commencement of the Contract/s, to facilitate where required the co-location, access to operating systems (where deemed necessary and appropriate by the District Council) in order to meet the requirements of the service specification
- (c) Ensure there is a named contact for their authority during the life of the Contract
- (d) Be responsible for the day to day partnership arrangements with the Service Provider/s to support the Service Provider/s in local delivery of the Services
- (e) Appoint an officer who shall attend quarterly contract management meetings with the Service Provider/s and any other contract management meetings as required.
- (f) Attend meetings with the other Parties to this Agreement on an annual basis (or as otherwise agreed) to review the workings of this Agreement and the collaboration.

APPENDIX B – FINANCIAL CONTRIBUTIONS

B1 Subject to paragraph B2, each Party shall provide the following financial contributions towards the Contract price per annum:

Start Date: 1st April 2021 **End Date:** 31st March 2023

	1st April 2021 to 31st March 2022	1st April 2022 to 31st March 2023	Total over Initial Period (2 years)
Adur District Council	£50,000	£50,000	£100,000
Arun District Council	£50,000	£50,000	£100,000
Chichester District Council	£50,000	£50,000	£100,000
Crawley Borough Council	£50,000	£50,000	£100,000
Horsham District Council	£50,000	£50,000	£100,000
Mid Sussex District Council	£50,000	£50,000	£100,000
West Sussex County Council	£350,000	£350,000	£700,000
Worthing Borough Council	£50,000	£50,000	£100,000

As the Contracts have not yet been procured these are maximum amounts each Party shall be liable to pay each year during the Initial Period of the Contract. The price to be tendered for the new Contract therefore shall not exceed the total annual value.

- B2 Where the Contract price tendered by successful provider/s is less than the above figures per annum the contributions each year during the Initial Period of the Contract shall be as follows:
- West Sussex County Council - 50%
- Relevant District Council – 50%
- B3 The District Councils agree to pay WSCC their contribution no later than 30 days after the anniversary of the Start Date each year for the Initial Period of the Contract, (for example, Adur District Council will pay £50,000 by 1st May 2021 and £50,000 by the 1st May 2022). WSCC shall be responsible for payment of its own contribution above and all payments to be made to the Service Provider/s under the terms of the Contract/s.
- B4 The District Councils will not be liable for any non-payment or late payment of the Contract price to the Service Provider/s, including any interest charges the Service Provider/s may be able to charge WSCC.
- B5 Where for any reason a Contract terminates before the end of a contract year (being 12 months from commencement date or anniversary thereof) WSCC shall consider and account for the annual advance payments already made by the District Councils for the relevant year and shall return any balance to the District Councils accordingly and in proportion to the advance contributions paid by the relevant Party.
- B6 WSCC shall keep full and accurate records of all expenditure made and payments received in connection with this Agreement and the Contract/s which may be made available to the District Councils may upon reasonable request.
- B7 Discussion will take place between the Parties in year two (2) of the Contract/s with regard to exercising any extension option. Any extension of the Contract/s beyond the Initial Period shall be subject to agreement between all the Parties, including agreement on the Contract price and contributions payable during any extension.

APPENDIX C – CONFLICT OF INTEREST, CONFIDENTIALITY AND NON-DISCLOSURE

The purpose of this appendix is to confirm the terms and conditions pursuant to which WSCC will release tender documents relating to the Procurement Exercise to the District Councils, its employees, officers, representatives etc. Those taking part in the Procurement Exercise must be familiar with the terms that follow and comply with them at all times.

Conflict of Interest

Conflict of Interest refers to situations in which personal and/or business interests (which may include financial interests) may compromise, or have the appearance of, or potential for, compromising professional judgement and integrity and, in doing so, the best interests of the District Council's and WSCC ("the Council").

Examples of conflicts of interest include: (*This is not an exhaustive list*)

- Having a financial interest (e.g. holding shares or options) in a potential tenderer (including any member of the tenderers group, bidding team or sub-contractors) or any entity involved in any tendering consortium.
- Having a financial or any other personal interest in the outcome of the evaluation of any tender evaluation process.
- Being employed by (as staff member or volunteer) or providing services to any potential tenderer (including any member of the tenderers group, bidding team, sub-contractors or consortium).
- Being a member of a potential tenderer's management/executive board (including any member of the tenderers group, bidding team, sub-contractors or consortium).
- Receiving any kind of monetary payment or non-monetary gift or incentive (including hospitality, trips, gifts, rewards, favours, discounts) from any tenderer or its representatives.
- Canvassing, or negotiating with, any person with a view to entering into any of the arrangements outlined above.
- Having a close member of your family (which term includes unmarried partners) or personal friends who falls into any of the categories outlined above.
- Having any other close relationship (current or historical) with any potential tenderer (including any member of the tenderers group (subsidiary or holding company), bidding team, sub-contractors or consortium).

It is the individual's responsibility to ensure that any and all potential conflicts of interest are disclosed to their employer and WSCC in writing prior to them becoming involved in any procurement process.

Individuals will be excluded from the procurement process where the identified conflict is in WSCC's opinion material and cannot be mitigated.

Confidentiality and Non-disclosure Undertaking

Meanings:

"Confidential Information" means all information of whatsoever nature and in whatsoever form (however recorded or preserved) relating to the Procurement Exercise, obtained from any source or is disclosed or made available, whether before or after the date of this agreement, (in any form or medium), directly or indirectly, to me, including without limitation the tender documentation, information received from or advice given by the Council or its advisors and any information obtained as a result of attending meetings or presentations with Council officers or tenderers whether identified as confidential or not.

"Procurement Exercise" as described on Appendix A, A1 and encompasses any formal and

informal meetings or presentations, associated discussions, meeting preparation and follow up or any other activity related to the procurement exercise, including but not limited to evaluation of tenders.

“Information” means all information, facts, data and other matters of which I acquire knowledge, either directly or indirectly, as a result of my activities as an evaluator of any bidder/potential providers Pre-Qualification Questionnaire or Tender submissions or tender interviews/presentations etc.

“Documents” means all draft, preparatory information, documents and any other material in either paper or electronic form, together with any information contained therein, to which I have access, either directly or indirectly, as a result of my participation in any Procurement Exercise. Furthermore, any records or notes made by me or others relating to information or documents shall be treated as Confidential Documents.

I understand that I may be invited to participate either directly or indirectly in the Procurement Exercise and agree:

1. To treat all Confidential Information, Information and Documents as strictly private and confidential at all times and take all reasonable steps necessary to protect such from disclosure.
2. Not to disclose, make copies of, record, reproduce or discuss any received Confidential Information, Information and/or Documents with any person who is not a member of the Tender Evaluation Panel (without the prior written approval of WSCC).
3. Not to use (or authorise any other person to use) any Information and/or Documents in any way other than for the purpose of my work in connection with the Procurement Exercise.
4. My contact with any potential providers/tenderers is restricted during the period of the tender and I understand and agree that until the successful provider has been announced I will not pass any Information and/or Documents or make any comments to them about the tender and I will not meet any potential providers or have any discussions about the tender with them unless conducted as part of the formal procurement process. I will pass any requests for information and/or meetings from potential providers to WSCC's Procurement Officer.
5. To keep all materials containing Confidential Information, Information and/or Documents in a secure place during the Procurement Exercise and not to make any copies of such on any personal IT apparatus or externally accessible computer.
6. At the direction of WSCC to either destroy all Confidential Information, Information and/or Documents (and any copies) provided to me or return all such to the Chair of the Tender Evaluation Panel or WSCC Officer (as directed) as soon as the evaluation process is complete or if I no longer participate in the Procurement Exercise. If any Confidential Information, Information and/or Documents are stored by me in electronic format I will permanently erase all such Confidential Information, Information and/or Documents from the relevant computer, communication systems and any devices used by me to the extent technically practicable. If requested by WSCC I will confirm in writing that I have complied with this obligation.
7. I will keep the results of the Tender selection process confidential and no indication of the likely recommendation will be discussed, disclosed or allowed to be disclosed without WSCC's written approval.

Unless otherwise agreed with WSCC, and subject to relevant legislation, this undertaking applies until the end of the Contract (that is subject of the Procurement Exercise), including any Contract extensions.

This undertaking shall not apply to any document or information that becomes public knowledge otherwise than as a result of a breach of any of the above undertakings.

APPENDIX D – DATA SHARING AGREEMENT

Data Sharing Agreement

- (1) [Council]
- (2) [insert name]

Dated

20

DRAFT

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This Agreement is made the _____ day of _____ 20

Between:

- (1) [Council], of [address] (the **Council**); and
- (2) [INSERT] a company registered in [INSERT] with company number [INSERT] whose registered office address is at [INSERT] (the **Partner**).

Background:

- (A) [On [date] the Council advertised in the Official Journal of the European Union (reference [insert]), inviting prospective suppliers to submit proposals for the provision of [insert details]. On the basis of the Partner's response to the advertisement and a subsequent tender process, the Council selected the Partner as its preferred supplier.]

OR:

- (B) [Insert background information about the sharing arrangement. This should include information about a) why the arrangement is necessary; b) the specific aims of the arrangement; and c) the benefits of the data sharing to individuals]
- (C) The parties have agreed to share Personal Data (as defined below) for the Agreed Purpose on the terms set out in this Agreement.

1 Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Agreed Purpose	the purpose for which the parties are entitled to use the Shared Personal Data, as set out in Schedule 2;
Agreement	this data sharing agreement and the schedules thereto;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Commencement Date	the date of this Agreement;
Control	in relation to an entity that is not a natural person, the power of a person (or persons acting in concert) to secure directly or indirectly that the affairs of that entity are conducted in accordance with the wishes of that person (or persons);
Data Controller	the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;
Data Discloser	the party disclosing Shared Personal Data under this Agreement;
Data Recipient	the party receiving Shared Personal Data under this Agreement;
Data Protection Legislation	laws and regulations in any relevant jurisdiction that apply in relation to the Processing of Personal Data including (without limitation) the Data Protection Act 1998 and any replacement legislation coming into effect from time to time (including but not limited to the GDPR) together with any codes of practice or other guidance issued by a Regulatory Authority in any relevant jurisdiction;
Data Breach	a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared

	Personal Data;
Data Subject	an identified or identifiable natural person to whom the Shared Personal Data relates;
Deletion Procedure	the deletion procedure agreed by the parties and set out at Schedule 6 of this Agreement;
GDPR	the General Data Protection Regulation (EU) 2016/679;
Group Company	in relation to a party, any person Controlled by, Controlling or under common Control with that party;
Insolvency Event	if a party makes any voluntary arrangement with its creditors, enters administration or goes into liquidation; if a security holder takes possession or a receiver or administrative receiver is appointed; if anything analogous to the foregoing occurs in any jurisdiction; or if that party ceases to do business;
Permitted Recipient	a director, employee or professional advisor of each respective party or an agent or contractor used by that party in the fulfilment of the Agreed Purpose who has a legitimate need to receive and Process Personal Data for the Agreed Purpose;
Personal Data	any information relating to an identified or identifiable natural person;
Process, Processed or Processing	any set of operations which is performed on personal data, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
Regulatory Authority	any competent data protection or privacy authority by which either party is regulated;
Shared Personal Data	the Personal Data to be shared between the parties under this Agreement, as set out in Schedule 1;
SPoC	Single Point of Contact as defined in clause 2.2;
Subject Access Request	a request from a Data Subject to exercise his or her right of access to personal data under the Data Protection Legislation;
Third Country/Countries	all countries outside of the scope of the data protection laws of the European Economic Area (EEA), excluding countries that have been approved by the European Commission from time to time as having adequate data protection laws.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 a "person" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
- 1.2.2 any phrase introduced by the terms include, including, particularly or in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended or re-enacted from time to time;
- 1.2.4 unless otherwise provided the singular includes the plural and the masculine includes the feminine and vice versa;
- 1.2.5 the headings are inserted for convenience and do not affect the construction of this Agreement.

- 2.1 This Agreement sets out the framework for the sharing of Personal Data between the parties as Data Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other in respect of the Shared Personal Data.
- 2.2 Each party shall nominate a single point of contact (**SPoC**). The SPoCs shall work together to reach agreement with regard to any issues arising from this Agreement and to actively improve the effectiveness of the Agreement going forward. The SPoC for each party is set out at Schedule 3.

3 Compliance with Data Protection Legislation

- 3.1 Each party must ensure compliance with all relevant Data Protection Legislation at all times during the term of this Agreement.
- 3.2 Each party warrants that it has a valid registration with all relevant Regulatory Authorities as required by the Data Protection Legislation which, at the Commencement Date, covers the intended data sharing pursuant to this Agreement, unless an exemption applies.

4 Shared Personal Data

- 4.1 The parties will provide to each other the Shared Personal Data at the times, frequencies and in the format set out at Schedule 4 or as otherwise agreed in writing between the parties.
- 4.2 Each party shall ensure that the Shared Personal Data is accurate and is not irrelevant or excessive with regard to the Agreed Purposes.
- 4.3 Each party shall ensure that it processes the Shared Personal Data fairly and lawfully during the term of this Agreement. The legal basis which permits the sharing of the Shared Personal Data for the Agreed Purposes is set out in Schedule 2.
- 4.4 [Each party shall inform the Data Subjects, on or before the date when that party commences Processing of their Personal Data, of the purposes for which it will process their Personal Data and to provide all the information that it is obliged to provide under the Data Protection Legislation to ensure that the Data Subjects understand how their Personal Data will be processed by that party.]

OR:

[The parties have agreed that [the Council/the Partner] shall be responsible for delivering a privacy notice to Data Subjects to provide all information that the parties are obliged to provide under the Data Protection Legislation to ensure that the Data Subjects understand how their Personal Data will be processed by the parties. The form of the privacy notice and the timing and method of delivery of the privacy notice will be [agreed in writing by the parties/as set out in Schedule 10.]

- 4.5 The parties agree that they shall record all Shared Personal Data using compatible databases and the data transfer methods as set out in Schedule 5 or as otherwise agreed in writing between the parties.

5 Data Subjects' rights

- 5.1 Each party shall maintain a record of individual requests from Data Subjects to exercise their rights under the Data Protection Legislation, including Subject Access Requests, requests for deletion, restriction, rectification, portability, objections and rights in relation to automated decision making. Records kept should include, but shall not necessarily be limited to, the following:
- 5.1.1 copies of the relevant request received;
 - 5.1.2 details of the data accessed and shared with the Data Subject, if any; and
 - 5.1.3 notes of any meetings, correspondence or phone calls relating to the request.
- 5.2 [Each party shall be responsible for responding to requests that they receive from Data Subjects in relation to the Personal Data that they hold and shall provide reasonable assistance to the other to enable the other party to comply with any requests received and to respond to queries or complaints from Data Subjects.]

OR:

[[The Council/Partner] shall be responsible for responding to individual requests from Data Subjects to exercise their rights under the Data Protection Legislation in relation to the Shared Personal Data. [The Partner/Council] shall provide all reasonable assistance to enable [the Partner/Council] to comply with any requests received and to respond to queries or complaints from Data Subjects. The party that receives a request from an individual will be responsible for the costs of complying with the request. The basis of calculating such costs shall be agreed in advance in writing by the parties.]

6 Data retention and deletion

- 6.1 Neither party shall retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
- 6.2 Notwithstanding clause 6.1, each party may continue to retain Shared Personal Data in accordance with any applicable statutory or professional retention periods.
- 6.3 Each party shall ensure that all Shared Personal Data is returned to the other party or destroyed in accordance with the agreed Deletion Procedure:
- 6.3.1 on termination or expiry of this Agreement; or
 - 6.3.2 once processing of the Shared Personal Data is no longer necessary for the Agreed Purposes.
- 6.4 Following the deletion of the Shared Personal Data in accordance with clause 6.3, each party shall notify the other that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure.

7 Transfers of Shared Personal Data to Third Countries

- 7.1 Neither party shall disclose or transfer the Shared Personal Data to any person located in a Third Country without the prior written consent of the other party.
- 7.2 If the Partner is located in a Third Country, the Partner shall take all steps required by the Council to ensure adequate safeguards are in place to protect the Shared Personal Data, including but not limited to entering into standard contractual clauses.

8 Security of Shared Personal Data

- 8.1 Having regard to the state of technological development and the cost of implementing such measures, each party shall have and maintain in place throughout the term of this Agreement appropriate technical and organisational measures as set out in Schedule 7 in order to:
- 8.1.1 prevent:
unauthorised or unlawful processing of the Shared Personal Data; and
the accidental loss or destruction of, or damage to, the Shared Personal Data; and
 - 8.1.2 ensure a level of security appropriate to:
the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
the nature of the Shared Personal Data to be protected.
- 8.2 Each party shall ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures set out in Schedule 7 and with the Data Protection Legislation.
- 8.3 The level, content and regularity of training referred to in clause 8.2 shall be proportionate to the staff members' role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data and to the nature of the Shared Personal Data handled by the relevant staff members.
- 8.4 Each party shall ensure that only Permitted Recipients have access to the Shared Personal Data and shall ensure the reliability of all such Permitted Recipients.

9 Data Security Breaches and reporting procedures

- 9.1 Each party shall notify any potential or actual losses of the Shared Personal Data, and any Data Security Breach, to the other party's SPoC as soon as possible and in any event within 24 hours after becoming aware of the breach. The SPoCs shall work together to consider the action required in order to resolve the issue in accordance with the applicable Data Protection Legislation.
- 9.2 Each party shall provide reasonable assistance as is necessary to the other to facilitate the handling by the other party of any Data Security Breach in an expeditious and compliant manner.

10 Review of Agreement

- 10.1 [If the Data Recipient wishes to request data from the Data Discloser under this Agreement, the Data Recipient shall complete and submit to the Data Discloser a data sharing request form in the form set out at Schedule 8. The Data Discloser shall then complete and submit a data sharing decision form as set out in Schedule 9.]
- 10.2 The parties shall review the effectiveness of this data sharing initiative and Agreement every **[6]** months and upon the addition and removal of a party, having consideration to the aims and purposes set out in this Agreement and to the Agreed Purpose. The parties shall continue, amend or terminate this Agreement depending on the outcome of this review.

- 10.3 The review of the effectiveness of the data sharing initiative and Agreement will involve at least the following:
- 10.3.1 assessing whether the purposes for which the Shared Personal Data is being processed still align with the Agreed Purpose;
 - 10.3.2 assessing whether the Shared Personal Data is still as listed in Schedule 1 to this Agreement or whether the scope of the Shared Personal Data needs to be amended;
 - 10.3.3 assessing whether the legal frameworks governing data quality, retention and data subjects' rights are being complied with; and
 - 10.3.4 assessing whether Data Security Breaches involving the Shared Personal Data have been handled in accordance with this Agreement and the applicable Data Protection Legislation.

11 [Direct marketing]

- 11.1 If the Data Recipient processes the Shared Personal Data for the purposes of direct marketing, the Data Recipient shall ensure that effective procedures are in place to allow the Data Subjects to opt-out from having their Shared Personal Data used for such direct marketing purposes in accordance with the Data Protection Legislation.]

12 Resolution of disputes with Data Subjects or Regulatory Authorities

- 12.1 In the event of a dispute or claim brought by a Data Subject or a relevant Regulatory Authority concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- 12.2 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or Regulatory Authority. If they do participate in the proceedings, the parties may elect to do so remotely. The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- 12.3 Each party shall abide by a decision of a competent court of the UK or of the UK Regulatory Authority which is final and against which no further appeal is possible.

13 Warranties and indemnity

- 13.1 [The Partner warrants and undertakes that it will:

- 13.1.1 process the Shared Personal Data in compliance with all applicable Data Protection Legislation;
- 13.1.2 make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement;
- 13.1.3 respond within a reasonable time and as far as reasonably possible to enquiries from any relevant Regulatory Authority in relation to the Shared Personal Data;
- 13.1.4 where applicable, maintain registration with all relevant Regulatory Authorities to enable the Partner to process all Shared Personal Data for the Agreed Purpose;
- 13.1.5 take all appropriate steps to ensure compliance with the security measures set out at clause 8 above; and
- 13.1.6 not disclose or transfer Shared Personal Data to a Third Country without the prior written consent of the Council.]

OR

- 13.2 [Each party warrants and undertakes that it will:

- 13.2.1 process the Shared Personal Data in compliance with all applicable Data Protection Legislation;
- 13.2.2 make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement;
- 13.2.3 respond within a reasonable time and as far as reasonably possible to enquiries from any relevant Regulatory Authority in relation to the Shared Personal Data;

13.2.4 where applicable, maintain registration with all relevant Regulatory Authorities to enable the Partner to process all Shared Personal Data for the Agreed Purpose;

13.2.5 take all appropriate steps to ensure compliance with the security measures set out at clause 8 above; and

13.2.6 not disclose or transfer Shared Personal Data to a Third Country without the prior written consent of the other party.]

13.3 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

13.4 The Partner undertakes to indemnify the Council and hold the Council harmless from any costs, charge, damages, expense or loss incurred or suffered by the Council as a result of their breach by the Partner of any of the provisions of this Agreement.

14 Limitation of liability

14.1 Neither party excludes or limits liability to the other party for:

14.1.1 fraud or fraudulent misrepresentation;

14.1.2 death or personal injury caused by negligence; or

14.1.3 any matter for which it would be unlawful for the parties to exclude or limit liability.

14.2 Subject to clause 14.1, [the Council shall not in any circumstances be liable to the Partner] OR [neither party shall be liable to the other] whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

14.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

14.2.2 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

14.2.3 any loss or liability (whether direct or indirect) under or in relation to any other contract.

14.3 Subject to clause 14.1, the Council shall in no circumstances be liable to the Partner whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any sum in excess of [£50,000] in aggregate.

14.4 [Subject to clause 14.1, the Partner shall in no circumstances be liable to the Council whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any sum in excess of [£X] in aggregate.]

15 Force majeure

15.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement 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.

16 Allocation of cost

16.1 Except as expressly set out in this Agreement, each party shall perform its obligations under this Agreement at its own cost.

17 Termination

17.1 [The Council shall be entitled to terminate this Agreement in the event that the Partner:

17.1.1 commits a material breach of any of the terms of this Agreement, which breach is irremediable or, if remediable, has not been remedied within 30 days of receipt by the Partner of a notice in writing from the Council requiring the Partner to remedy it; or

17.1.2 suffers an Insolvency Event.]

OR:

17.2 [Either party shall be entitled to terminate this Agreement in the event that the other party:

17.2.1 commits a material breach of any of the terms of this Agreement, which breach is irremediable or, if remediable, has not been remedied within 30 days of receipt of a notice in writing requiring the breach to be remedied; or

17.2.2 suffers an Insolvency Event.]

17.3 Either party shall be entitled to terminate this Agreement on giving the other party [30 days] written notice to terminate.

17.4 If the underlying agreement to which this Agreement relates (if applicable) is terminated or expires, this Agreement shall automatically terminate at the time of termination or expiry of the main agreement.

18 Third party rights

18.1 Other than as expressly set out in this Agreement, a person who is not a party to this Agreement is not entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. If a person who is not a party to this Agreement is stated to have the right to enforce any of its terms, the parties may rescind or vary this Agreement without the consent of that person.

19 Rights and remedies

19.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20 Notice

20.1 Any notice given to a party under or in connection with this Agreement shall be in writing, addressed to that party's SPoC and shall be delivered by hand or pre-paid first-class post or other next working day delivery service at the address for the SPoC notified in Schedule 3.

20.2 Any notice shall be deemed to have been received:

20.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and

20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting or at the time recorded by the delivery service.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

21 Variation

21.1 No variation of this Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of each of the parties.

22 Waiver

22.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23 Severance

23.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

23.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24 Changes to Data Protection Legislation

24.1 If the Data Protection Legislation applicable to either party changes in a way such that this Agreement is no longer adequate for the purposes of governing lawful data sharing, the parties agree that the SPoCs will negotiate in good faith to review the Agreement in light of the changes and to make any amendments required to enable this Agreement to be adequate for those purposes.

25 No partnership or agency

25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26 Further assurance

26.1 Each party shall from time to time (both during the continuance of this Agreement and after its termination) do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.

27 Entire agreement

27.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and the terms of this Agreement shall supersede any previous agreements.

28 Governing law and jurisdiction

28.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.

In witness whereof this Agreement has been signed by the parties or their duly authorised representatives on the date written at the beginning of this Agreement.

Signed by)
for and on behalf of [Council])
)

Signed by)
for and on behalf of [Partner])
)

Schedule 1¹ - Shared Personal Data

[Each category of personal data that will be shared by the parties should be listed here. Personal data includes any information that relates to a living individual and includes items such as name, telephone number, gender, employment status etc. This should be as specific as possible to allow for utmost clarity and certainty]

¹ This is a mandatory Schedule. This Schedule is required to ensure that it is clear exactly what personal data will be shared by the parties.

Schedule 2 - Agreed Purpose and Legal Basis

The agreed purpose(s) for which the Shared Personal Data is being shared and processed by the parties is as follows:

[insert]

The legal basis for the data sharing is as follows:

Legal basis:	Tick here if this legal basis is relied upon:	Details:
The Data Subject has consented to the processing		
The processing is necessary for performance of a contract with the individual or to take steps at the request of the Data Subject prior to entering into a contract		
The processing is necessary for compliance with a legal obligation		
The processing is necessary to protect the vital interests of the Data Subject		
The processing is necessary for performance of a task carried out in the public interest		
<p>The processing is necessary for the purposes of the legitimate interests of the Council or the Partner and those interests are not overridden by the privacy rights and interests of the individual</p> <p><i>Note that because the Council is a public authority, this legal basis can only be relied upon when the Council is carrying out non-public functions. Please contact the legal team for advice if you require assistance with assessing the legal basis of processing.</i></p> <p><i>Please note that if the legitimate interests condition is relied upon it is necessary to document the legitimate interests and to consider whether these interests are outweighed by the privacy rights and interests of affected individuals. Please include details of the relevant legitimate interests, any competing privacy interests of individuals and the reasons why you consider that the identified legitimate interests outweigh the interests of individuals.</i></p>		

Schedule 3 - Single Points of Contact

SPoC for the Council:

Name:

Address:

Email address:

Telephone number:

SPoC for Partner:

Name:

Address:

Email address:

Telephone number:

Schedule 4 - Details of sharing²

[This schedule should set out at what time, how often and in what format data will be shared.]

Format in which data will be provided:

Frequency of data sharing:

Method of transmission of data:

² This is a mandatory Schedule. It is important to set out the means of sharing the data to ensure that data is adequate and relevant and that it is shared in a secure manner.

Schedule 5 - Compatible databases and methods of recording

[Insert here details of the format in which data should be stored and measures required to ensure the parties' databases are compatible. This schedule is required if data needs to be stored in a particular format in order to enable one of the parties to store it in their systems or if a particular naming convention needs to be followed to enable easy identification of data.]

Schedule 6 - Deletion Procedure³

[Set out details of any agreed deletion procedure. The procedure should ensure that hardcopies of shared personal data are confidentially destroyed (e.g. by shredding/placing in confidential waste) and that electronic copies of shared personal data are completely removed from the relevant party's systems. Additionally or alternatively, there should be procedures for each party to return all personal data to the other and ensure that no copies are kept.]

³ This is a mandatory Schedule. This Schedule evidences how the parties will comply with security and data minimisation requirements.

Schedule 7 - Security Measures⁴

[Insert details of security measures required to be put in place to protect the shared personal data. This Schedule should detail the security measures that each party will take to ensure that data is kept securely while in their control and when transmitted to the other party. The parties' information security teams should assist with populating this Schedule.]

⁴ This is a mandatory Schedule. This Schedule is required to demonstrate compliance with security obligations.
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Schedule 8 - Data Sharing Request Form

Name of organisation:

**Name and position of person
requesting data:**

Date of request:

**Reference to data sharing
agreement:**

Data requested:

Purpose:

Date required by:

**Any specific arrangements for
retention and deletion of data:**

Signed:

Dated:

Schedule 9 - Data Sharing Decision Form

Name of organisation:

**Name and position of person
requesting data:**

Date request received:

Data requested:

Purpose:

Decision:

Data supplied:

**Reason(s) for disclosure or non-
disclosure:**

**Any specific arrangements for
retention or deletion of data:**

**Decision taken by (name and
position):**

Date of disclosure:

Signed:

Dated:

Schedule 10 - Form and method of delivery of privacy notice

[Insert agreed form of privacy notice and details of how the notice will be delivered to data subjects and when.]