

DATED

DATA PROCESSING AGREEMENT

between

CHESHIRE EAST BOROUGH COUNCIL

and

PROCESSOR

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THIS AGREEMENT is dated _____ 201[7]

PARTIES

- (1) CHESHIRE EAST BOROUGH COUNCIL of Westfields, C/O Municipal Buildings, Earle Street, Crewe, CW1 2BJ (**Council**).
- (2) [ORGANISATION NAME] [of [ORGANISATION ADDRESS]] / [incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]] (**Processor**).

BACKGROUND

- (A) The Processor is providing Services to the Council pursuant to an agreement for the provision of [DESCRIPTION OF AGREEMENT UNDER WHICH PROCESSOR IS PROVIDING THE SERVICES] dated [INSERT DATE OF AGREEMENT UNDER WHICH PROCESSOR IS PROVIDING THE SERVICES] (**Services Agreement**).
- (B) The Council is the Data Controller in respect of the Council Data including Personal Data that the Processor requires access to in order to provide Services to the Council.
- (C) The Council agrees that the Processor may Process the Council Data on the Council's instructions in accordance with the terms of this agreement.

AGREED TERMS

In consideration of the Charges payable and the Services provided pursuant to the Services Agreement the Parties agree as follows:

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this agreement.

Authorised Person: the persons specified in Part 1 of Schedule 1 as amended from time to time in accordance with this agreement.

Authorised Purpose: the purpose specified in Part 1 of Schedule 1.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges specified in the Services Agreement.

Commencement Date: the date of last signature below.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with this

agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Controller: shall have the same meaning as set out in the Privacy and Data Protection Legislation.

Council Data: the Data supplied by the Council to the Processor under clause 3.3, comprising the Council Data (PD) and the Council Data (NPD).

Council Data (NPD): all Data comprised in the Council Data from time to time other than the Council Data (PD).

Council Data (PD): the Personal Data comprised in the Council Data from time to time.

Council System: any information technology system or systems owned or operated by the Council on which Data is Processed in accordance with this agreement.

Data: any data or information, in whatever form, including images, still and moving, and sound recordings, the provision of which comprises the Services (wholly or in part), including any personal data.

Data Subject: shall have the same meaning as set out in the Privacy and Data Protection Legislation;

European Union: the economic and political confederation of nations established on the 1 November 1993 by the Treaty on European Union;

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

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Normal Business Hours: 8.30 am to 6.00 pm in the United Kingdom on a Business Day.

Personal Data: shall have the same meaning as set out in the Privacy and Data Protection Legislation.

Personal Data Breach: shall have the same meaning as set out in the Privacy and Data Protection Legislation.

Privacy and Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the General Data Protection Regulations (EU)2016/679 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Process(ing): shall have the same meaning as set out in the Privacy and Data Protection Legislation.

Processed Data: any Council Data that has been processed.

Processed Data (NPD): all Data, other than personal data, comprised in the Processed Data from time to time.

Processor System: any information technology system or systems owned or operated by the Processor on which Data is Processed in accordance with this agreement.

Relevant Data: the Council Data and the Processed Data.

Security Breach: any security breach relating to:

- (a) the Council Data (PD) reasonably determined by the Processor to be sufficiently serious or substantial to justify notification to the Information Commissioner or other relevant supervisory authority in accordance with the Privacy and Data Protection Legislation; or
- (b) the Council Data (NPD) reasonably determined by the Processor to be sufficiently serious or substantial to give rise to a material risk of litigation by third parties affected by the breach.

Security Feature: any security feature, including any key, PIN, password, token or smartcard.

Services: the services set out in the Services Agreement.

Specific Instructions: instructions meeting the criteria set out in *clause 8.2*.

Staff: means all persons employed by the Processor to perform its obligations under the agreement together with the Processor's servants, agents, Processors and sub-contractors used in the performance of its obligations under the agreement.

Processor System: any information technology system or systems owned or operated by the Processor to which Data is delivered or on which the Services are performed in accordance with this agreement.

Term: the term set out in the Services Agreement.

- 1.2 Data subject, personal data, processing and appropriate technical and organisational measures shall bear the meanings given to those terms respectively in the Data Protection Act 1998 or the General Data Protection Regulations (EU) 2016/679 whichever is in force at such time.
- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 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.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 Any words following the terms **including**, **include**, **in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.14 In the case of conflict or ambiguity between:

- (a) any provision contained in the body of this agreement and any provision contained in the Schedules or appendices, the provision in the body of this agreement shall take precedence;
- (b) the terms of any accompanying invoice or other documents annexed to this agreement and any provision contained in the Schedules or appendices, the provision contained in the Schedules or appendices shall take precedence; and
- (c) any of the provisions of this agreement and the provisions of the Services Agreement the provisions of this agreement shall prevail.

2. SCOPE

During the Term the Processor shall supply the Services to the Council and the Council shall pay the Charges.

3. CONNECTION

- 3.1 The parties shall use reasonable efforts to establish connectivity between the Council System and the Processor System at such time as specified in the Services Agreement or as otherwise agreed between the parties.
- 3.2 Unless otherwise agreed each party shall bear its own costs of establishing that connectivity.
- 3.3 The parties shall promptly after the Commencement Date arrange for the Council Data to be provided as specified in the Services Agreement to the Processor.

4. SERVICES

- 4.1 During the Term the Processor shall supply the Services to the Council.

5. AUDIT

- 5.1 The Processor shall in accordance with the Privacy and Data Protection Legislation keep all detailed, accurate and up-to-date records relating to the processing of the Relevant Data by the Processor and the measures taken under clause 11.2(a), including the permissioning and control of the Relevant Data, and books of account (**Records**).
- 5.2 The Processor shall permit the Council and its third-party representatives, on reasonable notice during Normal Business Hours, but without notice in case of any reasonably suspected breach of this clause 5, to:

- (a) gain access to, and take copies of, the Records and any other information held at the Processor's premises or on the Council System; and
- (b) inspect all Records, documents and electronic data and the Processor System and facilities and equipment,

for the purpose of auditing the Processor's compliance with its obligations under this agreement. Such audit rights may be exercised only once in any calendar year during the Term.

5.3 The Processor shall give all necessary assistance to the conduct of such audits during the Term.

5.4 Audit access by any third party representative of the Council shall be subject to such representative agreeing confidentiality obligations equivalent to those in *clause 6* in respect of the information obtained, provided that all information obtained may be disclosed to the Council.

6. CONFIDENTIALITY

6.1 The Processor acknowledges that the Council's Confidential Information includes any Council Data.

6.2 The term Confidential Information does not include any information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 6);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
- (e) the parties agree in writing it is not confidential or may be disclosed; or
- (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

6.3 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use any Confidential Information except for the Authorised Purpose; or
 - (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 6.
- 6.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Authorised Purpose, provided that:
 - (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 6.
- 6.5 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 6.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to the other party, or are to be implied from this agreement.
- 6.7 The provisions of this clause 6 shall continue to apply after termination of this agreement.

7. ANNOUNCEMENTS

No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

8. PRIVACY AND DATA PROTECTION

- 8.1 The Processor shall (and shall procure that all of its Staff) comply with any notification requirements under the Privacy and Data Protection Legislation and both parties will duly observe all of their obligations under the Privacy and Data Protection Legislation which arise in connection with this agreement.

- 8.2 The Processor shall only act on any specific instructions given by the Council from time to time during the Term where they are in writing and given by an Authorised Person.
- 8.3 The Processor shall process the Council Data for the Authorised Purpose only and in compliance with the Council's documented instructions from time to time, which may be:
- (a) Specific Instructions; or
 - (b) the general instructions set out in Part 3 of Schedule 1.
- 8.4 The Processor shall not sub-contract the provision of the whole or any part of the Services without the prior specific or general written consent of the Council. Where the consent given by the Council is general the Processor shall inform the Council of any intended changes concerning the addition or replacement of sub-contractors, the Council may in its absolute discretion object to the appointment of any additional or replacement sub-contractors.
- 8.5 Pursuant to clause 8.4 where consent has been obtained to sub-contract the provision of the whole or any part of the Services the Processor shall enter into a written contract with the sub-contractor, the terms of the sub-contract must comply with the Privacy and Data Protection Legislation. The Processor shall ensure that any sub-contractor appointed complies with the terms of this agreement.
- 8.6 The Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk (**Security Measures**). When implementing the Security Measures the Processor shall assess the risk of a Personal Data Breach occurring as well as the impact on the Data Subject, take into account the state of the art, costs of implementation and nature, scope, context and purpose of the processing.
- 8.7 Prior to commencing the Services the Processor shall notify the Council of the Security Measures taken to protect the Relevant Data. The Processor may change Security Features on notice to the Council for security reasons.
- 8.8 The Processor shall at the request of the Council provide sufficient guarantees and evidence of the Processor's implementation of the Security Measures.
- 8.9 The Processor shall ensure that the Relevant Data is kept secure by using the Security Measures and shall use all reasonable security practices and systems applicable to the use of the Relevant Data, including those set out in Part 4 of Schedule 1 where specified, to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Relevant Data.

8.10 If the Processor:

- (a) becomes aware of any unauthorised or unlawful processing of any Relevant Data or that any Relevant Data is lost or destroyed or has become damaged, corrupted or unusable;
- (b) becomes aware of any Security Breach; or
- (c) learns or suspects that any Security Measure has been revealed to or obtained by any unauthorised person,

the Processor shall, at its own expense, promptly notify the Council and fully co-operate with the Council to remedy the issue as soon as reasonably practicable.

8.11 The Processor shall in accordance with good industry practice take all relevant precautions to preserve the integrity of any Relevant Data processed by it and to prevent any corruption or loss of such Relevant Data.

8.12 The parties shall agree a back-up procedure that shall require them to back-up Relevant Data and in any event the Processor shall make a back-up copy of the Relevant Data in accordance with the Backup Schedule and record the copy on media from which the Relevant Data can be restored in the event of any corruption or loss of the Relevant Data.

8.13 If any Relevant Data is lost or corrupted, the Processor's obligation under clause 8.12 shall be the Council's exclusive right and remedy against the Processor in respect of such loss or corruption.

9. PROCESSOR'S OBLIGATIONS

9.1 The Processor shall:

- (a) only make copies of the Council Data to the extent reasonably necessary for the Authorised Purpose (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Council Data);
- (b) not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Council Data other than for the Authorised Purpose; and
- (c) not do anything that may materially damage the reputation of the Council.

9.2 The Processor shall take reasonable steps to ensure the reliability and professionalism of all its employees who have access to the Council Data (PD).

9.3 Where required by the Privacy and Data Protection Legislation the Processor shall designate a suitably qualified a data protection officer and publish the

contact details of the data protection officer and communicate them to the supervisory authority.

9.4 The Processor shall provide all assistance reasonably required by the Council to ensure its compliance with the Privacy and Data Protection Legislation.

9.5 Where the Processor is not established within the United Kingdom or the European Union the Processor shall designate in writing a representative within the United Kingdom or the European Union.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 The Processor acknowledges that:

- (a) all Intellectual Property Rights in the Council Data (NPD) are and will remain the property of the Council or its licensors, as the case may be; and
- (b) it shall have no rights in or to the Council Data (NPD) other than the right to use it for the Authorised Purpose in accordance with this agreement.

10.2 The Processor assigns to the Council, and shall assign to it, its Intellectual Property Rights in any Processed Data (NPD) it may create, by way of future assignment. The Processor shall execute such confirmatory assignments as the Council may require.

10.3 The Intellectual Property Rights assigned to the Council under clause 10.2 shall be deemed to be included in the right to use referred to in clause 10.1(b) from the date when such rights arise.

11. WARRANTIES

11.1 Each party warrants to the other that it will process the Council Data (PD) in compliance with the Privacy and Data Protection Legislation.

11.2 The Processor warrants and represents that it will:

- (a) having regard to the state of technological development, take appropriate technical and organisational measures against the unauthorised or unlawful processing of Council Data (PD) and against the accidental loss or destruction of, or damage to, Council Data (PD) to ensure a level of security appropriate to:

- (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- (ii) the nature of the Data to be protected

including the security measures set out in Part 4 of Schedule 1;

- (b) take reasonable steps to ensure compliance with those measures; and
- (c) discharge its obligations under this agreement with all due skill, care and diligence.

11.3 The Council warrants and represents that:

- (a) it is the owner of the Intellectual Property Rights in any rights licensed or to be licensed to the Processor under clause 10.1(b);
- (b) it has the right to license the processing of the Council Data (NPD) for the Authorised Purpose;
- (c) as far as it is aware, the processing of the Council Data (NPD) under this agreement will not infringe the Intellectual Property Rights of any third party;
- (d) the processing of the Council Data (PD) from time to time has been carried out in accordance with the Privacy and Data Protection Legislation at all times;
- (e) it is not aware of any circumstances likely to give rise to breach of any of the Privacy and Data Protection Legislation in the future (including any Security Breach);
- (f) the Processor is entitled to process the Council Data (PD) for the Authorised Purpose and such use will comply with all Privacy and Data Protection Legislation;
- (g) all Council Data is necessary, accurate and up-to-date; and
- (h) it is registered with all relevant data protection authorities to process all Council Data (PD) for the Authorised Purpose.

11.4 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.

12. LIMITATION OF LIABILITY

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

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the parties to exclude liability.

- 12.2 Subject to clause 12.1, the Processor's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall in all circumstances be limited to £[AMOUNT].
- 12.3 The Council acknowledges that:
- (a) the Processor is reliant on the Council for direction as to the extent to which the Processor is entitled to use and process the Council Data (PD); and
 - (b) Claims against Processor include any claim or action brought by a data subject arising from any action or omission by the Processor, to the extent that such action or omission resulted directly or indirectly from the Council's instructions.
- 12.4 If any third party makes a Claim against Processor, or notifies an intention to make a Claim against Processor, the Processor shall:
- (a) give written notice of the Claim against Processor to the Council as soon as reasonably practicable;
 - (b) not make any admission of liability in relation to the Claim against Processor without the prior written consent of the Council;
 - (c) at the Council's request and expense, allow the Council to conduct the defence of the Claim against Processor including settlement; and
 - (d) at the Council's expense, co-operate and assist to a reasonable extent with the Council's defence of the Claim against Processor.

13. TERM AND TERMINATION

- 13.1 This agreement shall commence on the Commencement Date and shall terminate on the End Date.
- 13.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, the Council may terminate this agreement with immediate effect by giving written notice to the Processor if:
- (a) the Processor commits a material breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of [30] days after being notified in writing to do so;
 - (b) the Processor:
 - (i) suspends, or threatens to suspend, payment of its debts;

- (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (iv) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
 - (v) (being a partnership) has any partner to whom any of clause 13.2(b)(i) to clause 13.2(b)(iv) apply;
- (c) the Processor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of the Processor with one or more other companies or the solvent reconstruction of the Processor;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Processor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Processor with one or more other companies or the solvent reconstruction of the Processor;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Processor (being a company);
- (f) the holder of a qualifying floating charge over the assets of the Processor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the Processor;
- (h) a creditor or encumbrancer of the Processor attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the Processor's assets and that attachment or process is not discharged within 14 days;
- (i) any event occurs or proceeding is taken with respect to the Processor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(h) (inclusive);
- (j) the Processor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (k) there is a change of control of the Processor (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.
- 13.4 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 13.5 On any termination of this agreement for any reason or expiry of the Term:
- (a) each party shall within agreed timescales return all Data, information, software, and other materials provided to it by the other party in connection with this agreement including all materials containing or based on the other party's Confidential Information;
 - (b) within agreed timescales the Processor shall ensure that all Relevant Data is deleted from the Processor System and provide written confirmation of the destruction of the Relevant Data on the Processor System [by the use of data destruction software certified to recognised international standards, including but not limited to CESG HMG Infosec Standard No: 5 Secure Sanitisation (Baseline and Enhanced)] or equivalent recognised industry destruction techniques such as shredding, degaussed (demagnetized) , incinerated or otherwise physically damaged prior to disposal.
- 13.6 Each party shall provide written confirmation of compliance with clause 13.5(a) and, in the case of the Processor only, clause 13.5(b) (in the form of a letter signed by its Authorised Person) no later than [14] days after termination of this agreement.
- 13.7 If a party is required or requested by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy under clause 13.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. That party shall not be in breach of clause 13.5 with respect to the retained documents or materials, but clause 6 shall continue to apply to them.

14. AUDIT

- 14.1 The Council has the right to audit the Processor's compliance with this agreement on giving seven days written notice to the Processor. At the Council's option, this audit may cover documents only or may include onsite audit, subject to notifying the Processor of the identity of any onsite auditors and giving confirmation that any external auditors have entered into appropriate confidentiality agreements.

15. ANTI BRIBERY

15.1 The Processor shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- (d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Processor in connection with the performance of this agreement;
- (e) immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Processor or acquires a direct or indirect interest in the Processor and the Processor warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement);
- (f) within two (2) months of the date of this agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Processor, compliance with this clause 15 by the Processor and all persons associated with it under clause 15.2. The Processor shall provide such supporting evidence of compliance as the Council may reasonably request.

15.2 The Processor shall ensure that any person associated with the Processor who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Processor in this clause 15 (**Relevant Terms**). The Processor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

15.3 For the purpose of this clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this

clause 15 a person associated with the Processor includes but is not limited to any subcontractor of the Processor.

16. INSURANCE

16.1 During the Term and for a period of twelve (12) years following expiry of termination of this agreement the Processor shall take out and maintain or procure the maintenance of the following minimum insurances:

- (a) £5 million public liability insurance is required in respect of each and every claim.
- (b) £5 million products liability insurance is respected in each and every claim.
- (c) £10million employers liability insurance is required in respect of each and every claim (*this would not be required if sole trader or business that only employs members of the family)
- (d) £2 million professional indemnity insurance is required in respect of each and every claim.

16.2 The Processor shall produce to the Council within five (5) working days of request, brokers letters for all insurance policies referred to in clause 16.1 or such other evidence as agreed between the Council and the Processor that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

16.3 The terms of any insurance or the amount of cover shall not relieve the Processor of any liabilities under this agreement. It shall be the responsibility of the Processor to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in clause **Error! Reference source not found..**

16.4 If, for whatever reason, the Processor fails to give effect to and maintain the insurances required by this agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Processor.

17. FREEDOM OF INFORMATION

17.1 The Processor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

17.2 The Processor shall and shall procure that its Sub-Contractors shall:

- (a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 17.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 17.4 In no event shall the Processor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 17.5 The Processor acknowledges that (notwithstanding the provisions of this clause 17 the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Processor or the Services:
 - (a) in certain circumstances without consulting the Processor; or
 - (b) following consultation with the Processor and having taken their views into account, provided always that where Clause 17.5(a) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Processor advanced notice, or failing that, to draw the disclosure to the Processor's attention after any such disclosure.
- 17.6 The Processor shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 17.7 The Processor acknowledges that the Commercially Sensitive Information is of indicative value only and that the Council may be obliged to disclose it in accordance with clause 17.5.

18. TRANSPARENCY REQUIREMENTS

- 18.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this agreement is not Confidential Information. The Council shall be responsible for determining at its absolute discretion whether any of the content of this agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this agreement, the Processor hereby gives their consent for the Council to publish this agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provision of the FOIA redacted) including from time to time agreed changes to this agreement, to the general public.
- 18.2 The Council may consult the Processor to inform its decision regarding any redactions but the Council shall have the final decision in its absolute discretion.
- 18.3 The Processor shall assist and cooperate with the Council to enable the Council to publish this agreement.

19. LEGISLATIVE CHANGE

- 19.1 The Processor shall bear the cost of ensuring that the Processing complies with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Processor at the date of this agreement.
- 19.2 Where such reasonably unforeseeable amendments are necessary the Processor shall use all reasonable endeavours to keep any additional costs to a minimum and shall apportion such increase in costs across the Processor's customer base for the relevant Software.

20. FORCE MAJEURE

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 that delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for [NUMBER] [weeks OR months], the party not affected may terminate this agreement by giving [14 days] written notice to the affected party.

21. ASSIGNMENT

- 21.1 This agreement is personal to the Processor and it shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Council (which is not to be unreasonably withheld or delayed).

22. WAIVER

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 any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24. NOTICE

- 24.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 24.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 24.3 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. For the purposes of this clause, writing shall not include e-mail.
- 24.4 A notice given under this agreement is not valid if sent by email.

25. ENTIRE AGREEMENT

- 25.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 25.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

26. VARIATION

Except as expressly provided in this agreement no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

27. SEVERANCE

- 27.1 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.
- 27.2 If 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.

28. NO PARTNERSHIP OR AGENCY

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, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

29. THIRD-PARTY RIGHTS

29.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

29.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

30. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

31. JURISDICTION

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

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

For and on behalf of Cheshire East Borough Council

**Authorised
Signatory:**

Name:

Title:

Date:

For and on behalf of [insert company name]

**Authorised
Signatory:**

Name:

Title:

Date:

Schedule 1 Key details

Part 1. Authorised Persons

Name	Position
[Insert name of person authorised to give instructions on behalf of the Council]	[Insert authorised person's job title]
[Insert name of person authorised to give instructions on behalf of the Council]	[Insert authorised person's job title]

Part 2. Authorised Purpose

[Insert details of authorised purpose for processing Council Data]
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Part 3. General instructions under clause 4.3

Subject matter of data being processed	[insert details]
Duration of processing	[Council Data shall be processed for the duration specified in the Services Agreement]
Nature and purpose of the processing	[insert details]
Type of personal data	[insert details]
Categories of data subjects	[insert details]
Obligations and rights of the controller	[insert details]
Backup Schedule	[specify schedule of data backups e.g. Daily / Weekly / Monthly]

Part 4. [Security measures]

[Insert ICT Security Questionnaire completed by the Processor]
[Insert details of security measures]