

Services and Data Protection Agreement

Version 5.0

Document Date: 30/09/2015
Customer Relations and Information Governance Team
Business Strategy and Support

If you require help in the interpretation of this document, contact the Information Governance Manager at keepdevonsdatasafe@devon.gov.uk

If this document has been printed please note that it may not be the most up-to-date version. For current guidance please refer to The Source.

This document can be made available to the public, upon request, under the Freedom of Information Act 2000.

TABLE OF CONTENTS

THIS AGREEMENT IS BETWEEN.....	3
BACKGROUND:-	3
1. DEFINITIONS AND INTERPRETATION.....	3
2. OBLIGATIONS OF THE PROVIDER	5
3. THE PROVIDER'S EMPLOYEES	6
4. RIGHTS OF DCC.....	6
5. WARRANTIES	7
6. INTELLECTUAL PROPERTY RIGHTS	7
7. INDEMNITY	7
8. TERM.....	7
9. TERMINATION	7
10. GENERAL.....	8
SCHEDULE ONE – PERSONAL CONFIDENTIALITY STATEMENT	9
PERSONAL UNDERTAKING	9

This document is for information only and must not be used for responding to this tender

This agreement should be completed and issued to third parties who will have access to Devon County Council data, which contains confidential, personal or sensitive business information.

This Agreement is made on [enter date]

THIS AGREEMENT IS BETWEEN

- (1) **Devon County Council** whose address is County Hall, Topsham Road, Exeter, Devon EX2 4QD ("**DCC**"); and
- (2) [enter third party's name] [a company registered in England and Wales with company number [xxxxxxx] and] whose address is [enter address] (the "**Provider**").

BACKGROUND:-

- (A) DCC wishes to appoint the Provider for the purpose of [enter description] (the "**Purpose**").
- (B) This Agreement sets out the terms on which the Provider will provide the Services to DCC, which includes the processing of the Data.

THE PARTIES agree as follows:-

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement, including the schedules, the definitions and rules of interpretation in this clause will apply, unless the context otherwise requires or permits:
 - 1.1.1. **Act:** means the Data Protection Act 1998 including where applicable the guidance and codes of practice issued by the Information Commissioner;
 - 1.1.2. **Agreement:** means these terms and conditions including the Schedule;
 - 1.1.3. **Completion:** means the time immediately following the completion of the Purpose;
 - 1.1.4. **Data:** means the information provided to the Provider for the Purpose;
 - 1.1.5. **Data Controller:** has the meaning set out in section 1(1) of the Data Protection Act 1998;

- 1.1.6. **Data Processor:** has the meaning set out in section 1(1) of the Data Protection Act 1998;
- 1.1.7. **Personal Confidentiality Statement:** is the statement set out in Schedule 1 of this Agreement;
- 1.1.8. **Personal Data:** has the meaning set out in section 1(1) of the Data Protection Act 1998;
- 1.1.9. **Processing and process:** have the meaning set out in section 1(1) of the Data Protection Act 1998;
- 1.1.10. **Intellectual Property Rights:** means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other similar rights;
- 1.1.11. **Parties:** means the parties to this Agreement and **Party** means either of them; and
- 1.1.12. **Services:** means the services to be provided to DCC for the Purpose under the contract for [enter description of contract (including the date the contract has been entered into if known and/or any DCC contract reference number)].
- 1.2. Words in the singular include the plural and in the plural include the singular. Clause headings will not affect the interpretation of this agreement.
- 1.3. References to clauses are, unless otherwise provided, references to the clauses of this agreement.
- 1.4. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6. In the event that there is any conflict between these terms and conditions and the Schedules they shall take the following order of precedence (from most to least important):

- 1.6.1. the terms;
- 1.6.2. Schedule 1.

1.7. For the purposes of this Agreement, DCC is the Data Controller and the Provider is the Data Processor of any Personal Data.

2. OBLIGATIONS OF THE PROVIDER

2.1 The Provider will use all reasonable skill and care in providing the Services.

2.2 The Provider will process the Data only to the extent, and in such a manner, as is necessary for this Agreement and will not process the Data for any other purpose.

2.3 The Provider will:

- (a) process the Data in accordance with the Act, in so far as it applies;
- (b) take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss of, destruction of, or damage to Personal Data;
- (c) act only on instructions from Devon County Council and in accordance with this agreement; and
- (d) abide by the Personal Confidentiality Statement.

2.4 The Provider will keep a written record of any processing of Data it carries out on behalf of DCC.

2.5 In the event that the Provider receives any complaint, notice or communication from a third party in connection with the Services, it will immediately notify DCC in writing to Customer Relations & Information Governance Team, County Hall, Room 120, Topsham Road, Exeter, EX2 4QD and provide DCC with full co-operation and assistance dealing with such complaint, notice or communication.

2.6 The Provider will promptly comply with any reasonable request received from DCC in relation to the Data.

2.7 The Provider will keep all information (written or oral) confidential, in so far as permitted by law relating to any Data. The Provider will not be restricted by this Agreement in its use of any Data which is in the possession of the Provider prior to the date of this Agreement or in the public domain (other than as a result of a breach of this Agreement).

- 2.8 The Provider will not disclose or transfer the Data in whole or in part to any other person without DCC's written consent (not to be unreasonably withheld or delayed), except to its employees who have a need to know and involved in the performance of the Services.
- 2.9 The Provider will promptly inform DCC if they become aware that any Data is lost. The Provider will recover such Data at its own expense. If equipment containing the data has been lost or stolen, the Provider will notify the DCC Information Governance Manager immediately at KeepDevonsDataSafe@devon.gov.uk.
- 2.10 The Provider will not transfer any Personal Data outside the European Economic Area without the prior written consent of DCC.

3. THE PROVIDER'S EMPLOYEES

- 3.1 The Provider will ensure that access to the Data is limited to:
- (a) those employees who need access to the Data for the Purpose; and
 - (b) in the case of any access by any employee, such part or parts of the Data as is strictly necessary for performance of that employee's duties under this Agreement.
- 3.2 The Provider will ensure that any of their employees, agents, subcontractors or professional advisors who have access to the Data under this Agreement:
- (a) are informed of the confidential nature of the Data;
 - (b) have undertaken training in the laws relating to handling Personal Data;
 - (c) are aware of the Provider's obligations under this Agreement; and
 - (d) abide by the Personal Confidentiality Statement.
- 3.3 The Provider will use reasonable endeavours to ensure the reliability of any the Provider employees who have access to the Data.

4. RIGHTS OF DCC

- 4.1 DCC is entitled, on giving at least five working days' notice to the Provider, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of the Data.
- 4.2 The requirement under clause 4.1 to give notice will not apply if DCC believes that the Provider is in breach of any of its obligations under this Agreement.

5. WARRANTIES

- 5.1 Each Party warrants to the other that it is duly authorised to enter into this Agreement.
- 5.2 The Provider warrants that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 5.3 The Provider warrants that it will not authorise any third party or sub-contractor to process the Data.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Provider agrees and acknowledges that any Intellectual Property Rights in the Data belongs to DCC and that the Provider does not acquire any rights, title or interest in such Data, save as granted under this Agreement.
- 6.2 DCC hereby grants the Provider a royalty free licence to process the Data under this Agreement. For the avoidance of doubt, this licence shall terminate automatically on termination of this Agreement.

7. INDEMNITY

- 7.1 The Provider agrees to indemnify and hold DCC harmless against all costs, claims, losses, damages or expenses (including legal expenses) incurred by DCC as a result of the Provider failure to comply with its obligations under this Agreement and the Act.

8. TERM

- 8.1 This Agreement will commence on the date of this Agreement.
- 8.2 Immediately after Completion, the Provider will delete all Data and destroy any copies of the Data in its possession (unless otherwise stipulated).

9. TERMINATION

- 9.1 This Agreement will terminate automatically upon execution of the Purpose and the Provider having complied with clause 8.2, unless terminated earlier in accordance with this clause.

9.2 Except as provided in this Agreement, neither Party will have any further obligation to the other under this agreement following its termination.

9.3 Termination of this Agreement will not affect any rights, remedies or obligations of the Parties that have accrued or become due prior to termination.

10. GENERAL

10.1 Neither Party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other Party.

10.2 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.

10.3 This Agreement will be governed and construed in accordance with the laws of England and Wales.

10.4 The Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

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

Signed by []
on behalf of **Devon County Council** [JOB TITLE]

Signed by []
on behalf of **[Enter name of Provider]** [JOB TITLE]

A copy of this agreement should be held by both parties.

SCHEDULE ONE – PERSONAL CONFIDENTIALITY STATEMENT

NB. Statement outlining *personal responsibility* concerning security and confidentiality of information (relating to clients, staff and the business of Devon County Council).

NB. This statement must be signed by all employees of the Provider, (including sub-contractors) where access to the Data will be granted to ten employees or less. If more than ten employees will have access to the Data, this statement should be signed by the company director or other equivalent or relevant person, on behalf of their employees.

- 1 Any confidential and/ or personal information accessed or acquired by you or your employees in connection with the performance of any contract between you/your employer and Devon County Council must not be disclosed to any other person unless in pursuit of your/your employees duties as detailed in the contract between Devon County Council and you/your employer. This condition applies during the length of this contract with Devon County Council and after that ceases.
- 2 Confidential information includes all information relating to the business of Devon County Council and its clients and employees.
- 3 The Data Protection Act 1998 regulates the use of all personal information and included electronic and paper records of identifiable individuals (clients and staff). Devon County Council is registered in accordance with this legislation. If you or your employees are found to have used any information you/they have seen or heard other than for the purposes of your/their contractual responsibilities you and/or your employer may face legal action.

PERSONAL UNDERTAKING

- 4 I understand that I and my employees are bound by a duty of confidentiality and agree to adhere to the conditions within this Agreement with Devon County Council and understand my personal responsibilities to comply with the requirements of the Data Protection Act 1998.

NAME OF CONTRACTING ORGANISATION:	
PRINT NAME:	
SIGNATURE:	
POST HELD:	
DATE:	