

THIS AGREEMENT is dated \_\_\_\_\_ day of \_\_\_\_\_ 2018

BETWEEN:

- (1) NOTTINGHAM CITY COUNCIL of Loxley House, Station Street, Nottingham NG2 3NG (the "Council"); and
- (2) LEICESTERSHIRE COUNTY COUNCIL of County Hall, Glenfield, Leicester, LE3 8SR (the "Provider")

together referred to as the "Parties"

WHEREAS:

- (A) The Data Protection Legislation requires that where a Data Controller uses a Data Processor it must have a written contract (or other legal act) in place to evidence and govern their relationship.
- (B) The Parties have entered into a partnership to establish a shared service centre to carry out the processing activities as set out in Annex 1. East Midlands Shared Services ("EMSS") provide processing support for the partner authorities, the nature of these arrangements are set out in the Partnership Agreement as well as governance (via a Joint Committee to whom control of the relevant services has been delegated) and indemnities. The agreement identifies Nottingham City Council as the 'host authority' which includes holding contracts on behalf of the partnership. Leicestershire County Council is the 'employing authority' for the staff under the control of the Joint Committee.
- (C) The Parties agree to comply with the provisions of this Agreement in respect of the Personal Data and the processing activities.

NOW IT IS AGREED AS FOLLOWS:

- 1. In this Agreement unless the context requires the following will have the meanings set out below:

<b>"Controller"</b>	has the meaning given in the Data Protection Legislation
<b>"Data Protection Impact Assessment"</b>	An assessment by the Controller of the impact of the envisaged processing on the protection of the Personal Data
<b>"Data Protection Legislation"</b>	For the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications

	(Lawful Business Practices)(Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Data Protection Act 2018 ,the GDPR and all applicable laws and regulations relating to processing of personal data and privacy including all applicable guidance, codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time.
<b>“Data Subject”</b>	Means an individual who is the subject of Personal Data
<b>“DPA 2018”</b>	Means the Data Protection Act 2018 which comes into force on the 25 May 2018 and any equivalent legislation amending or replacing the Data Protection Act 2018
<b>“East Midlands Shared Services”</b>	Means the shared service centre established by the two councils and managed by a Joint Committee
<b>“Employing Authority”</b>	Means Leicestershire County Council who employ the staff on behalf of the partnership
<b>“GDPR”</b>	Means (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 28 May 2018 and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679)
<b>“Host Authority”</b>	Means Nottingham City Council who provide financial and procurement services to Joint Committee and EMSS
<b>“Joint Committee”</b>	Means the body to which Nottingham City Council and Leicestershire County Council have delegated control of processing of transactional payroll, HR and finance activities.
<b>“Law”</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable Community right within the meaning of section 2 of the European Communities Act 1972, bye-laws, regulatory policy, guidance or industry code, judgment of a relevant Court of Law, or directives or requirements of any regulatory body of which the Provider or its Staff are bound to comply.
<b>“Partnership Agreement”</b>	Means the legal arrangements for the establishment of the shared service centre and

	details the governance and relationship between the partners
<b>“Personal Data”</b>	has the meaning given in the Data Protection Legislation
<b>“Personal Data Breach”</b>	Has the meaning as set out in the Data Protection Legislation
<b>“Processor”</b>	has the meaning given in the Data Protection Legislation
<b>“Staff”</b>	means all persons employed by the Provider (including volunteers, agency, locum, casual or seconded personnel) in the provision of any services or any activity related to or connected with the provision of any services

2. The Parties acknowledge that for the sole purpose of fulfilling the data processing obligations under Annex 1 of this Agreement and the Data Protection Legislation, the Council is the Controller and the Provider is the Processor.
3. The Provider shall only process Personal Data in accordance with the Council’s instructions as set out in Annex 1 (which may be amended from time to time), unless otherwise required to do so by law. Where the Provider is relying on law as the basis for processing Personal Data it shall notify the Council of this prior to any processing taking place unless that law prohibits such information on important grounds of public interest.
4. The Council will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Agreement.
5. If required the Provider shall, prior to the commencement of any processing, provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment. Such assistance may include:
  - 5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services being provided by EMSS;
  - 5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

6. The Provider shall notify the Council immediately if it considers any instructions from the Council to be in breach of Data Protection Legislation.
7. The Provider, in respect of any processing of Personal Data under this Agreement shall:
  - 7.1 have in place, and maintain, appropriate technical and organisational measures (which may include as appropriate encryption and pseudonymising Personal Data), reviewed and approved by the Council from time to time. Such measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data (such measures having taken into regard the nature of the data to be protected, the state of technological development and the cost of implementation);
  - 7.2 not transfer Personal Data outside of the European Economic Area unless with the prior written consent of the Council, and subject to the Council and Processor being satisfied that sufficient safeguards are in place in respect of the transfer of the Personal Data and to protect the rights of the Data Subject;
  - 7.3 advise the Council when data is due for deletion and delete on the instruction from the Council as the appropriate retention period expires or return all Personal Data (including copies of it) to the Council on termination of the Partnership Agreement which ever takes place first unless the Provider is required by Law to retain the same.
8. The Provider shall ensure that its staff:
  - 8.1 only process Personal Data in accordance with this Agreement;
  - 8.2 are aware of and comply with the Provider's duties under the Partnership Agreement;
  - 8.3 enter into and be subject to, as appropriate, confidentiality agreements with the Provider or any sub-contractor;
  - 8.4 are made fully aware of the confidential nature of the Personal Data and not to publish, disclose or divulge any of the Personal Data to a third party unless directed to do so under this Agreement;
  - 8.5 have undergone appropriate training on an annual basis in the use, care, protection and handling of Personal Data.
9. The Provider shall notify the Council within two (2) working days and shall provide full assistance and further information if it receives:
  - 9.1 a request for Personal Data from a Data Subject;

- 9.2 a request to rectify, block or erase any Personal Data;
  - 9.3 any other request in relation to the Council or Provider's obligations under Data Protection Legislation;
  - 9.4 any communication from the Information Commissioner, or regulations authority in connection with Personal Data being processed under this Agreement;
  - 9.5 a request from any third party for disclosure of Personal Data which disclosure is required by Law.
10. The Provider shall notify the Council without delay and in any event within 24 hours upon becoming aware of a Personal Data Breach or loss of Personal Data processed under this Agreement in order to enable the Council to report the breach to the Information Commissioner's Office within the 72 hour deadline imposed by the GDPR and to assist the Council, as directed, in the investigation, mitigation and remediation of any Personal Data Breach.
  11. In the event of any personal data breach the Provider shall assist the Council in issuing any notifications to data subjects.
  12. In the event of any action, claim, demand, expense or cost suffered or made against either Party arising out of or in connection with delegated functions then the terms of clause 15.3 of the Partnership Agreement shall apply
  13. The Provider shall keep and maintain accurate records and information to demonstrate compliance with its obligations under this Agreement and any additional Data Protection Legislation obligations.
  14. The Provider shall not appoint another processor (whether as a sub-contractor or otherwise) of Personal Data under this Agreement unless the Provider has first obtained the written consent of the Council (such consent not to be unreasonably withheld) in which case the Provider shall enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this Agreement and in any event as between the Council and the Provider, the Provider shall remain liable for all acts or omissions of any sub-processor appointed by it pursuant to this clause  
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  15. Where the terms of this Agreement are inconsistent with the terms of the Partnership Agreement then to the extent that the inconsistency concerns the processing of Personal Data under Annex 1 then the terms of this Agreement shall prevail.

## ANNEX 1


### Data Processing Instructions

Here you must include and clearly set out the following if there will be any processing of data:

All data is collected for the sole use of:

- Recruiting NCC staff
- Providing payroll and transactional HR services for NCC and NCH
- Answering queries on the above services
- Paying invoices
- Collecting monies owed to NCC & NCH

<b>Description:</b>	<b>Scope:</b>
Subject Matter	Personal data relating to NCC & NCH employees, potential employees (NCC only) and contractors to manage its employment relationship; personal data relating to suppliers and payees to ensure payment of invoices and monies owed and personal data relating to debtors of the Council to enable the collection of monies owed.
Duration:	Ongoing
Nature and Purpose of the Processing	<p>The personal data needs to be processed to allow staff to enter into an employment contract with NCC &amp; NCH and to meet its obligations under the employment contract.</p> <p>Data is processed to:</p> <ul style="list-style-type: none"><li>▪ Run recruitment processes (NCC only)</li><li>▪ Maintain accurate and up-to-date employment records and contact details (including details of who to contact in the event of an emergency), and records of contractual and statutory rights</li><li>▪ Maintain record repository of disciplinary and grievance processes, to ensure acceptable conduct within the workplace</li><li>▪ Operate and keep a record of absence and absence management procedures, to allow effective workforce</li></ul>

	<p>management and ensure that staff are receiving the pay or other benefits to which they are entitled</p> <ul style="list-style-type: none"> <li>▪ Operate and keep a record of other types of leave (including maternity, paternity, adoption, parental and shared parental leave), to allow effective workforce management, to ensure that we comply with duties in relation to leave entitlement.</li> <li>▪ Ensure effective general HR and business administration</li> <li>▪ Provide information to allow the Council to respond to legal claims.</li> </ul> <p>Personal data needs to be processed for the purposes of accounts payable and accounts receivable. This data is processed to:</p> <ul style="list-style-type: none"> <li>▪ Set up suppliers and payees in Oracle (NCC only)</li> <li>▪ Process invoices for payment</li> <li>▪ Make payments and retain records of payments</li> <li>▪ Issue invoices for payment</li> <li>▪ Set up records for collection of debts</li> <li>▪ Manage payments made to the Council</li> <li>▪ Set up Direct Debits (NCC only)</li> </ul>
Type of Personal Data	 <p>GDPR Data Audit (Working).xlsx</p>
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers)
Plan for return and destruction of the data once processing complete	See paragraph 7.3