

**THIS AGREEMENT** is made the                      day of                      2017

BETWEEN:

- (1) The Police and Crime Commissioner for Leicestershire of Leicestershire Police Force Headquarters, St. Johns, Enderby, Leicestershire, LE19 2BX (the "PCC"); and
- (2) [*insert name of party to receive the Funding*] [*of[insert address]*] (the "Organisation") each of the PCC and the Organisation being a **Party** and together the PCC and the Organisation are the **Parties**.

## **Introduction**

- A The Organisation applied to the PCC by an application dated [*insert date*] for a grant for financial assistance towards the costs of the Scheme (as defined below).
- B The PCC has considered the application, wishes to support the Scheme by the provision of the Funding (as defined below) and decided to approve the making of a grant to the Organisation.
- C This Agreement sets out the terms and conditions that will apply in respect of the Funding.

## **THE PARTIES AGREE AS FOLLOWS**

### **1 Definitions and Interpretation**

- 1.1 The terms and expressions used in this Agreement shall have the meanings set out below:
  - 1.1.1 "Authorised Representative" means those persons appointed by the Parties in accordance with Clause 11;
  - 1.1.2 "Commencement Date" means [*insert date*]
  - 1.1.3 "Data Protection Legislation" means:
    - 1.1.3.1 the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any Law implementing the Data Protection Directive 95/46/EC of 24 October 1995 or the Privacy and Electronic Communications Directive 2002/58/EC of 12 July 2002; and/or
    - 1.1.3.2 the General Data Protection Regulation (EU) 2016/679 and/or any corresponding or equivalent national Law; and/or
    - 1.1.3.3 any other applicable Law relating to the Processing, privacy and use of Personal Data;
  - 1.1.4 "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" have the meaning given to them in the Data Protection Legislation;
  - 1.1.5 "DBS" means the Disclosure and Barring Service;
  - 1.1.6 "Expiry Date" means [*insert date*];
  - 1.1.7 "EIR" means the Environmental Information Regulations 2004;
  - 1.1.8 "FOIA" means the Freedom of Information Act 2000;
  - 1.1.9 "Force Majeure Event" means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations

under this Agreement;

- 1.1.10 “Funded Service” means any of the services specified in the Schedule;
- 1.1.11 “Funding” means the sum or sums of money stated in the Schedule that are to be paid by the PCC to the Organisation under the terms of this Agreement;
- 1.1.12 “Funding Conditions” means the purpose and conditions of the Funding set out in Clause 3;
- 1.1.13 “Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill, diligence, prudence and foresight which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in the same or a similar type of undertaking as the relevant Party under the same or similar circumstances, seeking in good faith to comply with its contractual and other obligations;
- 1.1.14 “Grant Period” means the period from the Commencement Date to:
  - 1.1.14.1 the Expiry Date, or
  - 1.1.14.2 following an extension pursuant to Clause 2.2, the date of expiry of the extended period;
- 1.1.15 “Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
- 1.1.16 “Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- 1.1.17 “Negative Outcome” means the Organisation’s current performance levels measured against the Outcome Specification in respect of any of the Funded Service will not meet the Outcome Specification;
- 1.1.18 “Outcome Specifications” means the outcomes to be achieved for the Funded Services as set out in the Schedule;
- 1.1.19 “Regulated Activity” in relation to children, has the meaning given in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, has the meaning in Part 2 of Schedule 4 of the Safeguarding Vulnerable Groups Act 2006;
- 1.1.20 “Regulated Activity Provider” has the meaning given to it in section 6 of the Safeguarding Vulnerable Groups Act 2006;
- 1.1.21 “Regulatory Body” means any government department or regulatory, statutory or other entity, committee or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of the PCC or the Organisation;
- 1.1.22 “Relevant Staff” means any and all individuals who are (or are to be) engaged by the Organisation to provide a Regulated Activity;
- 1.1.23 “Scheme” means the scheme set out in the Schedule;
- 1.1.24 “VAT” means value added tax in accordance with the provisions of the Value

Added Tax Act 1994 and any similar fiscal or sales tax;

1.1.25 “Victim” means any victim of crime as defined in Code of Practice for Victims of Crime (2015), introduction paragraphs 16 and 20-30; and

1.1.26 “Working Day” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

1.2 Unless the context otherwise requires, the interpretation and construction of this Agreement shall be subject to the following provisions:

1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

1.2.3 references to Clauses or to the Schedule are to clauses or the schedule of this Agreement;

1.2.4 references to legislation:

1.2.4.1 include any secondary or subordinate legislation made under or pursuant to that legislation; and

1.2.4.2 include any modification or re-enactment of that legislation;

1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

1.2.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;

1.2.8 references to this Agreement means:

1.2.8.1 the Clauses;

1.2.8.2 the Schedule; and

1.2.8.3 any other documents referred to in or attached to the Schedule; and

1.3 In the event of any conflict or inconsistency between the Clauses of this Agreement and the Schedule, the Clauses shall prevail.

## **2 Commencement and Duration**

2.1 2.1 The rights and obligations of the Parties under this Agreement shall be deemed to have taken effect on the Commencement Date and shall, unless terminated earlier in accordance with this Agreement, continue in force for the Grant Period.

2.2 Subject to Clause 2.3, either Party may by giving not less than one month’s written notice (such notice to expire on or prior to the Expiry Date) to the other Party, extend this Agreement for not more than three months’ from the Expiry Date provided that such notice shall not be effective unless such extension is agreed in writing by the other Party.

2.3 Any agreement to extend the term of this Agreement beyond the Expiry Date shall include an agreement as to any Funding payable for such extension period.

2.4 Where this Agreement is extended in accordance with Clauses 2.2 and 2.3, all other provisions of this Agreement shall continue in full force and effect during any period of extension.

## **3 Funding Conditions**

- 3.1 The Organisation shall use the Funding:
- 3.1.1 in accordance with the scope and nature of, Funded Service;
  - 3.1.2 to achieve the Outcome Specifications; and
  - 3.1.3 in accordance with the terms and conditions of this Agreement.
- 3.2 The Organisation shall apply the Funding only in the amounts and for the purposes of the Funded Services set out in the Schedule and for no other purpose or purposes.
- 3.3 The Organisation shall only use the Funding in respect of eligible expenditure. The following costs are not eligible expenditure: payments that support activity intended to influence or attempt to influence parliament, government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action.
- 3.4 The Organisation shall not be permitted to change, amend or vary the purposes, scope or nature of the Funded Services without the prior written consent of the PCC.
- 3.5 In the event that the Organisation applies for or secures any additional funding for the Funded Services, the Organisation shall give the PCC prior written notice as soon as reasonably practicable of its intention to apply for the receipt of additional funding, and shall provide the PCC with all reasonable information and confirmation of any application or grant of funding. The PCC may, in its absolute discretion, permit the Organisation to amend the amount of the Funding and/or the Funded Service as a result of the Organisation securing alternative or additional funding for the Funded Services.
- 3.6 The Funded Services must be in the interests of the Victim and be:
- 3.6.1 free of charge;
  - 3.6.2 confidential;
  - 3.6.3 non-discriminatory (including being available to all regardless of residence status, nationality or citizenship);
  - 3.6.4 available whether or not a crime has been reported to the police; and
  - 3.6.5 available before, during and for an appropriate time after any police investigation or criminal proceedings.
- 3.7 The Funding provided for one Funded Service shall not be applied to another Funded Service.

#### **4 Payment Provisions**

- 4.1 The PCC shall pay the Funding to the Organisation by instalments as set out in the Schedule to the Organisation's nominated bank account notified to the PCC in writing on or before the Commencement Date.
- 4.2 The PCC reserves the right to withhold payment of any final instalment until the Outcome Specification has been met to his reasonable satisfaction.
- 4.3 If any amount due under this Agreement is subject to VAT or any other tax, the PCC shall not be responsible to pay to the Organisation for that VAT or other tax in addition to the Funding.
- 4.4 The Organisation shall notify the PCC as soon as reasonably practice if any underspend is forecast.
- 4.5 If an overpayment of the Funding is made at any time, the Organisation shall repay any overpayment within 30 days of receiving any request for repayment from the PCC.
- 4.6 Within 30 days of the end of each financial year of the Grant Period, the Organisation

shall repay to the PCC any unspent Funding for that financial year.

## **5 Warranties**

- 5.1 The Organisation warrants and represents to the PCC that:
- 5.1.1 it has undertaken all appropriate disclosure checks through the DBS and, having undertaken such checks, has no reason to believe that any Relevant Staff are barred from providing the Regulated Activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006;
  - 5.1.2 it has the right, power and authority to enter into this Agreement and to perform its obligations under this Agreement;
  - 5.1.3 all information provided by the Organisation to the PCC is at the Commencement Date true and accurate and that it is not aware, having made all reasonable enquiries and to the best of its knowledge and belief, that any change will occur after the Commencement Date which will render that information untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operation or prospects of the Organisation that will affect the Funded Services since the date any information was provided;
  - 5.1.4 none of the information provided by the Organisation to the PCC infringes the Intellectual Property Rights of any third party; and
  - 5.1.5 the Funded Services will be performed:
    - 5.1.5.1 by suitably qualified and competent personnel who shall exercise all due skill and care and all due diligence in the execution of those services;
    - 5.1.5.2 in accordance with Good Industry Practice;
    - 5.1.5.3 so as to conform with all applicable Law relating to those services.
- 5.2 The Organisation shall notify the PCC in writing as soon as it is reasonably able upon becoming aware of any breach of any warranty or representation set out in Clause 5.1. When notifying the PCC of a breach the Organisation shall use all reasonable endeavours to provide such documentation, information, details and assistance in respect of the breach that the PCC may reasonably request.

## **6 Intellectual Property Rights**

- 6.1 Any Intellectual Property Rights belonging to either Party created prior to the Commencement Date, or created after the Commencement Date without connection to the Parties obligations under this Agreement shall continue to belong to that Party (or where applicable, the third party from whom the right to use such rights has been derived).
- 6.2 The Organisation shall ensure that any Intellectual Property Rights created in the furtherance of a Funded Service vests in the Parties jointly. This shall include but is not limited to processes, procedures, methodology and manuals. The Organisation shall grant to the PCC at no cost an irrevocable, royalty-free perpetual license to use and to sub-license the use of any material created by the Organisation under the terms of this Agreement for such purposes as the PCC shall deem appropriate.
- 6.3 The Organisation shall indemnify and keep indemnified and hold harmless the PCC from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by it as a result of or in connection with any action, demand or claim that use or possession of any information supplied by it to the PCC or in connection with the Funded Service(s) or the provision of any services by it or its subcontractors pursuant to the Funded Service, infringes the Intellectual Property Rights of any third

party (“IPR Claim”), provided that :

- 6.3.1 the PCC notifies the Organisation in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
- 6.3.2 the PCC does not makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Organisation (which shall not be unreasonably withheld or delayed);
- 6.3.3 if the Organisation requests, the Organisation (at its own expense) shall have the conduct of or settle all negotiations and litigation arising from the IPR Claim; and
- 6.3.4 if the Organisation requests, the PCC shall (at the Organisation’s expense) give the Organisation all reasonable assistance in relation to the Organisation’s conduct, settlement and/or negotiation of any IPR Claim.

## **7 Exclusion and limitation of liability**

- 7.1 Neither Party limits its liability for:
  - 7.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or
  - 7.1.2 fraud or fraudulent misrepresentation by it or its employees.
- 7.2 Subject to Clause 7.1, the PCC's total aggregate liability in respect of all claims, losses or damages, whether arising from contract, tort (including negligence) or otherwise under or in connection with this Agreement shall in no event exceed the aggregate of sums paid by it to the Organisation or, if greater, an amount equivalent to the Funding.
- 7.3 Subject to Clause 7.1, the PCC shall not be liable to the Organisation for:
  - 7.3.1 any indirect, special or consequential loss or damage;
  - 7.3.2 any loss of profits, turnover, data, business opportunities, anticipated savings or damage to goodwill (whether direct or indirect); or
  - 7.3.3 any loss, whether direct or indirect, arising from:
    - 7.3.3.1 the Organisation conducting or undertaking the Funded Services; or
    - 7.3.3.2 the use of the Funding, its late payment (in whole or in part) or its withdrawal.

## **8 Confidentiality**

- 8.1 During the Grant Period and after termination or expiry of this Agreement for any reason, neither Party shall:
  - 8.1.1 disclose any information concerning or relating to the other Party, which a reasonable person would regard as confidential, to any other person other than with the prior written consent of the other Party or in accordance with Clause 8.2 or Clause 8.3; or
  - 8.1.2 use any of the other Party’s confidential information for any purpose other than to perform its obligations and/or exercise its rights under this Agreement.
- 8.2 A Party (“**Receiving Party**”) may disclose confidential information belonging to the other Party to its employees, agents, representatives, sub-contractors and advisers to the extent that it is necessary to enable the Receiving Party to perform its obligations and/or exercise its rights under this Agreement provided that the Receiving Party shall ensure that each recipient:
  - 8.2.1 only uses the information for that purpose;

- 8.2.2 understands that the information is confidential;
  - 8.2.3 is made aware of and complies with all the obligations of confidentiality set out in this Agreement. The Receiving Party shall be responsible for any failure by any of its recipients to observe the obligations of confidentiality in this Agreement as though it were a breach committed by the Receiving Party.
- 8.3 The obligations contained in this Clause 8 shall not apply to any confidential information which:
- 8.3.1 was at the Commencement Date, or at any time after the Commencement Date comes into, the public domain other than through breach of this Agreement;
  - 8.3.2 can be shown by the Receiving Party to the reasonable satisfaction of the other Party to have been known by, or available (on a basis that did not require it to be maintained as confidential) to the Receiving Party before it was provided to it by the other Party;
  - 8.3.3 subsequently comes lawfully into the possession of the Receiving Party from a third party (who has not derived it directly or indirectly from the other Party), who is rightfully in possession of such confidential information and who is not bound as to its use or disclosure by an obligation of confidence or secrecy to the other Party; or
  - 8.3.4 is required by Law, court order or any Regulatory Body, to be disclosed; or
  - 8.3.5 in the case of the PCC, is disclosed pursuant to the PCC's rights set out in Clause 24.

## **9 Safeguarding**

- 9.1 Where, in relation to the Scheme, the Organisation is a Regulated Activity Provider with ultimate responsibility for the management and control of a Regulated Activity, it shall:
- 9.1.1 ensure that all Relevant Staff are subject to a valid enhanced disclosure check for the Regulated Activity undertaken through the DBS prior to commencing any Regulated Activity;
  - 9.1.2 monitor the level and validity of the checks undertaken pursuant to Clause 9.1.1 for all Relevant Staff; and
  - 9.1.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Victims or service users.
- 9.2 The Organisation shall immediately provide to the PCC any relevant information reasonably requested by the PCC to enable the PCC to be satisfied that the obligations of this Clause 9 have been met.
- 9.3 The Organisation shall immediately refer to the DBS information about any person in respect of whom it declines or withdraws permission to be involved in the Scheme (or would have done so, if that person had not otherwise ceased to be involved) because, in its opinion, that person has harmed or poses a risk of harm to Victims or service users.

## **10 Compliance with Law**

- 10.1 The Organisation shall comply, and shall (at its own expense) ensure that its employees, agents and representatives shall comply, with all applicable Laws (including in relation to the safeguarding of children and adults) in the performance of the Organisation's duties under this Agreement, provided that the Organisation shall

not be liable for any breach to the extent that such breach is directly caused or contributed to by any negligent act or omission of, or breach of this Agreement by, the PCC or its employees, agents and representatives.

## **11 Authorised Representatives**

11.1 The PCC's Authorised Representative shall be *[insert name]*, or such other person appointed as such by the PCC and notified to the Organisation pursuant to Clause 35.

11.2 The Organisation's Authorised Representative shall be *[insert name]* or such other person appointed as such by the Organisation and notified to the PCC pursuant to Clause 35.

## **12 Review, Monitoring and Information**

12.1 The Organisation shall *[within 2 Working Days of the last day of the month after each half year]* provide reports to the PCC setting out:

12.1.1 progress made *[during the last half year]* towards achieving the Outcome Specifications; and

12.1.2 eligible expenditure incurred *[during the previous last half year]*.

12.2 Each Party shall, if requested to do so by the other Party, meet within *[5 Working Days of the request (or such other reasonable time agreed by the Parties)]* to:

12.2.1 review the performance of the Funded Services and progress made towards achieving the Outcome Specifications; and

12.2.2 assess whether a Negative Outcome has arisen or is likely to arise.

## **13 Records**

13.1 The Organisation shall maintain comprehensive and up-to-date records of all expenditure made from the Funding or for the Funded Services, including such details as the PCC may reasonably require to ensure that the Funding is being used in accordance with this Agreement solely for and in connection with the Funded Services.

13.2 The Organisation shall make its records and books of account in relation to the Funding available to the PCC or any person nominated by the PCC for the purposes of inspection and audit on the giving of reasonable notice by the PCC.

13.3 The Organisation shall keep all records relating to the Funding for a period of seven years from expiry of the Grant Period.

## **14 Procurement of Services**

14.1 In the event of the Organisation seeking to procure goods or services in order to achieve the Outcome Specifications, the Organisation will ensure that its procurement processes comply with the laws of England and Wales and the European Union and with its own procurement processes and financial regulations.

14.2 The Organisation shall permit the PCC or any person nominated by the PCC to attend and observe any pre-tender meetings, tender evaluations and bidder presentations for the purpose of satisfying the PCC that any procurement process is conducted in accordance with the terms of this Agreement.

14.3 The Organisation shall notify the PCC as soon as reasonably practicable following the award of any contract to deliver part of the Funded Services including the details of the successful tenderer(s).

14.4 If any Funding provided by the PCC is used to procure goods or services and VAT is included in the cost, the Organisation shall recover that VAT from HM Customs and Excise where it is recoverable and shall reinvest such recovered VAT in the Funded Services.

## **15 Accounting**

- 15.1 The Organisation shall provide to the PCC if requested within six weeks of the expiry of the Grant Period an account setting out details of all expenditure from the Funding and of any surpluses, certified as accurate by the Organisation's external auditor.

## **16 Publicity**

- 16.1 The Organisation shall acknowledge the contribution of the Funding by the PCC in any annual report, audited accounts, or other material or event publicising the Scheme in a manner to be agreed between the Parties.
- 16.2 The PCC shall be entitled to promote the Funding of the Scheme in any publicity material or media statement issued by the PCC.
- 16.3 The Organisation shall (and shall use all reasonable endeavours to procure that its employees, agents, professional advisers and sub-contractors shall) not include in any published material the name, logo or style of "Leicestershire Police" nor "the Police and Crime Commissioner for Leicestershire"; any Intellectual Property Rights associated therewith; nor any photograph or drawing depicting any officer of Leicestershire Police force without the PCC's prior written consent.

## **17 Variation**

- 17.1 No amendment or variation to this Agreement shall have effect unless made in writing and executed on behalf of both Parties.

## **18 Indemnity**

- 18.1 Subject to Clause 18.2, the Organisation shall indemnify the PCC on demand from and against all liabilities arising from third party actions, claims or demands brought against the PCC for breach of statutory duty concerning the Funded Services which may arise out of or in consequence of a breach by the Organisation of its obligations under this Agreement.
- 18.2 The Organisation shall not be responsible under Clause 18.1 to the extent that any liability arises out of or in consequence of a breach by the PCC of its obligations under this Agreement or any negligent act or omission on the part of the PCC.

## **19 Breach of Funding Conditions**

- 19.1 If the Organisation fails to comply with any of the Funding Conditions set out in this Agreement, or if any of the events mentioned in Clause 19.2 occur, then the PCC may withhold payment of any future instalment of the Funding and/or require all or any part of the Funding to be repaid. The Organisation must repay any amount required to be repaid under this Clause 19 within 30 days of receiving the demand for repayment.
- 19.2 The events referred to in Clause 19.1 are as follows:
- 19.2.1 the Organisation purports to transfer or assign any rights, interests or obligations arising under this Agreement without the agreement in advance of the PCC;
  - 19.2.2 any information provided in relation to the Funding (or in a claim for payment) or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the PCC considers to be material;
  - 19.2.3 any member of the Organisation's governing body, staff or volunteers acts dishonestly or fraudulently;
  - 19.2.4 the Organisation takes inadequate measures to investigate and resolve any reported irregularity.
- 19.3 If during the term of this Agreement there is a breach of the Funding Conditions in

respect of any of the Funded Services the PCC may (at its option) write to the Organisation giving particulars of the breach and in that event:

19.3.1 the Organisation shall provide the PCC with a draft performance improvement plan for that Funded Service within 10 Working Days of the date of the Breach Notice;

19.3.2 the PCC shall either accept the draft performance improvement plan within five Working Days of receipt or inform the Organisation why it cannot accept the draft performance improvement plan; and

19.3.3 if the PCC does not accept the draft performance improvement plan:

19.3.3.1 the Parties shall then meet to discuss the PCC's concerns;

19.3.3.2 the Organisation shall provide a revised draft performance improvement plan within five Working Days of the meeting; and

19.3.3.3 if the draft performance improvement plan cannot then be agreed, the PCC shall be entitled to serve three months' notice of termination in writing upon the Organisation in respect of that Funded Service. Such notice shall not have the effect of terminating this Agreement in respect of other Funded Services.

## **20 Termination**

20.1 13.1 If during the term of this Agreement there is a breach of the Funding Conditions or an actual or anticipated Negative Outcome in respect of any of the Funded Services, the PCC may (at its option) write to the Organisation giving particulars of the breach or Negative Outcome (a "Breach Notice") and in that event:

20.1.1 the Organisation shall provide the PCC with a draft performance improvement plan for that Funded Service within 10 Working Days of the date of the Breach Notice;

20.1.2 the PCC shall either accept the draft performance improvement plan within five Working Days of receipt or inform the Organisation why it cannot accept the draft performance improvement plan; and

20.1.3 if the PCC does not accept the draft performance improvement plan

20.1.3.1 the Parties will then meet to discuss the PCC's concerns;

20.1.3.2 the Organisation shall provide a revised draft performance improvement plan within five Working Days of the meeting; and

20.1.3.3 if the draft performance improvement plan cannot then be agreed, the PCC shall be entitled to serve three months' notice of termination in writing upon the Organisation in respect of that Funded Service. Such notice shall not have the effect of terminating this Agreement in respect of other Funded Services.

20.2 The PCC may, without prejudice to its other rights and remedies, by notice in writing to the Organisation, immediately terminate this Agreement or the Funding for a specified Funded Service:

20.2.1 if the Organisation:

20.2.1.1 is in material or persistent breach of any of its obligations under this Agreement (and, if the breach is capable of remedy, the Organisation has failed to remedy such breach within 20 Working Days after receiving written notice requiring it to be remedied); has been involved in any illegal activity or improper act in its administration;

- 20.2.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the Organisation (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the Organisation or the Organisation enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction;
- 20.2.1.3 ceases or threatens to cease carrying on its business; or
- 20.2.2 if the Funding or any part of the Funding is being used for any purpose other than the purpose set out in this Agreement; or
  - if, in the reasonable opinion of the PCC, any funding secured by the Organisation, whether notified to it by the Organisation pursuant to Clause 3.5 or otherwise, is duplicate funding for a Funded Service.
- 20.3 The Organisation may terminate this Agreement in relation to Funding for a specific Funded Service by providing not less than 3 months' notice in writing to the PCC (such notice to expire at least six months following the Commencement Date where the Grant Period is more than nine months) specifying the Funded Service to which the notice relates

## **21 Consequences of Termination**

- 21.1 In the event of termination of this Agreement for any reason or upon its expiry:
  - 21.1.1 the PCC shall not be liable to make any payment of any unpaid or future instalments of the Funding in respect of the terminated Funded Service(s);
  - 21.1.2 each Party shall within 5 Working Days of such termination or expiry return (or, at the other Party's option, destroy) all Confidential Information (and any other information) belonging to the other Party in its possession or under its control and all copies of such information in respect of the terminated Funded Service(s); and
  - 21.1.3 the Organisation shall:
    - 21.1.3.1 return to the PCC any assets or property (unless the PCC gives its written consent to their retention or sale) that are in its possession in connection with the terminated Funded Service(s); and
    - 21.1.4 repay to the PCC within 30 days of termination or expiry any part of the Funding which has not been spent or contractually committed to be spent on the commissioning of services forming part of the Funded Services as at the date of termination or expiry.
- 21.2 Termination or expiry of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination

## **22 No Warranty**

- 22.1 This Agreement does not represent a commitment to renew or continue financial support to the Organisation for any Funded Service or any other purpose and the PCC gives no warranty or assurance that further Funding will be made available after the Expiry Date.

## **23 Data Protection**

- 23.1 The Organisation, as Data Controller for any Personal Data used for Processing in

connection with the Funded Services, shall comply with all of its obligations under the Data Protection Legislation and shall not indicate to any Data Subject that the PCC is a Data Controller or Data Processor of that Personal Data.

- 23.2 The Organisation shall indemnify and keep indemnified and hold harmless the PCC on demand against any costs, claims and proceedings, damages and other liabilities (including monetary penalties or other regulatory fines) incurred by the PCC as a result of the breach of this Clause 23 by the Organisation or its permitted sub-Processors.
- 23.3 The Organisation consents to the PCC holding and Processing personal data relating to the Organisation and the Organisation agrees that the PCC may Process and disclose such data internally and so far as is reasonably necessary externally for the purposes of complying with statutory requirements, meeting the PCC's legitimate interests and complying with this Agreement. The PCC shall Process Personal Data relating to the Organisation in accordance with the Data Protection Legislation.
- 23.4 The Organisation shall permit representatives of the Ministry of Justice to examine de-personalised data collected for the purposes of evaluation and ongoing performance monitoring of the Funding and other funding provided by the Ministry of Justice or the PCC for any support service for Victims.

## **24 Freedom of Information and Transparency Obligations**

- 24.1 The Organisation acknowledges that the PCC is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the PCC (at the Organisation's expense) to enable the PCC to comply with the requirements of the FOIA and EIR, including but not limited to transferring (or procuring the transfer) to the PCC any request for information pursuant to the FOIA or EIR received by the Organisation (or any of its sub-contractors) as soon as practicable following receipt and in any event within three Working Days of receipt.
- 24.2 In no event shall the Organisation respond to a request for information under the FOIA or EIR without the prior written consent of the PCC.
- 24.3 The Organisation acknowledges that the PCC may be obliged under the FOIA or the EIR to disclose information:
- 24.3.1 without consulting with the Organisation; or
- 24.3.2 following consultation with the Organisation and having taken its views into account,
- provided always that where Clause 24.3.1 applies the PCC shall, in accordance with the recommendations of the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of a public authorities' functions under Part 1 of FOIA, take reasonable steps, where appropriate and without putting itself in breach of applicable Law, to give the Organisation advanced notice, or failing that, to draw the disclosure to the Organisation's attention after any such disclosure.
- 24.4 The Organisation shall ensure that all Information (as defined by the FOIA) produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the PCC to inspect such records as requested from time to time.
- 24.5 The Organisation acknowledges that the PCC is subject to certain transparency and disclosure obligations set out in the Elected Local Policing Bodies Specified Information Order 2011 (as amended) ("**Transparency Obligations**").
- 24.6 The Organisation gives consent to the PCC to publish the contents of this Agreement and information regarding any tender process related to the Funded Services to enable it to comply with its Transparency Obligations.
- 24.7 The Organisation acknowledges that:

24.7.1 the PCC shall be responsible for determining, at its absolute discretion, whether any information is exempt from disclosure or should be disclosed pursuant to the FOIA, EIR and/or the Transparency Obligations and to what extent it may or shall redact any information disclosed; and

24.7.2 any lists or schedules provided by the Organisation outlining confidential information are of an indicative value only and that the PCC may be obliged to disclose confidential information in accordance with Clause 24.3 and/or Clause 24.5.

## **25 Relationship**

25.1 The Parties are independent entities and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other. Nothing in this Agreement shall create a partnership or joint venture between the Parties nor authorise any Party to enter into any contact or commitment for and/or on behalf of the other Party.

## **26 Counterparts**

26.1 This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **27 Insurance**

27.1 The Organisation shall take out and maintain a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Organisation, arising out of the Organisation's performance of its obligations under this Agreement including death or personal injury, loss of or damage to property or any other loss together with any other insurances as may be required by Law.

27.2 The Organisation shall provide to the PCC on request satisfactory evidence of the existence of the insurance referred to in Clause 27.1 together with evidence that the relevant premiums have been paid and that those insurances are in full force and effect.

27.3 If the Organisation is in breach of Clause 27.1 or Clause 27.2, the PCC may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Organisation on written demand, together with all expenses incurred in procuring such insurance.

27.4 The Organisation undertakes that it shall not do, or omit to do, anything to vitiate either in whole or in part any of the insurance cover that it is obliged to have and maintain under this Clause 27.

## **28 Dispute Resolution**

28.1 In the event of a dispute arising out of or in connection with this Agreement, it shall be resolved pursuant to this Clause 28.

28.2 The Parties shall each use reasonable endeavours to resolve any dispute by means of a prompt and bona fide discussion between the Authorised Representatives.

28.3 In the event that a dispute is not resolved within five Working Days of any discussion between the Authorised Representatives in accordance with Clause 28.2, it shall be referred to the PCC's Chief Executive and the Organisation's Chief Executive, or equivalent, to resolve.

28.4 If the dispute is not resolved within 10 Working Days of escalation of the dispute in accordance with Clause 28.3, it shall be referred to mediation pursuant to the procedure set out in Clause 28.6 unless either Party does not agree to mediation.

- 28.5 The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation and each Party, its sub-contractors and their officers, employees and agents shall comply fully with the requirements of this Agreement at all times.
- 28.6 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 28.6.1 A neutral adviser or mediator (the Mediator) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to Centre for Effective Dispute Resolution to appoint a Mediator.
- 28.6.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 28.6.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 28.6.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their Authorised Representatives.
- 28.6.5 If the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 28.7 Subject to Clause 28.8, the Parties shall not institute court proceedings until the procedures set out in Clauses 28.2, 28.3 and 28.4 have been completed.
- 28.8 Nothing in this dispute resolution procedure shall prevent a Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## **29 Prevention of Corruption**

- 29.1 The Organisation or anyone associated with the Organisation shall not:
- 29.1.1 offer or give, or agree to give, to the PCC or any other public body or any person employed by or on behalf of the PCC or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the PCC or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such contract;
- 29.1.2 commit any offence under the Bribery Act 2010 or under any other applicable Law creating offences in respect of bribery, corruption or fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the PCC.
- 29.2 For the purpose of this Clause 29, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person

associated with the Organisation includes, but is not limited to, any sub-contractor of the Organisation.

- 29.3 The Organisation warrants that it has not paid commission or agreed to pay commission to the PCC or any other public body or any person employed by or on behalf of the PCC or any other public body in connection with this Agreement.
- 29.4 If the Organisation, or anyone acting on the Organisation's behalf, engages in conduct prohibited by Clause 29.1 or Clause 29.3, the PCC may terminate this Agreement and recover from the Organisation the amount of any Funding paid to the Organisation together with any loss sustained by the PCC in consequence of any breach of those Clauses.
- 29.5 Any dispute, difference or question arising in respect of the interpretation of this Clause 29 including the right of the PCC to terminate this Agreement, shall be decided by the PCC, whose decision shall be final and conclusive.

### **30 Conflict of Interest and Prevention of Fraud**

- 30.1 The Organisation shall take all reasonable steps, in accordance with Good Industry Practice, to:
- 30.1.1 ensure that neither the Organisation nor any of its employees, agents or representatives is placed in a position where, in the reasonable opinion of the PCC, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Organisation and the duties owed to the PCC under the provisions of this Agreement; and
- 30.1.2 prevent fraud by its employees, agents and representatives (including its shareholders, members and directors) in connection with the receipt of monies from the PCC.
- 30.2 Without prejudice to the generality of Clause 30.1, the Organisation shall set up formal procedures to require all persons involved in the use of the Funding to declare any personal or financial interest in any matter concerning the Organisation's activities and to be excluded from any discussion or decision-making relating to the matter concerned.
- 30.3 The Organisation shall disclose to the PCC without delay full particulars of any such conflict of interest which may arise and if the Organisation has any grounds for suspecting financial irregularity in the use of any money paid under this Agreement, it shall notify the PCC immediately, explain what steps are being taken to investigate the suspicion, and keep the PCC informed about the progress of the investigation.
- 30.4 For the purposes of Clause 30.3, "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of the Funding for purposes other than those intended by the PCC.
- 30.5 If the Organisation or its employees, agents or representatives commits fraud in relation to this Agreement or any contract with the PCC, the PCC may terminate this Agreement and recover from the Organisation the amount of any Funding paid to the Organisation together with any loss sustained by the PCC in consequence of any breach of this Clause 30.

### **31 Discrimination**

- 31.1 The Organisation shall, and shall use all reasonable endeavours to procure that its employees, agents and sub-contractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.

### **32 Waiver**

- 32.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 32.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 35.
- 32.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

### **33 Severability**

- 33.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.
- 33.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the PCC and the Organisation shall immediately commence good faith negotiations to remedy such invalidity.

### **34 Remedies Cumulative**

- 34.1 Except as otherwise expressly provided by this Agreement, all rights and remedies available to either Party under this Agreement or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right or remedy to the exclusion of, and shall be without prejudice to the availability of, any other right or remedy.

### **35 Notices**

- 35.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or mailed (first class postage prepaid) to an Authorised Representative at the address of the relevant Party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

### **36 Contracts (Rights of Third Parties) Act 1999**

- 36.1 This Agreement does not and is not intended to confer any contractual benefit on any person who is not a party to this Agreement pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999. This does not affect any right or remedy of such a person that exists or is available apart from that Act.

### **37 Entire Agreement**

- 37.1 This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any previous arrangement, understanding or agreement between them relating the Funded Services.
- 37.2 The Organisation acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon, and in connection with this Agreement, it does not rely on, and will have no remedy and waives all rights in respect of, any statement, representation, warranty, undertaking or understanding of any nature whatsoever (whether negligently or innocently made) of any person (whether Party to this

Agreement or not) other than as expressly set out in this Agreement.

37.3 Nothing in this Clause 37 shall exclude or limited either Party’s liability in respect of any fraudulent misrepresentation.

**38 Force Majeure**

38.1 Neither Party will be liable to the other Party for any delay or non-performance of its obligations under this Agreement arising from any cause due a Force Majeure Event provided that it:

38.1.1 promptly notifies the other Party of the Force Majeure Event and its expected duration; and

38.1.2 uses reasonable endeavours to minimise the effects of that event.

38.2 If, due to a Force Majeure Event, a Party is delayed in or prevented from performing its obligations for a continuous period of more than 5 Working Days OR more than 10 Working Days in any 12 month period, the PCC may terminate this Agreement immediately by notice in writing served on the Organisation.

38.3 The PCC shall be entitled to withhold the Funding for a Funded Service during any period of Force Majeure Event affecting that Funded Service.

**39 Governing Law**

39.1 This Agreement and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall, subject to Clause 28, be governed by and construed in accordance with the law of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

This Agreement has been entered into on the date first above written

**Signed for and on behalf of** .....  
**the Police and Crime**  
**Commissioner for Leicestershire:** Authorised Officer

**Signed for and on behalf of** .....  
**Organisation**  
Authorised Officer

**THE SCHEDULE**

<b>Scheme</b>	
<b>Funded Services</b>	
<b>Outcome Specification</b>	
<b>Funding</b>	
<b>Details of Payment of Funding / Funding Instalments</b>	

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