



# FUNDING AGREEMENT

<b>Organisation Name</b>	
<b>Project Name</b>	
<b>Project Reference</b>	
<b>Amount Agreed</b>	
<b>Funding Period</b>	

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2020

**BETWEEN:**

- (1) The Police and Crime Commissioner for Nottinghamshire of Arnot Hill House, Arnot Hill Park, Arnold, Nottingham, NG5 6LU (the **"PCC"**); and

each of the PCC and the Beneficiary being a **Party** and together the PCC and the Beneficiary are the **Parties**.

## **BACKGROUND**

- A The Beneficiary applied to the PCC by an application dated \_\_\_\_\_ for a grant for financial assistance towards the costs of the Project (as defined below).
- B The PCC has considered the application, wishes to support the Project by the provision of the Funding (as defined below) and decided to approve the making of a grant to the Beneficiary.
- 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 14;
- 1.1.2 **"Budget"** means the budget set out in the Schedule;
- 1.1.3 **"Commencement Date"** means \_\_\_\_\_
- 1.1.4 **"Crown Body"** means the governments of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including ministers and departments and particular bodies, persons, commissions or agencies from time-to-time carrying out functions on its behalf;
- 1.1.5 **"Data Protection Law"** means the Data Protection Act 2018, the General Data Protection Regulation (EU Regulation 2016/679), the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Law Enforcement Directive (EU Directive 2016/680), 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 and any other applicable Law relating to processing of Personal Data and/or privacy (including, where applicable, any guidance and codes of practice issued by the Information Commissioner);
- 1.1.6 **"Data Subject"**, **"Controller"**, **"Processor"**, **"Personal Data"** and **"Processing"** have the meaning given to them in Data Protection Law;
- 1.1.7 **"DBS"** means the Disclosure and Barring Service;
- 1.1.8 **"Expiry Date"** means \_\_\_\_\_
- 1.1.9 **"EIR"** means the Environmental Information Regulations 2004;
- 1.1.10 **"FOIA"** means the Freedom of Information Act 2000;
- 1.1.11 **"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;

- 1.1.12 **“Funded Service”** means any of the services which form part of the Project as specified in the Schedule;
  - 1.1.13 **“Funding”** means the sum or sums of money stated in the Schedule that are to be paid by the PCC to the Beneficiary under the terms of this Agreement;
  - 1.1.14 **“Funding Conditions”** means the purpose and conditions of the Funding set out in Clause 3;
  - 1.1.15 **“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;
  - 1.1.16 **“Grant Period”** means the period from the Commencement Date to:
    - (a) the Expiry Date;
  - 1.1.17 **“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 to the United Kingdom) and the right to sue for passing off;
  - 1.1.18 **“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law or directives or requirements of any Regulatory Body, delegated or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 or enforceable right within the meaning of section 2 of the European Communities Act 1972 or notice of any Regulatory Body;
  - 1.1.19 **“Objectives”** means the objectives for the Project and/or the Funded Service (as appropriate) set out in the Schedule;
  - 1.1.20 **“Project”** means the project set out in the Schedule;
  - 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 Beneficiary;
  - 1.1.22 **“Relevant Staff”** means any and all employees, staff, workers, agents, contractors and consultants who are (or are to be) engaged by the Beneficiary to provide the Funded Services;
  - 1.1.23 **“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994 and any similar fiscal or sales tax;
  - 1.1.24 **“Victim”** means any victim of crime as defined in the Code of Practice for Victims of Crime (October 2015); and
  - 1.1.25 **“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:

- (a) include any secondary or subordinate legislation made under or pursuant to that legislation; and
  - (b) include any modification or re-enactment of that legislation;
- 1.2.5 references 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:
- (a) the Clauses;
  - (b) the Schedule; and
  - (c) any other documents referred to in or attached to the Schedule; and
- 1.2.9 in the event and to the extent only of any conflict or inconsistency between the Clauses and the Schedule, the Clauses shall prevail.

## **2 Commencement and Duration**

- 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.

## **3 Funding Conditions**

- 3.1 The Beneficiary shall use the Funding:
- 3.1.1 for the purposes set out in, and in accordance with the scope and nature of, the Project and the relevant Funded Service;
  - 3.1.2 to achieve the Objectives;
  - 3.1.3 in accordance with the Budget; and
  - 3.1.4 in accordance with the terms and conditions of this Agreement.
- 3.2 The Beneficiary 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.
- 3.3 The Beneficiary shall not be permitted to change, amend or vary the purposes, scope or nature of the Project or an individual Funded Service without the prior written consent of the PCC.
- 3.4 The Beneficiary shall not without the prior written consent of the PCC, not to be unreasonably withheld or delayed, exceed any amount set out in the Budget for any itemised expenditure.
- 3.5 In the event that the Beneficiary applies for or secures any additional funding for the Project (or a Funded Service), the Beneficiary 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 Beneficiary to amend the Budget, the Funded Service and/or the Project as a result of the Beneficiary securing alternative or additional funding for the Project and/or Funded Service.
- 3.6 The Beneficiary shall not use the Funding for the following:
- 3.6.1 the purchase of any capital items or any assets whatsoever;
  - 3.6.2 the payment of any capital expenditure whatsoever;
  - 3.6.3 any activity which is party-political in intention, use or presentation;

- 3.6.4 to support or promote religious activity (excluding inter-faith activity);
- 3.7 Where the Funding relates to more than one Funded Service, the Beneficiary may not use Funding provided for one Funded Service for or in respect of another Funded Service.
- 3.8 The Beneficiary agrees and accepts that it may become ineligible for grant support and be required to repay all or part of the Funding (including any unspent monies) if it engages in tax evasion or aggressive tax avoidance in the opinion of HM Revenue and Customs.

#### **4 Safeguarding of Children and Vulnerable Adults**

- 4.1 The Beneficiary acknowledges and agrees that has ultimate responsibility for the management and control of the Funded Services and the safety of victims, children and vulnerable adults and the Beneficiary shall therefore:
  - 4.1.1 ensure that all Relevant Staff are subject to a valid enhanced disclosure check for the Funded Services undertaken through the DBS prior to commencing any Funded Services;
  - 4.1.2 monitor the level and validity of the checks undertaken pursuant to Clause 4.1.1 for all Relevant Staff;
  - 4.1.3 immediately refer to the DBS information about any person carrying out the Funded Services in respect of whom it declines or withdraws permission to be involved in or to carry out the Funded Services (or would have, if such person had not otherwise ceased to be involved in or carry out the Funded Services) because, in its opinion, that person has harmed or poses a risk of harm to Victims, service users, children or vulnerable adults;
  - 4.1.4 not employ or use the services of any person (or any third party who employs or uses any person) who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Funded Services or who may otherwise present a risk to Victims, service users, children or vulnerable adults;
  - 4.1.5 have (and ensure that any third party supplier for the Project has) a procedure for dealing with allegations or suspicions of abuse (which the PCC may request to see and approve);
  - 4.1.6 ensure that all Relevant Staff are trained at induction (and receive regular (at least annual) refresher training) in the proactive prevention of abuse of children and adults, in the identification of relevant incidents and in following the reporting procedures;
  - 4.1.7 have in place (and ensure that any third party supplier for the Project has in place) a workforce development plan that includes appropriate competencies for all staff in relation to safeguarding adults and children work;
  - 4.1.8 adhere (and ensure that any third party supplier for the Project adheres) to rigorous recruitment practices to deter those who actively seek vulnerable people to exploit or abuse;
  - 4.1.9 have robust systems in place so that Relevant Staff are familiar with and follow its Safeguarding Vulnerable Groups policies and procedures;
  - 4.1.10 maintain (and ensure that any third party supplier for the Project maintains) a proactive approach to prevent abuse;
  - 4.1.11 address (and ensure that any third party supplier for the Project addresses) issues around bullying and have (and ensure that any third party supplier for the Project has) in place an anti-bullying policy which is linked to its safeguarding procedures as appropriate;
  - 4.1.12 ensure that all Relevant Staff and service users are made aware of the anti-bullying policy and that relevant training on that policy is given to all Relevant Staff; and
  - 4.1.13 notify the PCC immediately of all instances of suspected abuse pertaining to the Project.
- 4.2 The Beneficiary 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 4 have been met.

## **5 Payment of the Funding**

- 5.1 Subject to compliance by the Beneficiary with its obligations set out in this Agreement, the PCC shall pay the Funding to the Beneficiary by instalments as set out in the Schedule to the Beneficiary's nominated bank account notified to the PCC in writing on or before the Commencement Date. Any payment of the whole or any part of the Funding is subject to the PCC having the available funds to make the specified payment on the due date.
- 5.2 In the event that the PCC does not have sufficient funds to make any payment due under Clause 5.1, the PCC shall use its best endeavours to pay any shortfall within five Working Days of the relevant due date.
- 5.3 The PCC reserves the right to withhold payment of any final instalment until it has received all appropriate expenditure and monitoring information as outlined in the Schedule.
- 5.4 It is the Beneficiary's responsibility to ensure that its receipt, management and expenditure of the Funding complies with all tax requirements in force at all times throughout the Grant Period. For the avoidance of doubt, 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 Beneficiary for that VAT or other tax in addition to the Funding.
- 5.5 The Beneficiary acknowledges and agrees that unless explicitly agreed by the PCC in writing in advance, the Funding will not be used to meet the cost of any import, customs duties or any other taxes or similar charges applied by local governments or by any local public authority.
- 5.6 The Beneficiary shall notify the PCC as soon as reasonably practicable if any underspend is forecast.
- 5.7 If an overpayment of the Funding is made at any time, the Beneficiary shall repay any overpayment within 30 days of receiving any request for repayment from the PCC.
- 5.8 Within 30 days of the end of each financial year of the Grant Period, the Beneficiary shall repay to the PCC any unspent Funding for that financial year.

## **6 Warranties**

- 6.1 The Beneficiary warrants and represents to the PCC that:
- 6.1.1 it has the right, power and authority to enter into this Agreement and to perform its obligations under this Agreement;
- 6.1.2 all information provided by the Beneficiary 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 Beneficiary that will affect the Project (or any Funded Service) since the date any information was provided;
- 6.1.3 it shall comply with (and shall ensure that the Funded Services meet) the statutory duties to safeguard vulnerable adults and children;
- 6.1.4 it shall ensure that it has relevant organisational policies (including whistleblowing; safeguarding; diversity and equality; environmental; information security and data security protocols) (the "Organisational Policies") in place to deliver the Funded Services in accordance with this Agreement;
- 6.1.5 it shall ensure the Organisational Policies are regularly reviewed and kept up to date by appropriately senior staff and confirmed by the Beneficiary's board or trustee(s);
- 6.1.6 it shall ensure that all staff are aware of the Organisational Policies and of how to raise any concerns with them;
- 6.1.7 it has undertaken all appropriate disclosure checks through the DBS and has no reason to believe that any Relevant Staff are barred from providing the Funded Services in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006;

- 6.1.8 none of the information provided by the Beneficiary to the PCC infringes the Intellectual Property Rights of any third party; and
- 6.1.9 any services (including Funded Services) included within the Project will be performed:
- (a) by suitably qualified and competent personnel who shall exercise all due skill and care and all due diligence in the execution of those services;
  - (b) in accordance with Good Industry Practice;
  - (c) so as to conform with all applicable Law relating to those services and the Project.
- 6.2 The Beneficiary 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 6.1. When notifying the PCC of a breach the Beneficiary shall use all reasonable endeavours to provide such documentation, information, details and assistance in respect of the breach that the PCC may reasonably request.

## **7 Compliance with Law**

- 7.1 The Beneficiary shall comply, and shall (at its own expense) ensure that its employees, agents, contractors and representatives shall comply, with all applicable Laws in the performance of the Beneficiary's duties under this Agreement, provided that the Beneficiary 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 the PCC's employees, agents, contractors or representatives).

## **8 Intellectual Property Rights**

- 8.1 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).
- 8.2 The Beneficiary shall ensure that any Intellectual Property Rights created in the furtherance of a Funded Service vests in the Parties jointly such that both Parties are free to use, copy, modify, adapt, publish, create derivative works from, sub-licence, sell, rent, lease, transfer and commercially exploit it without restriction or the consent of the other Party. Deliverables created in the furtherance of a Funded Service could include processes, procedures, methodology and manuals.
- 8.3 The Beneficiary shall indemnify and keep indemnified and hold harmless the PCC on demand 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 report, product, information, service or other deliverable supplied by it (or its agents, employees or contractors) to the PCC in connection with the Project or the Funded Service(s) or the provision of any services by it (or its agents, employees or contractors) pursuant to this Agreement, infringes the Intellectual Property Rights of any third party ("**IPR Claim**").

## **9 Exclusion and limitation of liability**

- 9.1 Neither Party limits its liability for:
- 9.1.1 death or personal injury caused by its negligence, or that of its employees, agents, contractors or representatives (as applicable); or
  - 9.1.2 fraud or fraudulent misrepresentation by it or its employees.
- 9.2 Subject to Clause 9.1, 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 all sums paid by it to the Beneficiary or, if greater, an amount equal to the Funding.
- 9.3 Subject to Clause 9.1, the PCC shall not be liable to the Beneficiary for:
- 9.3.1 any indirect, special or consequential loss or damage;

9.3.2 any loss of profits, turnover, data, business opportunities, anticipated savings or damage to goodwill (whether direct or indirect); or

9.3.3 any loss, whether direct or indirect, arising from:

(a) the Beneficiary conducting or undertaking the Project or an individual Funded Service; or

(b) the use of the Funding, its late payment (in whole or in part) or its withdrawal.

## 10 Confidentiality

10.1 During the Grant Period and after termination or expiry of this Agreement for any reason, neither Party shall:

10.1.1 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 10.2 or Clause 10.3; or

10.1.2 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.

10.2 A Party ("**Receiving Party**") may disclose confidential information belonging to the other Party to its employees, agents, representatives, 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:

10.2.1 only uses the information for that purpose;

10.2.2 understands that the information is confidential;

10.2.3 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.

10.3 The obligations contained in this Clause 10 shall not apply to any confidential information which:

10.3.1 was at the Commencement Date in, or at any time after the Commencement Date comes into, the public domain other than through breach of this Agreement;

10.3.2 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;

10.3.3 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

10.3.4 is required by Law, court order or any Regulatory Body, to be disclosed; or

10.3.5 in the case of the PCC, is disclosed pursuant to the PCC's rights set out in Clause 12.

10.4 The Beneficiary shall ensure that when required any information of a sensitive nature, howsoever held, is securely disposed of in accordance with the PCC's directions.

10.5 Nothing in this Clause 10 shall prevent the PCC from sharing information obtained in relation to the Beneficiary with any Crown Body, provided that in disclosing information the PCC discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

10.6 The Beneficiary hereby acknowledges that a Crown Body receiving such information may further disclose the information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not a Crown Body.



- 10.7 The PCC may also disclose any information obtained from and about the Beneficiary for the purpose of the examination and certification of the PCC's accounts; or pursuant to section 6(1) of National Audit Act 1983 of the economy, efficiency and effectiveness with which the PCC has used its resources.

## **11 Data Protection**

- 11.1 The Beneficiary, as Controller for any Personal Data used for Processing in connection with the Project and/or a Funded Service, shall comply with all of its obligations under Data Protection Law and shall not indicate to any Data Subject that the PCC is a Controller or Processor of that Personal Data.
- 11.2 The Beneficiary 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 11 by the Beneficiary or its permitted sub-Processors.
- 11.3 The Beneficiary consents to the PCC holding and Processing personal data relating to the Beneficiary and the Beneficiary 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 Beneficiary in accordance with Data Protection Law.
- 11.4 The Beneficiary consents to the PCC sharing with a Crown Body de-personalised data collected for the purposes of evaluation and ongoing performance monitoring of the Funded Service(s).
- 11.5 The PCC may, at any time on not less than 30 Working Days' notice to the Beneficiary, revise the provisions of this Clause 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 11.6 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The PCC may, on not less than 30 Working Days' notice to the Beneficiary, amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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

- 12.1 The Beneficiary acknowledges that the PCC is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the PCC (at the Beneficiary's expense) to enable the PCC to comply with the requirements of the FOIA and EIR, including transferring (or procuring the transfer) to the PCC any request for information pursuant to the FOIA or EIR received by the Beneficiary (or any of its sub-contractors) as soon as practicable following receipt and in any event within three Working Days of receipt.
- 12.2 In no event shall the Beneficiary respond to a request for information under the FOIA or EIR without the prior written consent of the PCC.
- 12.3 The Beneficiary acknowledges that the PCC may be obliged under the FOIA or the EIR to disclose information:
- 12.3.1 without consulting with the Beneficiary; or
- 12.3.2 following consultation with the Beneficiary and having taken its views into account, provided always that where Clause 12.3.1 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 Beneficiary advanced notice, or failing that, to draw the disclosure to the Beneficiary's attention after any such disclosure.
- 12.4 The Beneficiary 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.

- 12.5 The Beneficiary 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**").
- 12.6 The Beneficiary gives consent to the PCC to publish the contents of this Agreement and information regarding any tender process related to the Project and/or a Funded Service to enable it to comply with its Transparency Obligations.
- 12.7 The Beneficiary acknowledges that:
- 12.7.1 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
- 12.7.2 any lists or schedules provided by the Beneficiary outlining confidential information are of an indicative value only and that the PCC may be obliged to disclose confidential information in accordance with Clause 12.3 and/or Clause 12.5.

### **13 Discrimination**

- 13.1 The Beneficiary shall not (and shall use all reasonable endeavours to procure that its employees, agents and 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.

### **14 Authorised Representatives**

- 14.1 The PCC's Authorised Representative shall be [REDACTED] or such other person appointed as such by the PCC and notified to the Beneficiary pursuant to Clause 34.
- 14.2 The Beneficiary's Authorised Representative shall be [REDACTED] or such other person appointed as such by the Beneficiary and notified to the PCC pursuant to Clause 34.

### **15 Review, Monitoring and Information**

- 15.1 The Beneficiary shall provide monitoring reports as detailed in the Schedule. This shall include as a minimum:
- 15.1.1 progress made towards achieving the objectives including a case study; and
- 15.1.2 eligible expenditure incurred; and
- 15.1.3 any additional information requested by the PCC from time to time.
- 15.2 The Beneficiary shall provide any information requested pursuant to Clause 15.1 in the format and within the timescales as the PCC reasonably requests from time to time. The Beneficiary shall ensure that all such information is accurate and complete and shall notify the PCC without delay of any changes to information previously provided to the PCC.
- 15.3 The Beneficiary shall meet with the PCC from time to time, at such intervals and in such places reasonably requested by the PCC, in order to discuss the Project, a Funded Service and/or progress towards achieving the Objectives and to identify any lessons learned for future projects and/or future grants of funding. The Beneficiary consents to the PCC sharing information arising from such meetings with: the Chief Constable of its police force; police and crime commissioners and/or chief constables of other police forces; the Crown Body; and/or co-commissioning partners in public sector organisations.
- 15.4 The Beneficiary shall not change its constitution or governing rules without the prior written approval of the PCC.
- 15.5 The Beneficiary shall notify the PCC in writing of any changes to its bank or building society accounts.

### **16 Records**

- 16.1 The Beneficiary shall maintain (and procure that any of its agents and sub-contractors maintain) comprehensive and up-to-date records of its expenditure in respect of the Project, each Funded Service and the Budget, together with details of all gifts (both given and received) in connection with the Project and such other details as the PCC may reasonably

require to verify that the Funding is being used in accordance with this Agreement solely for and in connection with the Project and/or the relevant Funded Service.

- 16.2 Without prejudice to Clause 16.1, the Beneficiary shall provide to the PCC upon request:
- 16.2.1 certified copies of the accounting documents justifying income and expenditure incurred by the Beneficiary in relation to the Project; and
  - 16.2.2 a written statement, signed by the Beneficiary's treasurer or equivalent senior finance officer, of how the money was spent.
- 16.3 The Beneficiary shall (and shall procure that its agents and contractors shall) make its (or their) records and books of account in relation to the Funding available to the PCC or any person nominated by the PCC on an open book basis for the purposes of inspection and audit on the giving of reasonable notice by the PCC.
- 16.4 The Beneficiary shall keep all records relating to the Funding for a period of at least seven years from expiry of the Grant Period.

## **17 External Assurances**

- 17.1 The Beneficiary shall comply with applicable international accounting standards or the Charities Statement of Recommended Practice.
- 17.2 The Beneficiary shall ensure that this Funding falls within the scope of audit as part of the Beneficiary's annual internal and external audit programme. The external auditor will be expected to sign off an Independent Assurance Statement as part of the scope of audit.
- 17.3 The value and purpose of this Funding shall be identified separately in the Beneficiary's audited accounts (or the notes thereto).
- 17.4 Upon request, the Beneficiary shall send to the PCC a copy of its latest accounts, cash flow statement and forecast and, where relevant, its audited accounts.
- 17.5 The Beneficiary agrees to make available immediately to the PCC, free of charge, and whenever requested, copies of audit reports obtained by the Beneficiary in relation to the Project or other aspect of this Agreement.
- 17.6 In all cases, the Beneficiary shall supply the PCC with all such financial information, as is reasonably requested from time-to-time.

## **18 Procurement by the Beneficiary**

- 18.1 In so far as the Beneficiary procures any goods, services or works from any third party in order to achieve the Objectives, then it shall do so in accordance with:
- 18.1.1 any reasonable instructions given by the PCC;
  - 18.1.2 the Public Contracts Regulations 2015 and all other Law governing public procurement as if the Beneficiary was itself a Contracting Authority within the meaning of those Laws. In addition and without limiting the generality thereof, the Beneficiary must secure the best value for money and must act in a fair, open and non-discriminatory manner in all purchases of goods and services; and
  - 18.1.3 its own procurement processes and financial regulations.
- 18.2 The Beneficiary shall permit the PCC or any person nominated by the PCC to attend and observe any pre-tender meetings, tender evaluations and bidder presentations related to the Project and/or a Funded Service for the purpose of satisfying the PCC that any procurement process undertaken by the Beneficiary is conducted in accordance with the terms of this Agreement.
- 18.3 The Beneficiary 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).
- 18.4 If any Funding provided by the PCC is used to procure goods or services and VAT is included in the cost, the Beneficiary shall recover that VAT from HM Customs and Excise where it is recoverable and shall use it to deliver the services required under this Agreement to achieve the Objectives.

## **19 Publicity**

- 19.1 The Beneficiary shall acknowledge the Funding in its annual report and accounts, including an acknowledgement that the PCC was the source of the Funding, in a form reasonably acceptable to the PCC.
- 19.2 The PCC shall be entitled to promote the Funding of the Project (including the Funded Service(s)) in any publicity material or media statement issued by the PCC.
- 19.3 The Beneficiary shall not (and shall use all reasonable endeavours to procure that its employees, agents, representatives, professional advisers and contractors shall not) make any press announcement or publicise this Agreement, the Project, any Funded Service or any part thereof in any way, except with the express prior written consent of the PCC.
- 19.4 The Beneficiary shall (and shall use all reasonable endeavours to procure that its employees, agents, representatives, professional advisers and contractors shall) not include in any published material the name, logo or style of "Nottinghamshire Police" nor "the Police and Crime Commissioner for Nottinghamshire"; any Intellectual Property Rights associated therewith; nor any photograph or drawing depicting any officer of Nottinghamshire Police force without the PCC's prior written consent.

## **20 Indemnity**

- 20.1 Subject to Clause 20.2, the Beneficiary shall indemnify and keep indemnified and hold harmless the PCC on demand from and against all losses, damages, liabilities, costs (including legal fees) and expenses incurred by it arising from third party actions, claims or demands brought against the PCC for breach of statutory duty concerning the Funded Service(s) which may arise out of or in consequence of a breach by the Beneficiary of its obligations under this Agreement.
- 20.2 The Beneficiary shall not be responsible under Clause 20.1 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.

## **21 Breach of Funding Conditions**

- 21.1 If the Beneficiary fails to comply with any of the Funding Conditions set out in this Agreement, or if any of the events mentioned in Clause 21.2 occur, then the PCC may reduce or suspend or withhold payment of the Funding and/or require all or any part of the Funding to be repaid. The Beneficiary must repay any amount required to be repaid under this Clause 21 within 30 days of receiving the demand for repayment.
- 21.2 The events referred to in Clause 21.1 are as follows:
- 21.2.1 the Beneficiary purports to transfer, novate, assign or otherwise dispose of the whole or any part of its rights, interests or obligations arising under this Agreement without the prior written agreement of the PCC;
  - 21.2.2 the Beneficiary has not submitted reports, information or other documentation within the required timescales when reasonably requested by the PCC;
  - 21.2.3 any information provided by (or on behalf of) the Beneficiary in relation to the Funding (including in the application for the Funding or in any 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;
  - 21.2.4 the Beneficiary does not implement or follow its Safeguarding Vulnerable Group's Policy in all aspects of its Regulated Activities;
  - 21.2.5 the Beneficiary is in breach of its obligations set out in Clause 4;
  - 21.2.6 any member of the Beneficiary's governing body, staff or volunteers acts dishonestly or fraudulently;
  - 21.2.7 the Beneficiary takes inadequate measures to investigate and resolve any reported irregularity;
  - 21.2.8 the PCC considers that the Beneficiary has not made satisfactory progress with its delivery of the Funded Service.

- 21.3 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 Beneficiary giving particulars of the breach and in that event:
- 21.3.1 the Beneficiary shall provide the PCC with a draft performance improvement plan for that Funded Service within 10 Working Days of the date of the notice of the breach;
- 21.3.2 the PCC shall either accept the draft performance improvement plan within five Working Days of receipt or inform the Beneficiary why it cannot accept the draft performance improvement plan; and
- 21.3.3 if the PCC does not accept the draft performance improvement plan:
- (a) the Parties shall then meet to discuss the PCC's concerns;
  - (b) the Beneficiary shall provide a revised draft performance improvement plan within five Working Days of the meeting; and
  - (c) 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 Beneficiary in respect of that Funded Service. Such notice shall not have the effect of terminating this Agreement in respect of other Funded Services.

## **22 Termination**

- 22.1 This Agreement does not represent a commitment to renew or continue financial support to the Beneficiary for the Project, any Funded Service or any other purpose and the PCC gives no warranty or assurance that further Funding will be made available after the termination or expiry of this Agreement.
- 22.2 The PCC may, without prejudice to its other rights and remedies, by notice in writing to the Beneficiary immediately terminate this Agreement or the Funding for a specified Funded Service:
- 22.2.1 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
- 22.2.2 if the Beneficiary:
- (a) has been involved in any illegal activity or improper act in its administration;
  - (b) is in material or persistent breach of any of its obligations under this Agreement (or in respect of the relevant Funded Service) and if that breach is capable of remedy and the Beneficiary has failed to remedy that breach within 20 Working Days after receiving written notice requiring it to remedy that breach; or
  - (c) 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 Beneficiary (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 Beneficiary or the Beneficiary enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction; or
  - (d) ceases or threatens to cease carrying on its business/operations or changes the nature of them to an extent which the PCC considers to be significant or prejudicial; or
- 22.2.3 in the circumstances set out in Clauses 21.3.3(c), 25.4, 26.8 or 38.2.
- 22.3 Where, in the reasonable opinion of the PCC, any funding secured by the Beneficiary, whether notified to it by the Beneficiary pursuant to Clause 3.5 or otherwise, is duplicate funding for the Project or a specific Funded Service, then the PCC may terminate this Agreement on five Working Days' notice in writing to the Beneficiary.
- 22.4 The Beneficiary may terminate this Agreement forthwith by serving a notice on the PCC in writing if it has made a written request for payment of a sum properly due (ie undisputed and

- validated) to it under this Agreement and the PCC has failed to make payment of that sum within 30 days of receiving the request.
- 22.5 Either Party may terminate this Agreement in relation to Funding for a specific Funded Service by providing not less than three months' notice in writing to the other Party specifying the Funded Service to which the notice relates.
- 22.6 In the event of termination of this Agreement (or a Funded Service) for any reason or upon its expiry:
- 22.6.1 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);
- 22.6.2 each Party shall within five 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
- 22.6.3 the Beneficiary shall within five Working Days of termination or expiry:
- (a) return to the PCC any PCC assets or PCC 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
- (b) repay to the PCC any unspent Funding for the terminated Funded Service(s) to such bank account notified by the PCC to the Beneficiary in writing.
- 22.7 Although the PCC does not seek to exercise detailed control of the Beneficiary's activities, it must ensure that public money is protected and value for money achieved. Consequently, the Beneficiary shall, in accordance with this Agreement, promptly provide such assistance and comply with such timetable as the PCC may reasonably require for the purpose of ensuring a smooth transfer of responsibility upon the expiry or other termination of this Agreement. The PCC will look to the Beneficiary to provide such assistance as appropriate prior to the expiry or other termination of the Project.
- 22.8 Such assistance may include the delivery of documents and data in the possession or control of the Beneficiary which relate to the activities funded by the Funding.
- 22.9 The Beneficiary undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the PCC to ensure a smooth transfer of responsibility for the grant funded activities to the PCC or any third party.
- 22.10 Termination or expiry of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

## **23 Insurance**

- 23.1 The Beneficiary 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 Beneficiary, arising out of the Beneficiary'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.
- 23.2 The Beneficiary shall provide to the PCC on request satisfactory evidence of the existence of the insurance referred to in Clause 23.1 together with evidence that the relevant premiums have been paid and that those insurances are in full force and effect.
- 23.3 If the Beneficiary is in breach of Clause 23.1 or Clause 23.2, 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 Beneficiary on written demand, together with all expenses incurred in procuring such insurance.
- 23.4 The Beneficiary 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 23.

## **24 Dispute Resolution**

- 24.1 In the event of a dispute arising out of or in connection with this Agreement, it shall be resolved pursuant to this Clause 24.

- 24.2 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.
- 24.3 The Parties shall each use reasonable endeavours to resolve any dispute by means of a prompt and bona fide discussion between the Authorised Representatives.
- 24.4 In the event that a dispute is not resolved within five Working Days of any discussion between the Authorised Representatives in accordance with Clause 24.3, it shall be referred to the PCC's Chief Executive and the Beneficiary's Chief Executive, or equivalent, to resolve.
- 24.5 If the dispute is not resolved within 10 Working Days of escalation of the dispute in accordance with Clause 24.4, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 24.7 unless either Party does not agree to mediation.
- 24.6 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 contractors and their officers, employees and agents shall comply fully with the requirements of this Agreement at all times.
- 24.7 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 24.7.1 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 the Centre for Effective Dispute Resolution to appoint a Mediator.
- 24.7.2 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 the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 24.7.3 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.
- 24.7.4 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.
- 24.7.5 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.
- 24.8 Subject to Clause 24.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 24.3, 24.4 and 24.5 have been completed.

## **25 Prevention of Corruption**

- 25.1 The Beneficiary or anyone associated with the Beneficiary shall not:
- 25.1.1 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;
- 25.1.2 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.

- 25.2 For the purpose of this Clause 25, 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 Beneficiary includes any sub-contractor of the Beneficiary.
- 25.3 The Beneficiary 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.
- 25.4 If the Beneficiary, or anyone acting on the Beneficiary's behalf, engages in conduct prohibited by Clause 25.1 or Clause 25.3, the PCC may terminate this Agreement and recover from the Beneficiary the amount of any Funding paid to the Beneficiary together with any loss sustained by the PCC in consequence of any breach of those Clauses.
- 25.5 Any dispute, difference or question arising in respect of the interpretation of this Clause 25 including the right of the PCC to terminate this Agreement, shall be decided by the PCC, whose decision shall be final and conclusive.

## **26 Exploitation, Conflict of Interest and Prevention of Fraud**

- 26.1 The Beneficiary shall take all reasonable steps to ensure that it (and anyone acting on its behalf) do not bring the PCC or the Project into disrepute for instance by reason of prejudicing the Objectives or purpose of the Project and/or being contrary to the interests of the PCC.
- 26.2 In particular, the PCC has a zero-tolerance approach towards sexual exploitation, abuse and harassment. The Beneficiary will immediately contact the PCC's Authorised Representative to report any credible suspicions, or actual incidents, of sexual exploitation, abuse or harassment related to the Project or which would be of significant impact to the PCC. For example, any event that affects the governance or culture of the Beneficiary, such as those related to senior management, must be reported.
- 26.3 The Beneficiary acknowledges and agrees that the PCC (or a Crown Body, a Regulatory Body or its or their duly nominated representative or agent) may investigate any incidents or suspicions of sexual exploitation, abuse or harassment related to the Project and the Beneficiary agrees to fully co-operate with any such investigation.
- 26.4 The Beneficiary shall take all reasonable steps, in accordance with Good Industry Practice, to:
- 26.4.1 ensure that neither the Beneficiary nor any of its employees, agents, contractors 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 Beneficiary and the duties owed to the PCC under the provisions of this Agreement; and
- 26.4.2 prevent fraud by its employees, agents, contractors and representatives (including its shareholders, members and directors) in connection with the receipt of monies from the PCC.
- 26.5 Without prejudice to the generality of Clause 26.4, the Beneficiary 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 Beneficiary's activities and to be excluded from any discussion or decision-making relating to the matter concerned.
- 26.6 The Beneficiary shall disclose to the PCC without delay full particulars of any such conflict of interest which may arise and if the Beneficiary 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.
- 26.7 For the purposes of Clause 26.6, "financial irregularity" includes fraud or other impropriety, mismanagement, bribery, corruption and the use of the Funding for purposes other than those intended by the PCC.
- 26.8 If the Beneficiary or its employees, agents, contractors 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 Beneficiary the amount of any Funding paid to the Beneficiary together with any loss sustained by the PCC in consequence of any breach of this Clause 26.



## **27 Prevention of Modern Slavery**

27.1 The Beneficiary undertakes, warrants and represents that:

27.1.1 neither the Beneficiary nor any of its officers or Staff has:

- (a) committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”); or
- (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

27.1.2 it shall comply with the Modern Slavery Act 2015; and

27.1.3 it shall notify the PCC immediately in writing if it becomes aware or has reason to believe that it, or any of its officers or Staff have breached or potentially breached any of the Beneficiary’s obligations under Clause 27.1.1. Any notice under this Clause 27.1.3 shall set out full details of the circumstances concerning the breach or potential breach of the Beneficiary’s obligations.

27.2 Any breach of Clause 27.1 by the Beneficiary shall be deemed a material breach of this Agreement entitling the PCC to terminate this Agreement pursuant to Clause 22.2.2(b).

27.3 Where the Beneficiary delegates or sub-contracts any of its duties or obligations under this Agreement, without prejudice to any requirements in relation to sub-contracting set out elsewhere in this Agreement, the Beneficiary shall ensure that the contract that it has with its sub-contractor:

27.3.1 is in writing; and

27.3.2 includes an obligation to comply with the Modern Slavery Act 2015.

27.4 The Beneficiary shall actively raise awareness of the Modern Slavery Act 2015 amongst its employees, agents, representatives and other members of its supply chain.

## **28 Variation**

28.1 Save as set out in Clause 11.5, no amendment or variation to this Agreement shall have effect unless agreed to by both Parties and made in writing executed by (or on behalf of) both Parties.

## **29 Relationship**

29.1 The Parties are independent entities and not partners, principal and agent, 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 on behalf of the other Party.

## **30 Counterparts**

30.1 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.

## **31 Severability**

31.1 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.

31.2 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 Beneficiary shall immediately commence good faith negotiations to remedy such invalidity.

### **32 Remedies Cumulative**

32.1 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.

### **33 Waiver**

33.1 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.

33.2 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 34.

33.3 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.

### **34 Notices**

34.1 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.

34.2 For the avoidance of doubt, any notice given under this Agreement shall not be validly served if sent by electronic mail and not confirmed by a letter sent by post.

### **35 Assignment and sub-contracting**

35.1 The Beneficiary may not, without the PCC's prior written consent, transfer, novate, assign, sub-contract or otherwise dispose of any right or obligation under this Agreement, in whole or in part.

### **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 to the Funded Service(s).

37.2 The Beneficiary 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, shall have no remedy and waives all rights in respect of: any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement, except that this Clause 37.2 shall not exclude or limit any liability in respect of any fraudulent misrepresentation.

### **38 Force Majeure**

38.1 Neither Party shall be liable to the other Party for any delay or non-performance of its obligations under this Agreement arising from any cause or causes due to 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 five 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 Beneficiary.

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.

38.4 The Beneficiary shall ensure it has a robust business continuity plan in place for the Funded Service which it shall implement in relation to any Force Majeure Event.

**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 be governed by and construed in accordance with the Law of England and, subject to Clause 24, the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

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

<b>Signed for and on behalf of the Police and Crime Commissioner for Nottinghamshire</b>		Signature
	<b>Charlotte Radford</b>	Name
	<b>Chief Finance Officer</b>	Position
		Date
<b>Signed for and on behalf of the Beneficiary</b>		Signature
		Name
		Position
		Date

### THE SCHEDULE

<b>Project</b>	
<b>Funded Services</b>	
<b>Objectives</b>	
<b>Funding and Budget</b>	
<b>Details of Payment of Funding / Funding Payment Plan</b>	
<b>Monitoring Information Requirements</b>	