

**CONTRACT**

Between

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH**

and

**[SERVICE PROVIDER]**

**THE CONTRACT**

The Contract shall comprise the following:

**A. The Conditions of Contract comprising:**

1 Appointment

2 Definitions and Interpretations

3 Contract Term

4 The Service Provider's Obligations

5 The Service Provider’s Representative

6 The Council's Obligations

7 The Council’s Authorised Officer

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36 Assignment and Sub-Contracting

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**B. Schedules to the Contract comprising:**

**Schedule 1 Service Specification**

**Schedule 2 Contact details**

**Schedule 3 Pricing Document and Payment Terms**

**Schedule 4 Schedule of Processing, Personal Data and Data Subjects**

### CONTRACT FOR PROVISION OF SOFTWARE SERVICES

**THIS CONTRACT** is made the day of

**BETWEEN**

1. [SERVICE PROVIDER NAME] whose address for service within the jurisdiction of the courts of (England and Wales) is xx (‘the Service Provider’)

**AND**

1. The Mayor and Burgesses of the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW (‘the Council’)

(each a ‘Party’ and together ‘the Parties’)

**1 Appointment**

1.1 The Council wishes to commission the Service Provider to provide an online queuing system in its Civic Centre in accordance with the Conditions of Contract, the Service Specification, Schedules and any appendices herewith.

**(CONDITIONS OF CONTRACT)**

**2 Definitions & Interpretations**

2.1 Definitions

Authorised Officer means xx whose contact details are listed in Schedule 3, or any person whose name has been notified in writing by or on behalf of the Council to the Service Provider in accordance with Clause 7

Commencement Date shall be the date the date stated in Clause 3.1 or, if none is stated, the date on which the Service Provider first delivers the Services to the Council

Contract means the Contract entered into by the Council and the Service Provider embodied in the Conditions of Contract and the Contract Documents

Contract Documents mean the Terms and Conditions of Contract, the tender or invitation for proposal documents, any submissions made by the Service Provider, together with the Schedules and any appendices

Contract Standard means such standards as complies in each and every respect with all relevant provisions of the Contract Documents

Council means the Council of the Mayor and Burgesses of the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW

Data Protection Legislation means (i) the General Data Protection Regulation (‘GDPR’), (ii) the Law Enforcement Directive and any applicable domestic implementing legislation as amended from time to time, (iii) the Data Protection Act 2018 (“DPA”) (iv) all applicable laws about the processing of personal data and privacy

Employees means directly employed staff and agency and locum staff and any agents of the Service Provider

Force majeure means:

* + acts of war
  + acts of God
  + decrees of Government
  + riots
  + civil commotion; and
  + any event or circumstance beyond the control of, or unpreventable by, the affected Party other than any labour dispute between the Service Provider and his Employees or the failure to provide the Services by any of the Service Provider’s sub-contractors

Instruction means a written order to provide the Services or any part thereof as described therein

Pricing Document means the rates and prices submitted by the Service Provider for the provision of the Services as set out in Schedule 4

Schedules mean the Schedules and appendices attached to these Conditions

Services means the services required to provide the outcomes set out in the Specification at Schedule 1 and which are to be delivered by the Service Provider

Service Provider has the same meaning as means [name] and its Employees, agents and sub-contractors

Service Provider's Representative means the person who is to represent the Service Provider appointed pursuant to Clause 5.1, whose contact details are listed in Schedule 3

Social Value means measures that help to improve the economic, social and environmental well-being of the area in which the Services are delivered

Term means the period the Services shall be provided by the Service Provider from the Commencement of the Services to the completion of all work required under the Contract.

Variation has the meaning ascribed to it in Clause 22

* 1. Interpretation

1. Words in the singular include the plural and vice versa;
2. Words in the masculine include words in the feminine and vice versa
3. Words importing individuals shall be treated as importing corporations and vice versa;
4. Headings are for ease of reference only and shall not affect the construction of the Contract; and
5. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to such enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument;
6. The word ‘including’ shall be understood as meaning ‘including without limitation’.
7. **Contract Term**
   1. The Contract Term (‘Term’) is the period from x February 2020 to x October 2021 unless either terminated in accordance with this Clause 3 or Clause 16 (Termination) of this Contract or extended by agreement.
   2. The Council may terminate this Contract where any of the grounds listed in Regulation 73(1) of the Public Contracts Regulations 2015, in the reasonable belief of the Authorised Officer, apply to this Contract. In such circumstances the Council may give reasonable notice of termination, and the Parties agree and acknowledge that 30 days’ notice in writing will constitute reasonable notice.
   3. This Contract does not constitute an exclusive agreement between the Parties and the Council shall be entitled to employ other persons to provide similar services to the Services.
8. **The Service Provider's Obligations**

4.1 During the Term the Service Provider shall devote such of his time attention and abilities to the provision of the Services as required by this Contract.

4.2 The Service Provider shall comply with the reasonable direction of the Authorised Officer and use his best endeavours to provide the Services.

4.3 The Service Provider shall at all times comply with the requirements of the Health and Safety at Work, etc. Act. 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision by the Service Provider of a copy of its risk assessment under these Regulations when requested by the Council), and of other Acts, Regulations, Orders or rules of law pertaining to health and safety. The Service Provider shall also ensure the health and safety of members of the public, the Council's employees, agents and contractors.

## 4.4 Except for any intellectual property which the Specification specifies will vest in the Council, the Service Provider shall own the copyright in all intellectual property that arises or is obtained by or developed by the Service Provider in respect of, or in the course of, or in connection with, the Services (“the Intellectual Property Right Work”). The Service Provider hereby grants to the Council a royalty-free licence in perpetuity to use and reproduce the Intellectual Property Right Work for all purposes relating to the Services. The Council shall also be entitled to grant sub-licences to others. If requested by the Council the Service Provider shall deliver to the Council all documents produced under the Contract. The Service Provider shall be entitled to retain a copy of all the documents as required by its insurers. The Service Provider shall indemnify the Council against all costs and damages associated with infringements of intellectual property rights in relation to the Services provided by the Service Provider.

4.5 The Service Provider shall, at all times during the Term, assign to the Services the sufficient, qualified and experienced Employees and agents to ensure that the Services are provided in accordance with the Contract Standard.

4.6 The Service Provider shall include in any sub-contract which it awards in connection with the Services an obligation to pay the sub-contractor in the manner prescribed by Regulation 113(2)(c) of the Public Contracts Regulations 2015.

4.7 The Service Provider shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other Service Provider or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other service provided by or on behalf of or to the Council.

4.8 The Service Provider shall at its own expense assist and co-operate with the Council and its partners in any general audit made under the Local Government Act 1999 and the Local Government and Public Involvement in Health Act 2007.

4.9 The Service Provider, upon the formation of the Contract and at all times throughout the Contract Term, warrants and represents to and undertakes with the Council in the terms set out in its proposal.

**5 The Service Provider’s Representative**

5.1 The Service Provider shall appoint a senior person as a representative empowered to act on behalf of the Service Provider for all purposes connected with the Contract. Such appointment or any further appointment shall be subject to the approval of the Council.

5.2 The Service Provider shall ensure that the Service Provider's Representative, or a competent deputy authorised by the Service Provider, is present at all work-places of the Service Provider, where work in connection with the Services is being carried out, and available to meet the Authorised Officer or representatives at all reasonable times.

**6 The Council's Obligations**

6.1 In consideration of the services rendered by the Service Provider under this Contract the Council shall pay the Service Provider in accordance with the provisions of Schedule 4.

* 1. It is a condition of this Contract that the Council shall pay all properly presented valid invoices within 30 days.
  2. The Council shall provide clear and accurate instructions to the Service Provider and shall take all reasonable measures to assist the Service Provider to provide the Services to the Contract Standard.

**7 The Council’s Authorised Officer**

7.1 The Authorised Officer shall be the person defined in this Contract and named in Schedule 3 or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Contract.

7.2 The Authorised Officer shall have power to issue Instructions to the Service Provider on any matter relating to the provision of the Services, and the Service Provider shall comply therewith.

**8 Best Value and Risk Management**

8.1 The Service Provider acknowledges that the Council is under a Best Value duty (Local Government Act 1999) to make arrangements for continuous improvement in the way in which its functions are exercised. The Service Provider shall at no additional charge provide reasonable assistance to the Council if the Authorised Officer identifies and requests steps which the Service Provider may reasonably take in furthering the Council’s discharge of its duties.

8.2 The Service Provider agrees to assist the Council in respect of combatting fraud and corruption perpetuated by Employees abusing their position and by others who may attempt to obtain the Council’s assets or services to which they are not entitled. If the Service Provider has any suspicions in this regard he should seek advice from the Head of Internal Audit and Counter Fraud, Civic Centre, 6 Brixton Hill London SW2 1EG.

8.3 The Service Provider shall have and maintain adequate procedures in place to prevent fraud, bribery, money-laundering and corruption in line with legislation including, but not limited to, the Terrorism Act 2000, the Proceeds of Crime Act 2002, and the Bribery Act 2010.

8.4 The Service Provider shall comply with the Modern Slavery Act 2015 (if applicable) and shall have and maintain throughout the Contract Term a whistleblowing policy for its Employees and sub-contractors to inform on any suspected breach of the procedural requirements of the Act.

8.5 The Service Provider shall have and maintain adequate procedures, policies and rules on corporate entertainment and gifts, and shall ensure that its Employees receive training in relation to those policies and rules.

8.6 The Service Provider shall comply with the conditions of employing foreign nationals under the Asylum and Nationality Act 2006.

8.7 Breach of any of Clauses 8.2 through 8.6 will usually constitute a breach incapable of remedy within the meaning of Clause 16.2(a) justifying immediate termination but the Authorised Officer may deem it capable of remedy within his absolute discretion and only if it is lawful to do so.

**9 Responsible Procurement**

9.1 The Service Provider shall endeavour to deliver Social Value through the provision of the Services and shall assist the Authorised Officer in capturing and measuring the Social Value so delivered.

**10 VAT**

10.1 All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

**11 Confidentiality**

11.1 The Service Provider shall not at any time during or after the Term divulge or allow to be divulged to any person any confidential information relating to the functions or affairs of the Council to a third person.

**12 Indemnity**

12.1 Subject to Clause 12.2 the Service Provider shall indemnify and keep indemnified the Council from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this Contract by the Service Provider including but not limited to:

(a) any act, neglect or default of the Service Provider or its Employees or agents; and

(b) breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.

12.2 Subject to Clause 12.3 the Service Provider’s aggregate liability under this Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss of or damage to tangible property (which for the avoidance of doubt includes data) (whether belonging to the other Party or a third party) howsoever caused will be limited to £100,000, which the Parties agree to be fair and reasonable in the circumstances.

12.3 Neither Party excludes or limits its liability (if any) to the other Party:

1. for breach of its obligations arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
2. for personal injury or death resulting from its negligence;
3. for any matter for which it would be illegal for it to exclude or to attempt to exclude its liability; or for fraud.

12.4 The Council shall not be liable for any consequential losses including but not exclusively, loss of profit, earning, income, business, goodwill, savings opportunities, reputation or associated costs to the Service Provider howsoever caused.

**13 Insurance**

13.1 The Service Provider shall maintain at its own cost and for a period of at least 6 years after the end of the Term policies of insurance to cover its liability in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Contract in the following minimum sums:

1. Employers’ liability of £10,000,000 (ten million)
2. Public liability of £5,000,000 (five million)
3. Professional indemnity of £2,000,000 (2 million)

13.2 The Service Provider warrants and represents that it has the insurances required by Clause 13.1. If the Authorised Officer demands it, the Service Provider shall provide evidence by broker’s letter or some other satisfactory form that it has the insurances.

**14 Conflict of Interest**

14.1 Upon becoming aware of any possible conflict of interest that may arise between the interest of the Council and any other of the Service Provider’s clients, the Service Provider shall notify the Authorised Officer immediately and shall take all reasonable steps to remove or avoid the cause of any such conflict to the satisfaction of the Authorised Officer.

**15 Monitoring of the Contract**

15.1 The Service Provider shall as soon as reasonably practicable provide the Authorised Officer with any information relating to the carrying out of the Services which the Authorised Officer may reasonably request.

**16 Termination**

16.1 Unless otherwise agreed by the Parties or terminated pursuant to Clause 3.2 or any of the following provisions, the Contract shall expire at the end of the Term specified in Clause 3.1 of this Contract.

16.2 The Council may terminate the Contract with immediate effect if:

(a) The Authorised Officer is of the reasonable opinion that the Service Provider has failed to perform the Services specified in the Contract or has failed to do so to the Contract Standard and that such failure is incapable of remedy.

(b) The Service Provider has failed to remedy a failure to perform the Services or has failed to remedy a failure to provide the Service to the Contract Standard including the standard required by the Schedules or these conditions of Contract in the time required to remedy such failure as expressed in writing to the Service Provider.

(c) If the Services have not been provided at the time set out in these Conditions of Contract (including but not limited to Schedule 1), and the Authorised Officer reasonably considers either that time is of the essence or that the nature of the Services justifies termination without affording the Service Provider an opportunity to remedy its default.

(d) The Service Provider or any employee of the Service Provider or any person acting on behalf of the Service Provider has:

1. given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
2. at any time during the tendering process (i.e. from the date of the publication of the notice seeking expressions of interest to the date of the award of the Contract), directly or indirectly canvassed any member or official of the Council concerning the acceptance of any proposal in respect of the Contract;
3. directly or indirectly obtained or attempted to obtain information from any member or official of the Council concerning any other proposal submitted by any other person in respect of the formation of the Contract;
4. committed, or attempted to commit, or failed to prevent, any offence under, but not limited to, the Acts of Parliament listed in Clause 8.

(e) The Service Provider compounds or arranges with his creditors whilst insolvent or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

(f) A mortgagor takes possession of the whole or a substantial part of the Service Provider’s property or assets or an administrator is appointed to the same.

(g) An order is made, or a resolution passed, for the winding up of the Service Provider.

* 1. The Service Provider may terminate the Contract if:

1. the Council is in breach of any of its obligations under clauses 6.1 and/or 6.2 but only after first giving the Council a reasonable opportunity to remedy its breach save that nothing in this provision shall relieve the Council of any obligation to pay interest; or
2. the Service Provider is professionally obligated to cease acting for the Council.

**17 Termination consequences**

17.1 In the event of the Contract being terminated for any of the reasons contained in Clause 16.2 above the Council will:

(a) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Service Provider's engagement shall have been calculated; and

(b) be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof; and

(c) be entitled to deduct from any sum or sums that would but for this Clause 17 have been due from the Council to the Service Provider under this Contract or any other contract or agreement, or be entitled to recover the same from the Service Provider as a debt, together with any consequent loss or damage to the Council. Such loss or damage will include the reasonable costs to the Council of the time spent by its officers in terminating the Contract, and in making alternative arrangements for the provision of the Services or any part thereof; and

(d) calculate the cost of any loss and/or damage and other costs arising from the Council's termination of the Contract and deduct the same from any sum or sums, which may otherwise be due to the Service Provider. The Council will pay to the Service Provider any balance shown as due to the Service Provider or if appropriate will recover any balance shown due to the Council as debt.

17.2 The rights of the Council under this Clause 17 are in addition to and without prejudice to any other rights the Council may have against the Service Provider.

17.3 In the event that the Service Provider terminates the Contract under the provisions of Clause 16.3(a) it shall be entitled to recover its reasonable expenses from the Council of recovering its unpaid invoices.

17.4 In the event that the Service Provider terminates the Contract under the provisions of Clause 16.3(b) it shall provide the Council with reasonable assistance in implementing an orderly transition to a new service provider.

17.5 The termination of the Contract, howsoever arising, will be without prejudice to any rights or obligations theretofore accrued or to any provisions which are expressed to be performed after or to survive the termination of this Contract.

**18 Delivery up of documents on termination**

18.1 Subject always to Clause 4.4, the Service Provider or his personal representative shall upon the termination of his engagement immediately deliver up to the Council all correspondence documents specification papers and property belonging to the Council which may be in his possession or under his control.

**19 Transfer of Undertakings (Protection of Employment) [TUPE]}**

19.1 It is not anticipated that TUPE will apply at the expiry or termination of the Contract but if it does the Parties will comply with their respective obligations under the TUPE Regulations and will cooperate with each other in providing such information as the other Party reasonably desires or requires in determining whether and to what extent TUPE may apply and providing TUPE information (to the extent permissible in law) to third parties who may have an interest in receiving it.

**20 Force Majeure**

20.1 If either Party fails to carry out their respective obligations under this Contract as a result of Force Majeure then that Party shall not be liable under this Contract for such failure provided the affected Party shall have given the other notice that such failure is the result of Force Majeure within 5 business days of such failure occurring.

20.2 If an event of Force Majeure occurs then the Council and the Service Provider shall meet to discuss how best to continue to provide the Services until the Force Majeure event ceases, which may include the Council providing the Service Provider with assistance, where reasonably practicable.

**21 Status of the Service Provider**

21.1 During the Term the Service Provider shall be an independent service provider and not an employee of the Council, and the Service Provider must not represent to anyone, nor allow any of his Employees or agents to represent to anyone, that they are employees or servants of the Council.

21.2 In such capacity the Service Provider shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax and VAT liability arising out of remuneration for his work performed by him under this Contract.

**22 Variations**

22.1 A variation to this Contract (including to the scope and nature of the Services) shall only be valid if it has been agreed in writing and signed by both Parties (‘Variation’).

22.2 The Service Provider shall not make a variation or supply services not specified without the written authority of the Authorised Officer.

**23 Data Protection and Freedom of Information**

23.1 Throughout this Clause 23 the Council is referred to as Controller and the Service Provider is referred to as Processor. The Parties acknowledge that for the purposes of the Data Protection Legislation the Council is the Controller and the Service Provider is the Processor unless otherwise specified in Schedule 5 or in any other part of the Contract or a Variation. The only processing that the Processor is authorised to do is listed in Schedule 5 (‘Schedule of Processing, Personal Data and Data Subjects’) by the Controller and may not be determined by the Processor.

23.2 The Service Provider warrants that it will lawfully process in accordance with the Data Protection Legislation as detailed in Schedule 5.

23.2 The Council has a number of obligations under the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations (EIR) to provide information of its functions where a person has made a request, unless the FOIA or the EIR exempts the requested information from such provision. The Service Provider and his sub-contractors shall co-operate with the Council in respect of any request affecting or related to the provision of the Services by among other things providing written responses to requests as required by the Authorised Officer. The Service Provider warrants to use all reasonable endeavours to help the Council meet its obligations under the FOIA and the EIR.

**24 Equal Opportunities**

24.1 The Service Provider shall use all reasonable endeavours to comply with all statutory provisions, statutory instruments, rules, regulations and bye-laws relating to equality and discrimination including, but not limited to, the Equality Act 2010 and shall take all reasonable steps to ensure that its Employees do not discriminate against any person because of any Protected Characteristic within the meaning of the Equality Act.

24.2 In the event of any finding of unlawful discrimination by the Service Provider during the Contract Period, or of an adverse finding in any formal investigation, the Service Provider shall inform the Council of this finding and the steps it proposes to take to prevent repetition of the unlawful discrimination.

24.3 The Service Provider shall provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's compliance with this Clause 24.

**25 Policy documents**

25.1 The Service Provider shall ensure that its Employees are fully conversant with and abide by all of the Council’s policies which are relevant to the performance of the Services and which have been brought to its attention including but not limited to Lambeth’s policy on whistleblowing.

**26 Disclosure and Barring Service / Criminal Records**

26.1 The Service Provider warrants that he is a fit and proper person to undertake the Services.

26.2 The Service Provider warrants that where the Services require the Service Provider to come into regular contact with vulnerable adults, its Employees and sub-contractors will have undergone appropriate checks with the Disclosure and Barring Service and that the results of those checks were satisfactory.

**27 Complaints in Respect of Service Provision**

27.1 The Service Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner and shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Service Provider shall notify the Authorised Officer promptly in writing of all complaints received and of all steps taken or proposed to be taken in response thereto.

27.2 Where the Authorised Officer receives any information or complaint about an Employee of the Service Provider in connection with the Services, he may direct that the Employee in question is withdrawn from engagement in the Services pending an investigation if in his opinion such a direction is required to maintain the confidence of the Council and/or Service Users in the performance of the Services. The Council shall not be responsible for any costs or loss arising from such a direction.

**28 Disputes**

28.1 Subject to Clause 28.3 if any dispute or difference arises out of this Contract the Parties shall meet and attempt to resolve all such disputes or differences. If within 30 days such disputes or differences cannot be resolved then the Parties with the assistance of the Centre for Dispute Resolution seek to resolve the dispute or difference amicably by using an alternative dispute resolution (“ADR”) procedure acceptable to both Parties.

28.2 If either Party fails or refuses to participate in the ADR procedure, or in the event the dispute or difference is not resolved to the satisfaction of both Parties within 30 days after it has arisen, the dispute or difference shall be referred to a sole arbiter appointed under the Rules of the Chartered Institute of Arbitrators.

28.3 Nothing in this Clause 28 (Disputes) shall operate to prevent either Party taking legal action in the courts should they consider that ADR will not adequately protect or vindicate their position.

**29 Committee Meetings and other Meetings**

29.1 The Service Provider shall, if requested (and only to the extent reasonable and proportionate), attend Council and committee meetings, meetings of the Executive, meetings with members of task forces and other meetings, including but not limited to Scrutiny Committees. If requested, the Service Provider shall supply written reports to whichever of those bodies as requests it. If the Service Provider is requested to attend any meeting then at such meeting the Service Provider shall answer truthfully and accurately, and including all relevant material. Such answer shall be, at the election of the committee or other body mentioned in this Clause 29.1, answered either orally at the meeting or at in writing at such a time as may be directed.

**30 Local Authority** **Functions**

30.1 Nothing in this Contract shall prejudice or affect the Council’s rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

**31 Waiver**

31.1 Failure by either Party to enforce or rely on at any time during or after the Term any one or more of the terms, conditions or warranties of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions or rely on any warranties given in this Contract, nor shall such failure create an estoppel.

**30 Supersedes Prior Agreements**

30.1 This Contract supersedes any prior contracts or agreements between the Parties to provide the Services, whether written or oral, and any such prior contracts or agreements are cancelled as at the Commencement Date but without prejudice to any rights that have already accrued to either of the Parties.

**33 Entire Contract**

33.1 Each Party acknowledges that this Contract, its Schedules and any amendments or Variations that may be agreed in writing by both Parties, contains the whole agreement between the Parties relating to the subject matter of the Contract.

**34 Notices**

34.1 Any notice or other communication requiring to be served under or in connection with the Contract shall be in writing and shall be delivered to the registered offices at the addresses stated in the Contract or as otherwise specified in the Contract.

34.2 Any such notice shall be delivered by hand or sent by recorded first class post and shall conclusively be deemed to have been given or received at the time of delivery. The Parties agree that they will simultaneously email any notice given under this Clause 34 to the other Party’s Representative or Authorised Officer, as the case may be.

**35** **Joint and Several**

35.1 Where the Services are being provided by a consortium each and every member of the consortium shall be jointly and severally liable under this Contract.

**36 Assignment and Sub-Contracting**

36.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Service Provider.

36.2 The Service Provider shall not:

(a) without the written consent of the Authorised Officer, in his absolute discretion and subject to any terms as he may consider desirable assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;

(b) sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Authorised Officer. Such consent shall be at the discretion of the Authorised Officer and, if given, shall not relieve the Service Provider from any liability or obligation under the Contract. The Service Provider shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees or agents in all respect as if they were the acts, defaults or neglect of the Service Provider.

**37 Third Parties**

37.1 Neither Party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contract (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

**38 Governing Law**

38.1 This Contract shall be governed by English law.

|  |  |
| --- | --- |
| **Signed for and on behalf of the Council (1)**  Name:  Position:  Signature: | **Signed for and on behalf of the Service Provider**  Director Name:  Position:  Signature: |
| **Signed for and on behalf of the Council (2)**  Name:  Position:  Signature: | **Service Provider Director’s signature witnessed by:**  Name:  Signature: |

**SCHEDULE 1**

**SERVICE SPECIFICATION**

**Appendix C- Specification**

# Context

1. Lambeth Council has received confirmation of Greater London Authority Grant funding under the Homebuilding Capacity Fund programme. This has been awarded to develop a new design-led approach to the development of a Site Allocations DPD (SA DPD) for the borough. The SADPD will form part of the statutory development plan and, following adoption, will be used to determine planning proposals on each relevant site. The DPD will introduce new site allocations to replace those currently contained within the forthcoming Revised Local Plan, which is anticipated for adoption in late 2020/21.
2. The SA DPD will include design and development principles with the aim of optimising residential (and non-residential) capacity for each site and will also demonstrate how the Draft London Plan affordable housing Fast Track Route can be achieved. The Council will be preparing a detailed evidence base in support of around 15-20 site allocations. This will mean that each individual site allocation will be underpinned by evidence on design and capacity; daylight and sunlight; flood risk data; and viability. It is anticipated that this holistic approach will speed up plan-making and decision-making processes and assist the Council in meeting its housing and economic development targets and aspirations.
3. One of the aims of the approach taken to the SA DPD is to go to a more detailed level of testing than would normally be included for such a document. The level of detail will depend on the potential detail of each site allocation. However, in general, the council will provide some detail in relation to uses and site layout, block configuration, massing and indicative heights. Consultants should advise on how minor amendments or variations to this design could achieve acceptable levels of sunlight and daylight forthe proposed development and existing/surrounding buildings. This will apply to both internal and external spaces. It is understood that this level of analysis can generally only be achieved where information is provided to the detail of a full detailed planning application however consultants should also advise on potential further considerations as they emerge as schemes are developed in the future. Further details are provided below. Consultants may also be asked to advise on the application of the ‘Right of light’ in relation to any relevant existing premises and the scale and form of any financial implications for changes which arise. This should be set out as an additional cost (see Appendix B Method Statement).
4. The Council therefore wishes to procure consultants with specialisms in daylight and sunlight testing to support preferred site options for each allocated site. In addition to advising on risks and matters requiring further investigation, the consultants would also be required to put forward and suggest creative solutions to mitigating any daylight and sunlight matters and risks that may arise from development options. Further details on the scope of these requirements is provided below. This will broadly involve:

* Assessing a number schemes to a differing level of detail
* Advising the council on how to optimise the design and site layouts to maximise the daylight and sunlight levels; and
* Advising on the areas of focus for future daylight and sunlight testing in future planning applications.
* Advising on the legal implications of the proposals in relation to the right of light. Advising on site layout to maximise residential amenity whilst at the same time providing great external spaces for people to inhabit and use (both proposed and nearby amenity spaces and public realm)

# APPROACH TO THE COMMISSION

**Iterative approach**

1. Each site allocation will be worked up to a differing level of detail which will depend on the site context and complexity; the land ownership; and the constraints. This is described below, and the level of detail and the potential for consultant input will depend heavily on this factor. However, for all sites the council will engage the consultant at the earliest stage in the design-led process and provide, as much as is possible, the broad range of quantum of floorspace, massing and where possible an indication of the uses. Where possible, and where there are some clear factors which may affect achieving acceptable daylight and sunlight penetration levels within and adjacent to the site, such as proposed building orientation, adjacent buildings, natural features etc. Consultants will be expected to raise any issues at this stage and advise on markers to be aware of, including raising any likely right of light issues which may arise
2. It is likely that each site allocation will undergo a number of different design iterations (likelihood of, on average two each) whereby design, daylight and sunlight and viability information will interact to further refine a scheme in relation to proposed massing, quantum of space and heights. In this respect the cost quoted should allow for testing of between up to 15 potential site allocations, each with an averaged attributed proportion of time. Consultants will be expected to monitor the time spent against each scheme in total and against the hourly total also provided. An allowance should also be quoted for each hour which goes beyond this total.
3. Below sets out the differing level of detail to which each potential site allocation will be developed however in most cases it is likely that sites being progressed to the greatest level of detail will go through each of the stages described below as part of the iterative process as described above.
4. The successful consultant will be expected to engage regularly with the council and have regard to this at all stages in the process. The council will also expect regular updates, approximately every 2 weeks.
5. Following consultation at the end of 2020, there may also be a need to re-visit the design and daylight and sunlight testing which would need to take place in January-March 2021. Therefore as set out in Appendix B, this should be factored in as a cost per additional testing, should these be required in excess of the quantum included in the quote.

**Detail of schemes**

1. Annex 1 includes some examples of the differing levels of detail, where some sites will be developed to levels 1, 2 and 3. Below sets out the various considerations the consultants would be expected to consider according to each level of detail.
2. Level 1- Site allocation to include broad indications on a site plan showing the proposed range of uses, however without any specific information on height and massing (See Level 1). In this scenario it is anticipated that the consultants should develop an understanding of the principle site constraints and how this should steer input into the design proposals; provide some information on the risks for consideration in the development of detailed designs; and advise on key site-specific factors for consideration in working up specific designs on the site. This should include consideration of the wider site context, nearby and adjacent uses, primary sensitivities and other relevant factors. This should enable the provision of general advice on potential site layout to maximise residential amenity and drawing of general conclusions with regard to how the design of neighbouring properties may affect the reasonable development of the site. It is anticipated that this testing will be required for approximately 15 site allocations.
3. The next stage in this may be taking forward the site allocation to Level 2 detail for some sites, or if not applicable, or advising the council on appropriate matters for inclusion as development principles for the site allocation. The Council will advise on this at relevant time.
4. Level 2- Site allocations to be developed to show broad locations of blocks within the site boundary, and broad location of different uses within the blocks (See Level 2). In this case consultants should provide commentary on the factors affecting the likelihood of gaining acceptable daylight and sunlight penetration into rooms on each façade proposed, and considerations for each potential uses. Consultants will also be expected to advise on potential changes to the site use and layout which may assist in improving daylight and sunlight penetration. Consultants should then provide advice on what other risks and factors which will need attention when drawing up a future planning application for the site. It is anticipated that this testing will be required for approximately 15 site allocations.
5. The next stage in this may be taking forward the site allocation to Level 3 detail for some sites, or if not applicable, advising the council on appropriate matters for inclusion as development principles for the site allocation. The Council will advise on this at relevant time.
6. Level 3- Site allocations showing broad locations of blocks and massing, and demonstration of the uses to be located in which part of the blocks (See Level 3). At this level of detail consultants should provide analysis of the broad ranges of daylight and sunlight values which may be achieved for each façade and how this may impact on the use proposed, and the effects of the design against the relevant BRE guidance. It is understood that full analysis of daylight and sunlight is not possible without a level of detail applicable to a planning application, however the consultants will be expected to provide an indication of the ranges which may be achieved subject to detailed design and make recommendations of any potential design changes which overall are likely to achieve a higher proportion of acceptable daylight and sunlight penetration to each façade and each proposed use. Consultants should then provide advice on what other risks and factors which will need attention when drawing up a future planning application for the site including what further modelling of the site and neighbouring properties would be required in order to refine the level of accuracy at the later stages. It is anticipated that this testing will be required for approximately 10 site allocations.
7. Where appropriate the next stage may be advising the council on appropriate matters for inclusion as design-based development principles for the site allocation or specific matters for further consideration within the development of a future planning application proposal.
8. In addition to the above, some of the site allocations may be developed to level 1 or 2 detail but may then provide much more detailed context to the site allocation and the consideration of matters which lie outside the red line boundary. Therefore the consultants will also be expected to have an awareness of the wider site context in relation to the emergence of a wider strategy for that location.
9. The council will be preparing a number of evidence-base documents in support of the Site Allocations DPD. A key evidence base document will be the design-led work which will include the detailed analysis and information which will be drawn upon to develop each site allocation. Consultants are expected to input into this by providing detail of the daylight and sunlight testing for each site. At present this is anticipated to form part of a wider document but there may be some merit in separating this off as one document. Either way consultants will be liaising closely with the council on the production of this information as set out within the timetable in Appendix D.
10. As set out above daylight and sunlight testing is required for approximately 15 potential site allocations. However as also set out in paragraph 13 above it is most likely that those being developed to the greatest detail (Level 3) will also undergo analysis at levels 1 and 2. It is currently envisaged that the consultants should allow for all of the total of between 15 site allocations to be developed to Level 1; approximately 10 of the total to Level 2; and 5 of the total to Level 3. A cost should be provided based on these differing degrees of analysis and complexity of work, plus an additional allowance for each further analysis for Levels 1, 2 and 3. The council will be able to further refine and provide further details on commissioning.

**Additional work- Right of light**

1. Where relevant and applicable, consultants may be asked to advise on the change to the level of light currently enjoyed and whether the proposal contained within the potential site allocation would cause an infringement of current light levels, and potential financial implications. The relevance and applicability of the above will be determined by the specific site (ie properties in the vicinity; which meet the criteria of enjoying the same levels of light for 20 years and above; whether the proposal likely to affect this); and the level of detail the council will be entering into in the site allocation. Where the site allocation is only likely to achieve Level 1 or 2 (as set out above) consultants will be expected to provide some expert opinion on whether the proposal may, or may not result in any infringement of the right of light and how this could be avoided.
2. If required, for each relevant site allocation:

* Confirmation whether or not rights of light are likely to be adversely impacted, and if not possible, where there may be a potential risk;
* Identification of any risks of injunction risks, or compensation valuations where identified; and
* Advice on how a scheme may be amended to mitigate against the risks identified and/or provide advice on an appropriate strategy for dealing with rights to light risks and implications.

1. Although the above brief includes for some level of daylight and sunlight analysis for up to 15 site allocations it is not envisaged that all of these will be considered relevant and applicable in relation to the above. Therefore a cost should be provided for each additional detailed report covering the bullets in paragraph 19 above based upon the length of time allotted to each. This should be included as an additional cost, see Appendix B.
2. For the avoidance of doubt, all negotiations in relation to formal Right of Light (ROL) awards and disputes are to be excluded as they are outside the scope of this project.

# SCHEDULE AND REQUIREMENTS (SPECIFICATION)

1. This schedule of requirements should be utilised to develop a Method Statement response to the brief as highlighted below. It is envisaged that this project will need to be flexible to the differing and flexible requirements of each site allocation however the below sets out the considerations and the broad approach which is proposed. The Council would also require a more detailed assessment methodology where material constraints to daylight/sunlight might become evident.

**Technical requirements**

1. The Council are wishing to appoint consultants with specialism in daylight and sunlight (D&S) to provide their expertise and assist withsite appraisals, feasibility and capacity studies for approximately 15 sites all within urban areas. The technical analysis is to be assessedagainst BRE ‘S[ite layout planning for daylight and sunlight: a guide to good practice (BR209](https://www.brebookshop.com/details.jsp?id=326792))’, BS EN 17037:2018 Daylight in Buildings. Any other relevant emerging guidance which may affect future delivery and feasibility of the sites will also need to be considered.
2. The preferred design options resulting from the technical D&S analysis will be used to undertake an initial view on the likely planning risk and any potential financial implications on the viability and to make recommendations on the emerging preferred design options. The outcome of the feasibility study will be used to inform the preferred option and for part of the evidence based document integral to the SADPD.
3. As this work is at feasibility stage level it will be used to support and inform policy. Please note, given that the level of detail assessments for the sites won’t be exceeding RIBA Stage 02 level of detail,  the Council are not anticipating commissioning detailed site surveys for the sites.  Site appraisal studies will be based on topographical information obtained from VUCity model software, site visits and OS maps.  Therefore, the consultants are asked to highlight any additional surveys and information they would require to carry out the assessments and make it clear in the costing submission how this might affect their final quote.

**The feasibility and capacity assessments of the sites (RIBA stages 0 to 2)**

1. In undergoing the process and to the differing levels of details as set out in paragraphs 8 to 17 above the consultants will be expected to carry out the following:

* Carry out all the services in accordance with relevant and current statutory guidance and requirements such as BS EN 17037:2018 Daylight in Buildings, BRE ‘S[ite layout planning for daylight and sunlight: a guide to good practice (BR209](https://www.brebookshop.com/details.jsp?id=326792)), RICS practice Standards and RICS guidance notes. As already mentioned, any emerging guidance and best practice approaches should also be considered due to the delivery program of the sites being appraised.
* Review existing topography and provide advice in relation to additional significant data that will be required in order to proceed with any potential ROL assessments.
* Visit the sites and provide initial appraisal of the obvious and significant apparent risks in relation to Daylight and Sunlight matters
* Set up 3D Daylight and Sunlight Analysis Computer models and provide initial Lighting Optimum Envelope Diagrams (please note, may not be required for all the sites). For the purpose of this scope and tender please allow for 15 sites.)
* Import, model and report to the council team on the site development options
* Allow the council team access to your analysis Computer Model and Modeller (on your premises or as otherwise agreed with the council) to develop the optimum option for the site and site allocations brief
* Respond to the council team in a timely manner and notify the team immediately on any changes and deviation from the original agreed programme so that the milestones identified in Appendix D can be met.
* Provide all necessary diagrams and calculations in relation to the developed options on each site for, Daylight and Sunlight matters.
* Provide a summary report for the SADPD in relation to daylight and sunlight matters and issues relating to each potential site allocation. The D&S reports and recommendations will form a key part of the evidence base in support of the DPD.

**SCHEDULE 2**

**CONTACT DETAILS**

The Service Provider’s Representative:

For general queries in the absence of the named officer:

The Council’s Authorised Officer shall be: Gudrun Andrews ([gandrews@lambeth.gov.uk](mailto:gandrews@lambeth.gov.uk))

For general queries in absence of the named officer.

**SCHEDULE 3**

**PRICING DOCUMENT AND PAYMENT TERMS**

**PRICING**

[INSERT PRICING]

**PAYMENT TERMS**

1. The Council operates an electronic only policy for issuing Purchase Orders and receiving invoices from service providers and contractors through an internet portal managed in partnership with the Council by a third party provider.

2. The electronic portal is offered free of charge to service providers and contractors. The Council will direct the third party partner to make contact with the Service Provider in order to create an account within the electronic portal to enable them to invoice the Council.

1. The Service Provider will be able to view their Purchase Orders and the status of their invoices within the electronic portal in real time.

4 Both the Council and the Service Provider shall adhere to the following procedure in respect of invoicing and payments in respect of the Services:

1. Following the schedule detailed below (or as otherwise agreed by the Parties in writing) the Service Provider shall submit to the Council an invoice, by electronic means through the portal only setting out the sums for each type of work together with a record detailing the work carried out, in accordance with the prices tendered
   1. Each month during January 2020 to June 2020;
   2. Following successful completion of any additional testing required; and

(b) Once the Council agrees the details of the electronic invoice and the work record it will arrange payment, which will be made within 30 days of invoice date unless disputed by the Council.

(c) Where the Council disputes the amounts entered on an invoice the parties shall discuss the differences and the Service Provider shall submit such further information as required by the Council to verify the invoice sum.

(d) Once agreed, the Service Provider shall submit a corrected Invoice as agreed pursuant to Clause 4(a), above.

1. Invoices submitted via the internet portal shall be deemed to have been received on the next working day from the date of transmission.
2. Invoices submitted by any other means shall be deemed to have been received only once those invoices reach the appropriate payment officer within the Council.

**SCHEDULE 4**

**SCHEDULE OF DATA PROTECTION AND DATA PROCESSING**

**PART 1: Generic Standard GDPR Clauses**

**STANDARD DEFINITIONS**

Party: a party to this Agreement;

Agreement: the ‘Contract’ to which this Schedule 4 is appended;

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

Processor Personnel: means all directors, officers, employees, agents, consultants and Service Providers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

**GDPR CLAUSE DEFINITIONS**

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018;

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679);

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing;

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in the Schedule appended to the Agreement (if any) prescribing security measures;

Sub-processor: any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

**B DATA PROTECTION**

B1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor unless otherwise specified in Part 2 of this Schedul4 or in any other part of the Agreement or any Variation. The only processing that the Processor is authorised to do is listed in Part 2 of this Schedule 4 by the Controller and may not be determined by the Processor.

B1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

B1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

* + 1. a systematic description of the envisaged processing operations and the purpose of the processing;
    2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
    3. an assessment of the risks to the rights and freedoms of Data Subjects; and
    4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

B1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

* + 1. process that Personal Data only in accordance with Part 2 of this Schedule 4, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
    2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
       1. nature of the data to be protected;
       2. harm that might result from a Data Loss Event;
       3. state of technological development; and
       4. cost of implementing any measures;
    3. ensure that :
       1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Part 2 of this Schedule 4);
       2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    4. are aware of and comply with the Processor’s duties under this clause;
    5. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    6. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    7. have undergone adequate training in the use, care, protection and handling of Personal Data; and not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
       1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
       2. the Data Subject has enforceable rights and effective legal remedies;
       3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
       4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
    8. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

B1.5 Subject to clause B1.6, the Processor shall notify the Controller immediately if it:

* + 1. receives a Data Subject Request (or purported Data Subject Request);
    2. receives a request to rectify, block or erase any Personal Data;
    3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
    4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
    5. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
    6. becomes aware of a Data Loss Event.

B1.6 The Processor’s obligation to notify under clause B1.5 shall include the provision of further information to the Controller in phases, as details become available.

B1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause B1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

* + 1. the Controller with full details and copies of the complaint, communication or request;
    2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
    3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
    4. assistance as requested by the Controller following any Data Loss Event;
    5. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

B1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 4. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

* + 1. the Controller determines that the processing is not occasional;
    2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
    3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
    4. If the Processor employs fewer than 250 staff and considers that it should be exempted from the requirements of this clause B8.1 it shall so notify the Controller, and the Controller shall determine whether the Processor should be exempted and direct the Processor accordingly.

B1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

B1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

B1.11 Before allowing any sub-processor to process any Personal Data related to this Agreement, the Processor must:

* + 1. notify the Controller in writing of the intended sub-processor and processing;
    2. obtain the written consent of the Controller;
    3. enter into a written agreement with the sub-processor which give effect to the terms set out in this Schedule 4 such that they apply to the Sub-processor; and
    4. provide the Controller with such information regarding the sub-processor as the Controller may reasonably require.

B1.12 The Processor shall remain fully liable for all acts or omissions of any of its sub-processors.

B1.13 The Controller may, at any time on not less than 14 days’ notice, revise this clause 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).

B1.14 The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 days’ notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

B1.15 Where the Parties include two or more Joint Controllers as identified in Part 2 (if so identified) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses B1.1- B1.14 for the Personal Data under Joint Control.

**PART 2: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

This Part 2 of Schedule 4 shall be completed by the Controller, who may take account of the view of the Processors; however, the final decision as to the content of this Part 2 of Schedule 4 shall be with the Controller at its absolute discretion.

* + 1. The contact details of the Controller’s Data Protection Officer are: Matt Ginn, Interim Information Governance Manager at: [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk), or any replacement or substitute Data Protection Officer at the relevant time and who should in the first instance be contacted at [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk).
    2. The contact details of the Processor’s Data Protection Officer are: [insert Contact details].
    3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
    4. Any such further instructions shall be incorporated into this Schedule 4.

|  |  |
| --- | --- |
| Description | Details |
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor in accordance with Clause 23.1.  [Guidance: You may need to vary this section where (in the rare case) the Council Service Provider have a different relationship. For example where the Parties are Joint Controller of some Personal Data:  “Notwithstanding Clause 23.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:  [Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]  In respect of Personal Data under Joint Control, Clauses B1.1 – B1.15 will not apply and the Parties agree to put in place a Joint Controller Agreement in the form advised by any current Policy Procurement Note instead.” |
| Subject matter of the processing | [This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.  The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide an online queuing solution/service to residents, users and members of the public. |
| Duration of the processing | [Clearly set out the duration of the processing including dates] |
| Nature and purposes of the processing | [Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.  The purpose might include: employment processing, statutory obligation, recruitment assessment etc.] |
| Type of Personal Data being Processed | [Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.] |
| Categories of Data Subject | [Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.] |
| Plan for return and destruction of the data once the processing is complete  UNLESS requirement under union or member state law to preserve that type of data | [Describe how long the data will be retained for, how it be returned or destroyed] |