

DATED

2023

(1) THE NORTH YORKSHIRE COUNCIL

and

**(2) NORTH AND EAST
YORKSHIRE
ECOLOGICAL DATA
CENTRE**

AGREEMENT
relating to

the provision of Ecological Services

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SCHEDULES

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BETWEEN

- (1) **THE NORTH YORKSHIRE COUNCIL** of County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD (the “**Council**”); and
- (2) **NORTH AND EAST YORKSHIRE ECOLOGICAL DATA CENTRE** an operating function of the Yorkshire and Humber Ecological Data Trust (YHEDT), a registered charity (No.1075999) whose principal office is at Unit 7, Hassacarr Close, Dunnington, York, YO19 5SN (the “**Supplier**”).

BACKGROUND

- (A) The Council wishes to provide funding to support the Supplier in carrying out research and data management necessary to collect, collate and proactively disseminate ecological and other environmental data pertaining to North Yorkshire, in line with the centre’s established mission and charitable function, and cannot be used to deliver a tangible commercial benefit to any individual or company (“the **Services**”).
- (B) The Council has selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services to the Council in accordance with the terms and conditions of this Agreement.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement:

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| “ Agreement ” | means the contract between (i) the Council and (ii) the Supplier constituted by these terms and conditions, its Schedules and any documents referred to within; |
| “ Agreement Manager ” | means the person nominated by the Supplier in accordance with clause 6.2; |
| “ Authorised Officer ” | means the person nominated by the Council in accordance with clause 6.1; |
| “ Business Continuity Plan ” | means the plan detailing the alternative arrangements to be put in place by the Supplier to ensure continuity of service delivery in the event of a failure in or disruption to the Services arising as a result of an emergency situation; |
| “ Charges ” | means the charges for the Services as specified in Schedule 3; |
| “ Commencement Date ” | means 1 April 2023; |
| “ Confidential ” | means all information, whether written or oral (however recorded), |

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| Information” | provided by the disclosing party to the receiving party and which (i) is known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential; |
| “Controller” | has the meaning given in the Data Protection Legislation; |
| “Data Processing Schedule” | means Schedule 5 to this Agreement setting out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject; |
| “Data Protection Impact Assessment” | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| “Data Protection Legislation” | means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party; |
| “Data-Protection Officer” | has the meaning given in the Data Protection Legislation; |
| “Data Subject” | has the meaning given in the Data Protection Legislation; |
| “Data-Subject Access Request” | means 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; |
| “Domestic Law” | means the law of the United Kingdom or a part of the United Kingdom; |
| “DPA 2018” | means the Data Protection Act 2018; |
| “Expiry Date” | means 31 st March 2025 |
| “FOIA” | means the Freedom of Information Act 2000; |
| “Information” | has the meaning given under section 84 of the FOIA; |
| “Key Personnel” | means any persons specified as such in Schedule 4 or otherwise notified as such by the Council to the Supplier in writing; |

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| “Mandatory Policies” | means the Supplier’s business policies listed in paragraph 5 of Part A of Schedule 1, as amended by notification to the Council from time to time; |
| “Party” | means the Supplier or the Council (as appropriate) and “Parties” shall mean both of them; |
| “Personal Data” | has the meaning given in the Data Protection Legislation and where used in this Agreement refers to any such Personal Data processed by the Supplier on behalf of the Council under this Agreement; |
| “Personal-Data Breach” | has the meaning given in the Data Protection Legislation and where used in this Agreement refers to any such Personal Data processed by the Supplier on behalf of the Council under this Agreement; |
| “Processor” | has the meaning given in the Data Protection Legislation; |
| “Prohibited Act” | means the Supplier or any Staff: <ul style="list-style-type: none"> a) directly or indirectly offering, promising or giving any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function activity; b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or d) defrauding, attempting to defraud or conspiring to defraud the Council; |

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| “Protective Measures” | means 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 Data Processing Schedule; |
| “Purchase Order Number” | means the Council’s unique number relating to the supply of the Services; |
| “Relevant Transfer” | means a relevant transfer of an undertaking for the purpose of TUPE; |
| “Request for Information” | has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply); |
| “Services” | means the services to be supplied by the Supplier to the Council under this Agreement and in accordance with the Specification and “Service” shall be construed accordingly; |
| “Service Specific Terms” | means the terms set out in Schedule 1 relating specifically to the Services to be provided under this Agreement; |
| “Specification” | means the specification for the Services (including as to quantity, description and quality) as specified in Schedule 2; |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under this Agreement; |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Supplier from time to time; |
| “Sub-processor” | means any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement; |
| “Term” | means the period from the Commencement Date to the Expiry Date as such period may be extended in accordance with paragraph 1 of Part A of Schedule 1 or terminated in accordance with the terms and conditions of this Agreement; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the |

purpose of implementing the EC Acquired Rights Directive (Council Directive 2001/23/EC) into English law;

“UK GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) retained by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419);

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 references to numbered clauses are references to the relevant clause in this Agreement;
 - 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3 the headings to the clauses of this Agreement are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.
- 1.3 If there is any conflict or inconsistency between the provisions in the main body of this Agreement and the Schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
- 1.3.1 the clauses of this Agreement and Part A of Schedule 1 to this Agreement;
 - 1.3.2 Part B of Schedule 1 to this Agreement; and
 - 1.3.3 Schedules 2 to 5 to this Agreement.

2 Supply of Services

- 2.1 In consideration of the Council’s agreement to pay the Charges, the Supplier shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of this Agreement, including any Service Specific Terms.

- 2.2 In supplying the Services, the Supplier shall:
- 2.2.1 co-operate with the Council in all matters relating to the Services and comply with all the Council's instructions;
 - 2.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 2.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
 - 2.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 2.2.5 comply with all applicable laws; and
 - 2.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 2.3 The Council may by written notice to the Supplier at any time request a variation to the scope of the Services including but not limited to a decrease in the scope in accordance with the Public Contract Regulations 2015 and any successor legislation. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier.
- 2.4 The Supplier acknowledges that in entering this Agreement no form of exclusivity or volume guarantee has been granted by the Council for Services from the Supplier and that the Council is at all times entitled to enter into other agreements and arrangements with other services for the provision of any of all services which are the same as or similar to the Services.

3 Term

This Agreement shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with paragraph 1 of Part A of Schedule 1 or terminated in accordance with the terms and conditions of this Agreement.

4 Charges, Payment and Recovery of Sums Due

- 4.1 The Charges for the Services shall be as set out in Schedule 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 4.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate as applicable. The Council shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services. The Supplier shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Supplier's failure to account

for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

- 4.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
 - 4.4 For the purposes of clause 4.3, an electronic invoice complies with the standard on electronic invoicing where it complies with the standard referred to in the Public Procurement (Electronic Invoices etc.) Regulations 2019 (2019/624).
 - 4.5 The Supplier shall invoice the Council as specified in this Agreement. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period. Non-compliant invoices will be sent back to the Supplier which may lead to a delay in payment
 - 4.6 In consideration of the supply of the Services by the Supplier, the Council shall pay the Supplier the invoiced amounts no later than ten (10) Working Days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
 - 4.7 If the Council fails to consider and verify an invoice or raise a dispute within ten (10) Working Days of receipt the invoice shall be regarded as valid and undisputed for the purpose of clause 4.6.
 - 4.8 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement for a failure to pay undisputed sums in accordance with clause 15.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
 - 4.9 If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
 - 4.10 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
 - 4.10.1 provisions having the same effects as clauses 4.5 to 4.9 of this Agreement; and
 - 4.10.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 4.5 to 4.10 of this Agreement.
- In this clause 4.10, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.11 If any sum of money is recoverable from or payable by the Supplier under the Agreement

(including any sum which the Supplier is liable to pay to the Council in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Council. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

- 4.12 All amounts due under this agreement from the Supplier to the Authority shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

5 Premises and Equipment

- 5.1 If necessary, the Council shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 5.2 If the Supplier supplies all or any of the Services at or from the Council's premises, on completion of the Services or termination or expiry of this Agreement (whichever is the earlier) the Supplier shall vacate the Council's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Council's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Council's premises or any objects contained on the Council's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 5.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 5.4 The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Council's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Council's security requirements.
- 5.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Council in writing.
- 5.6 Without prejudice to clause 2.2.6, any equipment provided by the Council for the purposes of this Agreement shall remain the property of the Council and shall be used by the Supplier and the Staff only for the purpose of carrying out this Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of this Agreement.
- 5.7 The Supplier shall reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Council is notified otherwise in writing within five (5) Working Days.

6 Staff and Key Personnel

- 6.1 Before the Commencement Date, the Council shall appoint an Authorised Officer who shall:
 - 6.1.1 manage the Agreement;
 - 6.1.2 liaise with the Agreement Manager; and
 - 6.1.3 issue instructions to the Supplier on any matter relating to this Agreement.
- 6.2 Before the Commencement Date, the Supplier shall appoint an Agreement Manager approved by the Council who shall:
 - 6.2.1 manage and co-ordinate the Services;
 - 6.2.2 liaise with the Authorised Officer; and
 - 6.2.3 supply information to the Council as required in relation to this Agreement
- 6.3 The Supplier shall notify the Authorised Officer in writing of the name, address and contact numbers of the Agreement Manager and any deputy.
- 6.4 Either Party may replace its Authorised Officer or Agreement Manager at any time by giving written notice to the other Party.
- 6.5 Any notice, instruction or other information given to the Authorised Officer or Agreement Manager shall be deemed to have been given to the respective Party.
- 6.6 The Council may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a “**Relevant Conviction**”), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- 6.7 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of this Agreement, it may, by giving written notice to the Supplier:
 - 6.7.1 refuse admission to the relevant person(s) to the Council’s premises;
 - 6.7.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 6.7.3 require that the Supplier replace any person removed under this clause 6 with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,

and the Supplier shall comply with any such notice.

- 6.8 The Supplier shall:
- 6.8.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and legal requirements;
 - 6.8.2 if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council's premises in connection with this Agreement; and
 - 6.8.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.
- 6.9 Any Key Personnel identified in Schedule 4 shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 6.10 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 6.11 The Parties agree that the provisions of paragraph 2 of Part A of Schedule 1 shall apply to any Relevant Transfer of Staff under this Agreement.

7 Assignment and Sub-contracting

- 7.1 The Supplier shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of this Agreement or any part of this Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 7.2 Where the Council has consented to the placing of sub-contracts, the Supplier shall:
- 7.2.1 impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the sub-contractor complies with such terms; and
 - 7.2.2 at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
- 7.3 The Council may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under this Agreement. This includes any such assignment, novation or disposal of rights and obligation to any legal entity with which the Council merges or which is a successor body of the Council by reason of statutory or voluntary reorganisation.

8 Intellectual Property Rights

- 8.1 All intellectual property rights in any materials provided by the Council to the Supplier for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement for the sole purpose of enabling the Supplier to perform its obligations under this Agreement.
- 8.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to this Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Council by operation of law, the Council hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 8.3 All intellectual property rights in any materials provided by the Supplier to the Council for the purposes of this Agreement shall remain the property of the Supplier but the Supplier hereby grants the Council a royalty-free, non-exclusive and non-transferable licence to use such materials as follows for the sole purpose of enabling the Supplier to perform its obligations under this Agreement; the Supplier hereby grants the Council:
- 8.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to this Agreement and any intellectual property rights arising as a result of the provision of the Services (the Data Products); and
- 8.3.2 a royalty-free, and non-exclusive licence (with a right to sub-license) to use:
- (a) any intellectual property rights vested in or licensed to the Supplier on the date of this Agreement for the Term of the Agreement; and
- including any modifications to or derivative versions of any such intellectual property rights, which the Council reasonably requires in order to exercise its rights and take the benefit of this Agreement including the Services provided.
- 8.4 The Supplier shall indemnify, and keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

9 Governance, Records and Review

- 9.1 The Supplier shall:
- 9.1.1 attend progress meetings with the Council at the frequency and times specified by the

Council in Schedule 2 and shall ensure that its representatives are suitably qualified to attend such meetings; and

9.1.2 submit progress reports to the Council at the times and in the format specified by the Council in Schedule 2.

9.2 The Council may from time to time review the Services in pursuance of the Council's commitment to continuing service improvement, having regard to a combination of economy, efficiency and effectiveness and the Supplier shall participate in and fully co-operate with such reviews and provide such assistance and information including, but not limited to; accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Council in relation to the Services.

9.2 The Supplier shall keep and maintain until six (6) years after the end of this Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Council. The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be reasonably requested by the Council in connection with this Agreement.

10 Confidentiality, Transparency and Publicity

10.1 Subject to clause 10.2, each Party shall:

10.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and

10.1.2 not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under this Agreement.

10.2 Notwithstanding clause 10.1, a Party may disclose Confidential Information which it receives from the other Party:

10.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

10.2.2 to its auditors or for the purposes of regulatory requirements;

10.2.3 on a confidential basis, to its professional advisers;

10.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

10.2.5 where the receiving party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under this Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 10.2.5 shall observe the Supplier's confidentiality obligations under this Agreement; and

10.2.6 where the receiving party is the Council:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Council;
- (b) on a confidential basis to any company to which the Council transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 11.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 10.

10.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information and the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to this Agreement agreed from time to time. The Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

10.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise this Agreement or any part of this Agreement in any way, except with the prior written consent of the Council.

11 Freedom of Information

11.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 11.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 11.1.2 transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- 11.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
- 11.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.

- 11.2 The Supplier acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 11.3 Notwithstanding any other provision in this Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

12 Data Protection

- 12.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 12.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The Data Processing Schedule sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 12.3 Without prejudice to the generality of clause 12.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.
- 12.4 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Council (as set out in the Data Processing Schedule), unless the Supplier is required by Domestic Law to otherwise process the Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;
 - (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- (c) not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (d) notify the Council immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council 's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Council immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination or expiry of this Agreement unless required by Domestic Law to store the Personal Data;
- (h) indemnify the Council against any losses, damages, cost or expenses suffered by the Council arising from or in connection with any breach by the Supplier of its obligations under this clause 12.

12.5 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Council or it's designated auditor

and authorised representatives of its data processing activity and premises. The Council shall be entitled to inspect, test and audit or appoint representatives to inspect, test and audit all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of the Supplier and the Supplier shall co-operate and assist the Council (and its representative) with each inspect, test and audit. The Supplier shall immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 12.6 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 7 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
 - (b) obtain the prior written consent of the Council to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 12.
- 12.7 Either Party may, at any time on not less than 30 Working Days' notice to the other Party, revise this clause 12 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).

13 Liability and Insurance

- 13.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Council if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under this Agreement.
- 13.2 Subject always to clauses 13.3 and 13.4, the aggregate liability of the Supplier under this Agreement shall be as set out in paragraph 3 of Part A of Schedule 1.
- 13.3 Nothing in this Agreement shall be construed to limit or exclude either Party's liability for:
- 13.3.1 death or personal injury caused by its negligence or that of its Staff;
 - 13.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 13.3.3 any other matter which, by law, may not be excluded or limited.
- 13.4 The Supplier's liability under the indemnity in clause 8.4, 12.4 and 17.7 shall be unlimited.
- 13.5 The Supplier agrees to have in place and maintain in force throughout the Term adequate insurance to cover its liabilities under this Agreement, as set out in paragraph 4 of Part A of Schedule 1.
- 13.6 The Supplier shall provide a copy of the certificates/schedules of such insurance to the Council upon request.
- 13.7 Subject to clause 13.3, the aggregate liability of the Council under this Agreement, in addition

to its obligation to pay the Charges as and when they fall due for payment, shall be as set out in paragraph 3 of Part A of Schedule 1.

14 Business Continuity

The Supplier shall have in place and supply to the Council on request a Business Continuity Plan which shall be capable of implementation whenever an emergency situation occurs, including but not limited to: in the case of flooding, power failure, Staff absence due to widespread illness. The Supplier shall ensure that relevant Staff are aware of and able to implement the Business Continuity Plan whenever an emergency situation occurs.

15 Termination

15.1 The Council may terminate this Agreement at any time by providing notice in writing to the Supplier in accordance with paragraph 6 of Part A of Schedule 1.

15.2 Without prejudice to any other right or remedy it might have, the Council may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier:

15.2.1 (without prejudice to clause 15.2.5), is in material breach of any obligation under this Agreement which is not capable of remedy;

15.2.2 repeatedly breaches any of the terms and conditions of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Agreement;

15.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

15.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

15.2.5 breaches any of the provisions of clauses 6.8, 10, 11, 12, 16 and 17;

15.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.2.6) in consequence of debt in any jurisdiction; or

15.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

15.3 The Supplier shall notify the Council as soon as practicable of any change of control as referred to in clause 15.2.4 or any potential such change of control.

- 15.4 The Supplier may terminate this Agreement by written notice to the Council if the Council has not paid any undisputed amounts within ninety (90) days of them falling due.
- 15.5 Termination or expiry of this Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause 15 and clauses 2.2, 5.1, 5.2, 5.6, 5.7, 6, 8, 9.2, 10, 11, 12, 13, 15.6, 16.3, 16.5, 17, 19, 21.7 and 21.8 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 15.6 Upon termination or expiry of this Agreement, the Supplier shall:
- 15.6.1 give all reasonable assistance to the Council and any incoming supplier of the Services; and
 - 15.6.2 return all requested documents, information and data to the Council as soon as reasonably practicable.
- 15.7 Without prejudice to the Council's other powers under this Agreement, If the Supplier commits any breach of this Agreement which is capable of remedy then the Council will be entitled to serve a notice to the Supplier stating the nature of the breach and the action required to remedy the breach, including timescales ("**Default Notice**"). Any such timescale shall be reasonable in accordance with the nature of the breach. The Supplier will take the action specified in the Default Notice within the timescale set out at its own cost.
- 15.8 Without prejudice to the Council's other powers under this Agreement, if the Supplier fails to provide the Services in accordance with this Agreement, the Council may commission and pay another Supplier to provide part or all of the Services. Costs incurred in providing part or all of the Services may be deducted from the Supplier's payment or shall be recoverable as a debt.
- 15.9 Without prejudice to the Council's rights to terminate this Agreement, if a right to terminate this Agreement arises in accordance with clause 15.2, the Council may suspend the Supplier's right to receive payment from the Council by giving notice in writing to the Supplier. If the Council provides notice to the Supplier in accordance with this clause, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Council in writing from time to time.

16 Compliance

- 16.1 The Supplier shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement. The Council shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Council's premises and which may affect the Supplier in the performance of its obligations under this Agreement.
- 16.2 The Supplier shall:
- 16.2.1 comply with all the Council's health and safety measures while on the Council's premises; and

16.2.2 notify the Council immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

16.3 The Supplier shall:

16.3.1 perform its obligations under this Agreement in accordance with all applicable equality Law and the Council's equality and diversity policy as provided to the Supplier from time to time; and

16.3.2 take all reasonable steps to secure the observance of clause 16.3.1 by all Staff.

16.4 The Supplier shall supply the Services in accordance with the Council's environmental policy as provided to the Supplier from time to time.

16.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of all applicable laws, statutes, regulations from time to time in force (including but not limited to):

16.5.1 the Official Secrets Acts 1911 to 1989;

16.5.2 section 182 of the Finance Act 1989;

16.5.3 the Bribery Act 2010;

16.5.4 the Modern Slavery Act 2015;

16.5.5 the Data Protection Legislation; and

16.5.6 the Mandatory Policies.

16.6 The Council may terminate the Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 16.5.1 or 16.5.3.

16.7 The Supplier shall ensure that all necessary consents are in place to provide the Services and the Council shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

17 Prevention of Fraud and Corruption

17.1 The Supplier shall not, and shall procure that any Staff shall not, commit any Prohibited Act.

17.2 The Supplier shall not offer, give, or agree to give anything, to any person 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 for showing or refraining from showing favour or disfavour to any person in relation to this Agreement.

17.3 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors)

in connection with this Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

- 17.4 The Supplier warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council (or that an agreement has been reached to that effect) in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 17.5 The Supplier shall, if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- 17.6 If the Supplier or the Staff engages in conduct prohibited by clause 17.1 or commits fraud in relation to this Agreement or any other contract with the Crown (including the Council) the Council may:
- 17.6.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or
 - 17.6.2 recover in full from the Supplier any other loss sustained by the Council in consequence of any breach of this clause 17.
- 17.7 The Supplier shall indemnify the Council against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Council as a result of any breach of this clause 17 by the Supplier.

18 Complaints

- 18.1 The Supplier shall have in place throughout the Term a complaints procedure which must comply with the requirements of any regulatory body to which the Supplier is subject including any change in such requirements. Where a complaint is made directly to the Supplier, the Supplier will follow its own complaints procedure and provide a full response to the complainant. The Supplier will supply to the Council, on request, a copy of the investigation report and response to the complainant.
- 18.2 The Supplier will co-operate fully with any investigation undertaken by the Council as a result of a complaint (e.g. safeguarding concern or complaint by a relative, resident, staff member or other person) to the Council against the Supplier or its staff, agents, contractors, sub-contractors and the Supplier will ensure that any records requested are made available to the Council, within a reasonable time, to assist with the investigation and staff are made available to speak to representatives of the Council, if required.
- 18.3 If a complaint is made to the Council by a third party relating to the Service, the Local Government Ombudsman has the power to investigate the complaint. The Council requires the

Supplier to fully co-operate in associated investigation. If the Council is found to be guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Supplier, the Supplier shall indemnify the Council in respect of the costs arising from such maladministration or injustice.

19 Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one (1) month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one (1) month, or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20 Best Value and Sustainability

- 20.1 The Supplier must ensure that the Service is provided in accordance with the principles of Best Value: economy, efficiency and effectiveness as defined in the Local Government Act 1999.
- 20.2 The Supplier shall meet such sustainability requirements as set out in the Specification and shall comply with the provisions of any such environmental policy as the Council may have approved relating to the Service.

21 General

- 21.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by its duly authorised representative.
- 21.2 A person who is not a party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3 This Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4 This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause 21 shall exclude liability for fraud or fraudulent misrepresentation.

- 21.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of this Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

22 Notices

22.1 The address for notices of the Parties are:

Council

The North Yorkshire Council

County Hall

Racecourse Lane

Northallerton

North Yorkshire

DL7 8AD

Attention: Julia Casterton

Email: Julia.casterton@northyorks.gov.uk

Supplier

North & East Yorkshire Ecological Data Centre

Unit 7

Hassacarr Close

Dunnington

York

YO19 5SN

Attention: Simon Pickles

Email: simon.pickles@neyedc.co.uk

22.2 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery or first class recorded delivery to the address of the relevant Party or such other address as that Party may from time to time notify to the other Party in accordance with this clause 22:

22.3 Notices served as above shall be deemed served on the Working Day of delivery provided

delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day.

22.4 A notice required to be given under or in connection with this Agreement shall not be validly served if sent by e-mail.

23 Force Majeure

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the Parties agree that the provisions of paragraph 7 of Part A of Schedule 1 shall apply.

24 Governing Law and Jurisdiction

24.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

24.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS WHEREOF this Agreement has been entered into on the date stated at the beginning of it

Signed for and on behalf of
THE NORTH YORKSHIRE COUNCIL
acting by:

Authorised Signatory

Name

Position

Signed by Simon Pickles and on behalf of **NORTH AND EAST YORKSHIRE ECOLOGICAL DATA CENTRE** an operating function of the **Yorkshire and Humber Ecological Data Trust**)

Authorised Signatory

Name

Position

Schedule 1

Service Specific Terms

PART A – GENERAL

1 Term

The Council may extend this Agreement for a period of up to 3 years by giving not less than 8 weeks' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of this Agreement shall apply throughout any such extended period.

2 TUPE

2.1 The Council accepts no liability nor gives any indemnity for losses incurred through the operation of TUPE in relation to this Agreement (as may be applicable). Where relevant, the Supplier shall ensure it has complied with TUPE and shall indemnify the Council against any costs or losses incurred by the Council due to the Supplier's failure to comply with any such requirements.

2.2 Where the Council has notified the Supplier that it intends to tender or retender any of the Services or, in any event during the last year of the Term, the Supplier shall upon the written request of the Council and in any event within twenty (20) Working Days of that request (unless otherwise agreed in writing), provide the Council with all reasonably requested information on the Staff engaged in the provision of the relevant Services to be tendered or retendered that may be subject to TUPE or any equivalent provisions then in force.

2.3 The Supplier shall indemnify and keep indemnified the Council and any successor Supplier against any losses incurred by the Council and/or the successor Supplier in connection with any claim or demand by any transferring employee under TUPE in relation to the Services and/or this Agreement arising on or prior to the transfer date notwithstanding whether such claim or demand is brought by a transferring employee before, on or after the transfer date.

3 Liability

3.1 Subject always to clauses 13.3 and 13.4:

3.1.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 100% of the Charges paid or payable to the Supplier; and

3.1.2 except in the case of claims arising under clauses 8.4 and 17.6, in no event shall the Supplier be liable to the Council for any:

3.1.2.1 loss of profits;

3.1.2.2 loss of business;

- 3.1.2.3 loss of revenue;
- 3.1.2.4 loss of or damage to goodwill;
- 3.1.2.5 loss of savings (whether anticipated or otherwise); and/or
- 3.1.2.6 any indirect, special or consequential loss or damage.

3.2 Subject always to clauses 13.3 and 13.7:

3.2.1 the aggregate liability of the Council in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 20% of the Charges paid or payable to the Supplier; and

3.2.2 in no event shall the Council be liable to the Supplier for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

4 Insurance

4.1 In accordance with clause 13.5, the Supplier shall have in place and maintain the following insurance policies throughout the Term:

- 4.1.1 employers liability insurance to cover liabilities under this Agreement for at least ten million pounds (£10,000,000) in respect of each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements;
- 4.1.2 public liability insurance to cover liabilities under this Agreement for death, injury and/or third party damage for the sum of ten million pounds (£10,000,000) in respect of each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements; and
- 4.1.3 where appropriate Professional Indemnity Insurance which is sufficient to cover its liabilities under this Agreement but which in any event is a minimum sum of [two million pounds (£5,000,000)].

5 Mandatory Policies

5.1 The Supplier shall have the following policies in place throughout the Term of this Agreement and shall make a copy available to the Council upon request:

- (i) Anti-Slavery Policy (for the purposes of Section 54 of the Modern Slavery Act 2015);
- (ii) Anti-Corruption Policy/Statement of Ethics (for the purposes of the Bribery Act 2010);
- (iii) Data Protection Policy;
- (iv) Privacy Policy; and
- (v) Corporate and Social Responsibility Policy

6 Termination

NOT USED

7 Force Majeure

In accordance with clause 23, if such delay or failure result from events, circumstances or causes beyond the reasonable control of either Party, the Parties agree that the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 2 months, the Party not affected may terminate this Agreement by giving 14 days' written notice to the affected Party.

PART B – SPECIAL TERMS

NOT USED

Schedule 2

Specification

1.0 Background

The North and East Yorkshire Ecological Data Centre (NEYEDC) is an operating function of the Yorkshire and Humber Ecological Data Trust (YHEDT), a registered charity (No.1075999). Established in 1999 NEYEDC is part of a complete and non-overlapping network of Local Environmental Record Centres (LERC) that cover the whole of England. Most LERCs are wholly within and funded by a Local Authority and share the geography of that authority. They deliver a range of statutory and non-statutory functions including a suite of core functions described by the Defra recognised Association of Local Environmental Record Centre (ALERC) accreditation scheme. NEYEDC is accredited under this scheme. NEYEDC is unusual in that it covers several local authority geographies; approximately 8% of England.

For over a decade, North Yorkshire County Council (NYCC) supported the NEYEDC through a grant, which is facilitated by a Memorandum of Agreement. In light of the formation of North Yorkshire County (NYC) and the significant changes that are likely to arise as a result of the Environment Act (2021) NEYEDC have been asked to provide a schedule of costs and services (summarised in the table below) to enable the existing Memorandum of Agreement (MOA) to be replaced by a Service Level Agreement (SLA).

2.0 Proposed Schedule of Services

- *NEYEDC will undertake searches of the NEYEDC databases on request (through the submission of a data request form) and provide the available data in either electronic or paper format as appropriate or as requested in the query. The data will be accompanied by all appropriate metadata as requested. The service standard for response to a request will be 5 working days.*
- *NEYEDC will undertake data searches of the outward facing decision support databases from third parties according to current best practice. The service standard for this data provision will be 5 working days. NEYEDC will enable an expediated data search with a service standard of 2 working days on payment of a supplemental fee. The charge to the LA for the provision of this service will be dependent on the annual volume of data requests and will be banded in units of 500 searches. The unit cost of this service will be £5000 per 500 searches.*
- *NEYEDC will undertake the management of all or any aspects of a LWS process as required by the Local Authority partner. The full cost of a 10-year rolling programme of resurvey is estimated as £25,000.00. The cost of maintaining a new candidate site process, with new candidate sites coming forward at a rate of 1% of the current number of designated sites is £5000.00.*
- *NEYEDC will provide access to the eMapper system to Local Authority partners. The service standard for this service will be 2 working days (1 working day by negotiation). The charge to the LA for access to this service will be based on the annual volume of data request and will*

be banded in units of 50 searches. The unit cost of this service will be £1000.00 per 50 searches.

- *NEYEDC can mount data and maps on the NEYEDC Data Hub and manage access on behalf of local authority. The cost of this service is based on the volume of data held on the hub. The service will assume 2 updates of the data per year. The unit cost of this service is £2500.00 per 5 maps.*
- *NEYEDC will undertake to produce bespoke data products on behalf of Local Authority partners as part of the SLA. The cost of this service will depend on the number of bespoke data products produce per year. The unit cost of bespoke data product production is £2500.00 per 5 products. Any data products required above the provision within the SLA will need to be negotiated with NEYEDC on a product-by-product basis.*

3.0 Notes on Services and Service Levels

1. Licence to access NEYEDC databases (minimum core service £25,000.00).

This is a non-exclusive licence to access all NEYEDC data bases, and to use or store the data for the duration of the agreement. The use and dissemination of the raw data and the creation and dissemination of data products is governed by the licence. The license allows the production of data products from the data, for example for use in strategic documents like the Local Plan. The licence allows for the royalty free use of these data products in perpetuity.

This service also includes responding directly or indirectly to Freedom of Information Act requests as a Public Body for the purpose of this function.

- 1. NEYEDC will undertake searches of the NEYEDC databases on request (through the submission of a data request form) and provide the available data in either electronic or paper format as appropriate or as requested in the query. The data will be accompanied by all appropriate metadata as requested. The service standard for response to a request will be 5 working days.***

If the proposed use of any data held by NEYEDC falls outside the existing licence, NEYEDC will seek to negotiate with the copy-right holders of the data to facilitate its use.

Currently, NEYEDC provides data to White Rose Forest under the current MOA. Going forward, this will need to either be included in the SLA or be negotiated out-with the agreement at full commercial cost.

2. Provision of a Data Search Service to Third Parties (£5000 per 500 searches)

All English local authorities provide access, on request, to biodiversity and other environmental data in support of effective decision making in conservation, land management and sustainable development. Most make the access of this data a mandatory part of participation in a formal decision-making process e.g. through planning checklists.

Access to biodiversity data is provided through the Local Environmental Record Centre (LERC). The fee that an LERC can charge for this is limited by the Environmental Information Regulations (EIR) to the reasonable cost of data dissemination. It is not permissible to pass on a charge for this service, which fully covers the cost of accession or management of biodiversity data.

NEYEDC provides all the recognised functions of an LERC and is accredited under the Defra approved process administered by the Association of Local Environmental Record Centres (ALERC). NEYEDC maintains an outward facing database of between 1 and 2 million records, which are both appropriate and available to support decision making. Accession of this data is prioritised according to the current legislation that governs environmental decision making e.g. priority species and habitats etc.

II. NEYEDC will undertake data searches of the outward facing decision support databases from third parties according to current best practice. The service standard for this data provision will be 5 working days. NEYEDC will enable an expediated data search with a service standard of 2 working days on payment of a supplemental fee. The charge to the LA for the provision of this service will be dependent on the annual volume of data requests and will be banded in units of 500 searches. The unit cost of this service will be £5000 per 500 searches.

3. Management of Local Wildlife Site System (£25,000.00 for a 10-year rolling programme of re-survey)

All English Local Authorities maintain a network of Local Wildlife Sites, which appear in the Local Plan and are a material consideration in planning. The North Yorkshire County has 800 Local Wildlife sites. At its inception, the system envisaged a 10-year rolling programme of re-survey for the Local Wildlife Sites. This aspiration has not been met, however, most LERCs are revisiting their re-survey targets in the light of the Environment Bill.

NEYEDC has a strong record of management and administration of local wildlife site systems and can either provide a complete Local Wildlife Site management service or undertake elements of the process in collaboration with local authority officers. The service level cited below is for a full 10-year rolling programme of survey, with NEYEDC undertaking complete management of the process. NEYEDC can undertake a bespoke service, which will be costed on a pro-rata basis. A full breakdown of LWS services and costs can be provided on request.

Whilst some LWS systems are now stable, with the number of sites not subject to change, others allow the designation of new candidate LWSs. NEYEDC can manage a candidate LWS process on request. The level of service included in the schedule of costs assumes candidate sites will arise at the rate of 1% of the current number of designated sites per year. This can be adjusted at the request of the Local Authority partner and will be costed on a pro-rata basis.

III. NEYEDC will undertake the management of all or any aspects of a LWS process as required by the Local Authority partner. The full cost of a 10-year rolling programme of resurvey is estimated as £25,000.00. The cost of maintaining a new candidate site process, with new candidate sites coming forward at a rate of 1% of the current number of designated sites is £5000.00.

4. Access to Self Service Site Data Through The eMapper System (£1000.00 per 50 searches).

NEYEDC has invested in a data dissemination system for site-based data searches called eMapper that allows rapid access to data for discrete sites. The system provides data on species, sites and habitats. Requests are made to NEYEDC on-line and the enquirer receives a web link to a portal

where they can both view and download the data. The system is maintained by the Welsh network of LERCs and is supported by the Welsh assembly.

IV. NEYEDC will provide access to the eMapper system to Local Authority partners. The service standard for this service will be 2 working days (1 working day by negotiation). The charge to the LA for access to this service will be based on the annual volume of data request and will be banded in units of 50 searches. The unit cost of this service will be £1000.00 per 50 searches.

5. Access to NEYEDC Data Hub (£2000.00 per 5 maps or datasets)

NEYEDC maintains a datahub, which enables users to view and download data. Access to view or download can be securely controlled.

Datasets could include but not limited to: -

- Local Wildlife Sites (boundaries or habitats)
- Alert maps
- Invasive species maps
- LNRS map or LNRS activity data
- BNG units

V. NEYEDC can mount data and maps on the NEYEDC Data Hub and manage access on behalf of local authority. The cost of this service is based on the volume of data held on the hub. The service will assume 2 updates of the data per year. The unit cost of this service is £2000.00 per 5 maps.

6. Production of Bespoke Data Products – (£2000.00 per 5 data products per annum)

From time-to-time, Local Authority partners ask NEYEDC to produce bespoke data products, including but not limited: -

- SDL 160-01 reporting
- Screening allocations for district of local plans.
- Production of planning alert layers.
- Ecological network mapping (linked to NPPF)

A service level agreement can include provision for these services.

VI. NEYEDC will undertake to produce bespoke data products on behalf of Local Authority partners as part of the SLA. The cost of this service will depend on the number of bespoke data products produce per year. The unit cost of bespoke data product production is £2000.00 per 5 products. Any data products required above the provision within the SLA will need to be negotiated with NEYEDC on a product-by-product basis.

Schedule 3

Charges

3.1 The Council will pay the full amount of the charges at the start of the financial year upon receipt of an invoice from The Supplier.

| Service / Licence | Description | Cost / £ | Optional? |
|---|--|-------------------|-----------|
| Licence to access NEYEDC data | Non-exclusive licence for NYC officers to access NEYEDC data for the duration of the SLA. | 25,000.00 | No |
| Provision of data search services to 3 rd parties. | Deliver data searches to third parties in accordance with the NEYEDC data access policies. | 10,000.00 | No |
| Management of Local Wildlife Site System | Cost is contingent on the level of service required. The estimate is based on a full service as described below for a 10-year rolling programme of LWS survey. | 25000.00 pro-rata | Y |
| Management of Candidate Local Wildlife Site Process | It is envisaged that the LWS process will be on-going and that new sites will be surveyed and considered by the panel at a rate of 1% of the total number of LWS per year. | 5000.00 pro-rata | Y |
| Access to eMapper for site-based data searches | This allows a rapid access to outward facing "decision support" databases for site-based queries. | 1,000.00 | Y |
| Access to mount data on NEYEDC data hub. | This allows the LA partner to mount data in the form of a map our downloadable dataset on NEYEDC data-hub, from which it can be viewed or downloaded. | 2,000.00 | Y |
| Production of bespoke data products. | NEYEDC will undertake to produce bespoke data products, based on NEYEDC data holdings, on behalf of the LA partner. | 2,000.00 | Y |
| Total | | 65,000.00 | |

Schedule 4

Key Personnel

The following persons are Key Personnel for the purposes of this Agreement:

NOT USED

Schedule 5

Data Processing

1. The contact details of the Council's Data Protection Officer is:

Information Governance Office
Veritau
West Offices
Station Rise
York
North Yorkshire
YO1 6GA

Email: infogov@northyorks.gov.uk

Telephone: 01904 552848

2. The contact details of the Supplier's Data Protection Officer is:

Clare Langrick

Unit 7

Hassacarr Close

Dunnington

York

YO19 5SN

Email: clare.langrick@neyedc.co.uk

Telephone: 01904 641631

3. Pursuant to clause 12 of the Agreement, the Supplier shall process the Personal Data as follows and any further instructions from the Council shall be incorporated into this Schedule 4.

| Description | Details |
|----------------------------------|---|
| Subject matter of the processing | The Supplier processes the Personal Data under the Agreement for the purposes set out in the Agreement and otherwise in the furtherance of the arrangements between the Parties, in each case in connection with the provision of the Services. |

| | |
|---|---|
| | |
| Duration of the processing | For as long as is necessary for the Supplier to comply with its obligations under the Agreement and for the furtherance of the arrangements between the Parties, and as otherwise permitted by this Agreement. |
| Nature and purposes of the processing | <p>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.</p> <p>Processing activities 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) may all be undertaken by the Supplier for the following purposes:</p> <ul style="list-style-type: none"> • The purposes set out in the Agreement |
| Type of Personal Data being processed. | <p>Personal Data:</p> <ul style="list-style-type: none"> • name, address, telephone number and email address. <p>Special Categories of Personal Data:</p> <ul style="list-style-type: none"> • None |
| Categories of Data Subject | <p>Depending on the circumstances, the Personal Data may concern one or more of the following categories of Data Subjects (as determined by the Council or agreed between the Parties) and such other categories as the Council may specify or the Parties may agree from time to time:</p> <ul style="list-style-type: none"> • Customers/clients, members of the public. |
| Plan for return and destruction of the Personal Data once the | The Personal Data (and any copies of it) will be returned to the Council once the processing activity to which it relates has been completed and on termination of this Agreement |

| | |
|--|--|
| processing is complete UNLESS requirement under union or member state law to preserve that type of Personal Data | unless the Parties agree in writing that it can instead be securely destroyed in any particular case in accordance with an agreed document retention and destruction policy. |
|--|--|