# Birmingham Device Bank Transfer of Ownership Agreement

This Agreement is between Birmingham City Council and the Recipient specified within the Birmingham Device Bank Transfer Form (the “Parties”) and is comprised of both the Terms and Conditions hereunder and the contents of the Birmingham Device Bank Transfer Form to be agreed between the Parties.

# Between:

Birmingham City Council of Council House, 1 Victoria Square, Birmingham, B1 1BB (The “Council”); and

The Recipient as specified within the joint signed Birmingham Device Bank Transfer Form (The “Recipient”);

# Whereby:

The Council’s Refreshed Digital Strategy (the “Strategy”) states the Council’s commitment to digital equality and inclusion for groups, citizens and organisations throughout the City.

Under the Strategy, the Council wishes to transfer the digital Hardware (the Equipment) to the Recipient as a single instance transfer of ownership.

Upon signature of the Birmingham Device Bank Transfer Form, the Recipient shall take ownership of the items stipulated within the Birmingham Device Bank Transfer Form, and the agreed Birmingham Device Bank Transfer Form in conjunction with the terms and conditions hereunder shall form the sole and entire Agreement between the Parties.

# It is agreed as follows:

1. In consideration to the Transfer of £1 (One) by the Recipient to the Council, which for the avoidance of doubt the Council agrees has taken place, this Agreement is formed.
2. The Council transfers the Equipment listed within the Birmingham Device Bank Transfer Form, to the Recipient.
3. The details of the Equipment within the Birmingham Device Bank Transfer Form are given only for the purposes of identifying the Equipment and do not make this agreement a sale by description.
4. The Equipment is provided "as is”. The Council makes no representations and gives no warranties as to the quality, condition, state or description of the Equipment, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions, and warranties as to the Equipment are excluded to the fullest extent permitted by law.
5. The title to the Equipment, and risk of damage to or loss of the Equipment thereunder, shall pass to the Recipient upon signature of this agreement.
6. It shall be the responsibility of the Recipient to ensure the Equipment is collected on the date jointly agreed between the Recipient and the Council. Should the Recipient seek or attempt to collect the Equipment on a date that is not jointly agreed between the Council and the Recipient, the Council may at its sole discretion terminate this Agreement and the rights of the Recipient to the Equipment thereunder.
7. Upon signature of this agreement, the Recipient shall hold full ownership of the Equipment, and that the Council transfers all responsibility for the performance and upkeep of the Equipment to the Recipient.
8. The Equipment has been provided by the Council to the Recipient “as is”, and that the Council shall hold no responsibility for the performance or faults in the Equipment following the transfer of ownership to the Recipient.
9. The Recipient shall not seek to request technical or operational support from the Council, and the Council shall hold no obligation to provide such support to the Recipient following the execution of this Agreement.
10. The Council makes no representation and gives no warranty as to the suitability, viability or usability otherwise of the Equipment.
11. The Recipient shall indemnify and hold harmless the Council from all claims, disputes or matters otherwise arising from the use of the Equipment by the Recipient, or any such further recipients, users or beneficiaries otherwise of the Equipment, whether such claim arises from the Recipient or any other third party, and regardless of origin of such claim.
12. In the event that any data originating from the Council is identified by the Recipient as being stored on the Equipment, the Recipient will:
	* 1. Cease all usage of the Equipment with Immediate effect;
		2. Erase all copies of the council data from any location that the data may have been transferred, copied, duplicated or otherwise reproduced to beyond the Equipment, and;
		3. Notify the Council immediately of the presence of Council data on the Equipment.
13. Nothing in this agreement shall limit or exclude the Council’s liability for:
	* 1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
		2. fraud or fraudulent misrepresentation;
		3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
		4. any matter in respect of which it would be unlawful for the Council to exclude or restrict liability.
14. Subject to clause 13:
15. the Council shall under no circumstances be liable to the Recipient, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the agreement; and
16. the Council’s total liability to the Recipient for all other losses arising under or in connection with the agreement, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall be limited to the value of this Agreement as specified within Clause 1 of this Agreement.
17. This Agreement governs the transfer of the Equipment specified within the Birmingham Device Bank Transfer Form only, and:
18. The Recipient shall hold no claim of ownership or entitlement to any other item not specified in Birmingham Device Bank Transfer Form or this Agreement.
19. any further or additional request for the transfer of Equipment by the Recipient under the Strategy shall be the subject of a further and separate Birmingham Device Bank Transfer Form and Agreement between the Parties.
20. 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. If the period of delay or non-performance continues for 1 month, the party not affected may terminate this agreement by giving 7 days written notice to the affected party.
21. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between then, whether written or oral, relating to its subject matter.
22. This Agreement shall commence on the date of the Collection of the Equipment by the Recipient from the Council subject to:
23. The signature of the Birmingham Device Bank Transfer Form by the Recipient, and;
24. That such collection is in adherence to Clause 6 of this Agreement.
25. No variation of the agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
26. No one other than a party to this agreement shall have any right to enforce any of its terms.
27. This Agreement may not be novated, assigned or otherwise Transferred by any Party without the prior written consent of the other Party.
28. This agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
29. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.