

DATED

Customer Engagement and Self-Serve Platform

between

Supplier

and

Council

This Agreement is dated [DATE]

PARTIES

- (1) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)
- (2) **MELTON BOROUGH COUNCIL** whose principal address is Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire LE13 1GH (**the Council**)

BACKGROUND

The Council placed a Competitive procedure with negotiation Contract Notice, reference OJS: [INSERT] on [INSERT DATE] in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of a cloud-based Customer Engagement and Self-Serve Platform.

The Council has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

Agreed terms

1. Interpretation

1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: means this written Agreement between the Council and the Supplier consisting of these clauses and the attached schedules.

Applicable Law: the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, judgements, resolutions, decisions, orders, notices or demands of a competent court, tribunal or regulator, guidelines or industry codes which apply in any manner to: (a) the activities of the Council (generally); or (b) the performance of a party's obligations under this Agreement.

Assignment Letter: as defined in clause 22.7.1.

Assignment Right: the right, following the occurrence of a Trigger Event, for the Council to have the account for the hosting Environment assigned to the Council (or a third party supplier who is contracted to maintain the same on the Council's behalf).

Authorised Users: those employees, agents and independent Suppliers of the Council who are authorised by the Council to use the SaaS Services and the Documentation.

Benchmarked Services: the services, which are to be the subject of a Benchmark Review, pursuant to a notice delivered in accordance with clause 24.1.

Benchmarker Appointment Procedure: as notified by the Council to the Supplier from time to time.

Benchmark Price: in relation to the Equivalent Services provided by a Comparison Sample, the Benchmark Value for the price of the relevant services over the previous 12 month period.

Benchmarking Report: the report produced by the Benchmarker following a Benchmark Review.

Benchmark Review: any benchmarking of any or all of the Service Charges, the Services and the Service Levels which may be requested by the Council pursuant to clause 24.2 and which shall be conducted by the Benchmarker.

Benchmarker: the independent third party appointed by the Council to carry out a Benchmark Review.

Benchmark Value: the upper quartile for the Benchmarked Services and the Benchmark Price, as against the Comparison Sample for Equivalent Services.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Change in Law: the coming into effect after the date of this Agreement of:

a) legislation, other than any Legislation which on the Effective Date has been published;

- i) in a draft Bill as part of a Government Departmental Consultation Paper;
- ii) in a Bill;
- iii) in a draft statutory instrument; or

iv) published as a proposal in the Official Journal of the European Union;

b) any Guidance; or

c) any applicable judgment of a relevant court of law which changes or establishes a binding precedent,

which impacts on the performance of the Services and which comes into effect following the Effective Date.

Commencement Date: [INSERT].

Comparison Sample: a sample of at least 3 organisations providing Equivalent Services.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 23.

Contracting Authority: any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

Contract year: a period of 12 months (or such shorter period if this agreement is terminated earlier), commencing on the Go Live Date or each anniversary of the Go Live Date.

Council Data: the data inputted by the Council, Authorised Users, or the Supplier on the Council's behalf for the purpose of using the Software, or facilitating the Council's use of the Software.

Council It Infrastructure: the Council's computing infrastructure (consisting of hardware, software and telecommunications networks) that is to be used by the Council to access and use the SaaS Services via the Environment (or, following the occurrence of a Trigger Event) any replacement hosting environment.

Council Premises: any premises made available from time to time to the Supplier by the Council in connection with this Agreement.

Council Requirements: the requirements for the SaaS Services provided by the Council to the Supplier under this Agreement as set out in schedule 1, as varied and updated from time to time.

Crown: means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

Data Controller: has the definition given to it in the Data Protection Legislation.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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 Processor: has the definition given to it in the Data Protection Legislation.

Data Protection Legislation:

- a) unless and until the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK;
- b) the Data Protection Act 2018; and then
- c) any successor legislation to the GDPR or the Data Protection Act 2018, or any other legislation protecting the freedoms and fundamental rights of individuals with respect to their personal data, including any guidance issued by the Information Commissioner's Office, all as may be issued from time to time.

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 Officer: has the meaning given in the Data Protection Legislation.

Data Subject: has the meaning given in the Data Protection Legislation.

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.

Delay Deductions: sums attributable to a failure to perform certain Services under this Agreement, as set out in the Implementation Specification.

Documentation: the document made available to the Council by the Supplier which sets out user instructions for the Software.

DPA: means the Data Protection Act 2018 and any subsequent legislation which may come into force.

Effective Date: the date of this Agreement.

End User Agreement: the end user agreement under which the third party agrees to licence the Third Party Software to the Council, referred to in the SaaS Specification or required to be accepted by the Council when downloading/using the Third Party Software.

Environment: the remote environment from which the SaaS Services are made available to the Council, hosted by the Hosting Provider.

Equivalent Services: services that are identical, or similar in all material respects, to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied by a provider of such services to a customer similar in size to the Council over a similar period, in particular, and where available, including services purchased by the Council from any other service provider that are identical or similar to the Services (including in terms of scope, specification, volume and quality of performance).

Escrow: the deposit with, and retention by the Escrow Agent of, certain materials as set out in clause 22.

Escrow Agent: The third-party carrying out the Escrow.

Escrow Agreement: the agreement to be entered into with the Escrow Agent in respect of the SaaS Software and the Integration Software.

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

General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the SaaS Services.

Go Live Date: means the date which the SaaS Services become live and the Council begins using the same.

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Good Value: shall have the meaning given to it in clause 24.1.

Hosting Provider: the third-party used to host the SaaS Software, acting as a Subcontractor to the Supplier.

Implementation Documents: the documents particularised at clause 4.1 of this Agreement.

Implementation Plan: the document agreed pursuant to clause 4.1.2 of this Agreement.

Implementation Services: The services carried out by the Supplier in accordance with clause 5 of this Agreement and the Implementation Documents.

Information Commissioner's Office: means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in the DPA.

Integration Software: any application programme interfaces, bridges, middleware, scripts or other software modules intended to permit the passing of Council Data from the Council IT Infrastructure to the SaaS Software.

Intellectual Property Rights: patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

Initial Term: the initial term of this Agreement as set out in clause 28 and schedule 1.

Key Milestone: any Milestone which is identified as “key” in the Implementation Plans.

Key Personnel: those Council personnel identified in schedule 7 for the roles attributed to such personnel, as modified by clause 19.

Mandatory Policies: the Council's policies noted in schedule 5, as amended by notification to the Supplier from time to time.

Milestone: an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date.

Milestone Date: the date set against the relevant Milestone or Key Milestone in the Implementation Plan by which the Milestone or Key Milestone shall be completed.

Normal Business Hours: [8.00 am to 5.00 pm] local UK time (GMT/BST), each Business Day.

Personal Data: has the meaning given in the GDPR.

Personal Data Breach: has the meaning given in the Data Protection Legislation.

Processing: has the meaning given in the Data Protection Legislation.

Processor: has the meaning given in the Data Protection Legislation.

Prohibited Act:

a) offering, giving or agreeing to the Council or any other public body or to any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward:

i) for doing or not doing (or for having done or not having done) any act in relation to the award or performance of this Agreement or any other contract with the Council;

ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;

b) entering into this Agreement or any other contract with the Council in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; or

c) committing any offence:

i) under the Bribery Act 2010;

ii) under Legislation creating offences in respect of fraudulent acts; or

- iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or
- d) defrauding or attempting to defraud or conspiring to defraud the Council, provided that the Supplier may pay proper commission or bonus to its employees within the agreed terms of their employment.

Renewal Period: the period described in clause 28.1.

Replacement Supplier: any third party service provider appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of this Agreement.

SaaS Services: the provision of the SaaS Software via the Integration Software in accordance with the terms of this Agreement.

SaaS Software: the software applications provided directly by the Supplier as part of the SaaS Services.

Services: the provision of the SaaS Software, the Support Services, the Benchmarking services, the Transition Assistance, and any other obligation with which the supplier agrees to comply in accordance with this Agreement from time to time.

Service Credits: any deduction to the Service Charges calculated in accordance with schedules 2 and 4.

Service Charges: the amounts payable to the Supplier in consideration for the performance of its obligations under this Agreement, by the Council as set out in schedule 4.

Service Failure: a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels.

Service Levels: The service levels to which the Services are to be performed, as set out in the relevant schedule or service specification.

Software: the Integration Software, the SaaS Software and the Third Party Software, as appropriate.

Specific Change In Law: a Change in Law which only affects or relates to the Council and which would not affect the supply of services that are similar to the Services to other customers, but excluding any Change in Law that would have been reasonably foreseeable at the Effective Date by an experienced supplier performing services similar to the Services.

Staff: all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any sub-contractor engaged in the performance of its obligations under this Agreement.

Sub-Contract: a contract between two or more suppliers, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement

Sub-processor: any third party appointed to process Personal Data on behalf of the Supplier related to this Agreement.

Supplier's Tender Submission: the Supplier's response to the invitation to submit final tenders in connection with this Agreement.

Support Services: the services described in the Support Services Specification.

Support Services Specification: the specification for Support Services, as set out in schedule 3.

Term: has the meaning given in clause 28 and schedule 1 (being the Initial Term together with any subsequent Renewal Periods).

Third Party Software: software, which is proprietary to any third party and that, is either licensed to the Council or is used by the Supplier in the provision of the Services, excluding any of the SaaS software and the Integration Software.

Transition Assistance: all reasonable actions requested by the Council that are reasonably necessary to achieve the orderly migration of any of the Council's basic functions, responsibilities, tasks and operations supported by the Services, and including all Council Data and an orderly and commercially reasonable cessation of any Order relating to such functions, tasks or responsibilities.

Transition Assistance Charges: the charges relating to the provision of the Transition Assistance, as agreed by the parties at the point the Transition Assistance is requested.

Transition Assistance Period: the period starting upon the termination or expiry of this Agreement and ending when the Council's basic functions, as previously supported by the Services have been migrated to an environment selected by the Council, but in no event greater than 18 months.

Trigger Event: the events listed in clause 22.4.4.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006, or any other similar Applicable Law having equivalent effect from time to time.

Variation: a variation issued in accordance with clause 33.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. References to a public organisation (other than the Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both

the functions and responsibilities of such public organisation. References to other persons (other than the Council) shall include their successors or assignees.

- 1.7. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.10. A reference to “parties” means the parties to this Agreement and references to “a party” means one of the parties to this Agreement.
- 1.11. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.12. A reference to writing or written includes e-mail but not faxes.
- 1.13. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
- 1.14. In the event of any inconsistency between the terms and conditions of this Agreement and any provision in any of the other documents referred to in this Agreement, the following hierarchy of interpretation shall apply:
 - 1.14.1. the main body of this Agreement;
 - 1.14.2. the schedules.

2. PROVISION OF SERVICES

- 2.1. Before entering into this Agreement, the Supplier shall deliver to the Council a true and complete copy (certified as such by the company secretary to the Supplier) of minutes of a meeting of the Board of the Supplier, resolving to enter into this Agreement.
- 2.2. The Supplier shall at all times perform and procure that the Services are performed in accordance with:
 - 2.2.1. Applicable Law;
 - 2.2.2. The Implementation Plan;
 - 2.2.3. any applicable Service specifications;

- 2.2.4. the terms and conditions of this Agreement;
 - 2.2.5. Good Industry Practice; and
 - 2.2.6. in accordance with all mandatory Policies of the Council as communicated to the Supplier from time to time.
- 2.3. Equalities and Human Rights
- 2.3.1. The Supplier shall ensure that all equalities and human rights matters concerning this Agreement are dealt with in accordance with the Equality Act 2010 and all other Laws pertaining to the rights of employees and other affected persons.
 - 2.3.2. The Supplier shall conduct the Services so that people with the protected characteristics set out in Section 4 – 12 of the Equality Act 2010 are not discriminated against when using any service provided, whether that service is for payment or not. The protected characteristics are:
 - 2.3.2.1. age;
 - 2.3.2.2. religion or belief (including non-belief);
 - 2.3.2.3. disability;
 - 2.3.2.4. pregnancy and maternity;
 - 2.3.2.5. gender reassignment;
 - 2.3.2.6. sex / gender;
 - 2.3.2.7. marriage and civil partnership (with regard to discrimination);
 - 2.3.2.8. sexual orientation; and
 - 2.3.2.9. race.
 - 2.3.3. The Supplier shall, and shall procure that any of its sub-contractors shall in the performance of its or their obligations under this Agreement comply to the extent permitted by law with the provisions of Section 149 and 150 of the Equality Act 2010 as if they were a body within the meaning of Schedule 19 to the Equality Act 2010.
- 2.4. The Supplier shall at all times:
- 2.4.1. comply with all applicable anti-slavery and human trafficking laws, statues, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

- 2.4.2. have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance; and
- 2.4.3. not engage in any activity, practice or conduct that would constitute an offence under Sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- 2.4.4. ensure that each of its direct subcontractors and suppliers shall comply with the Anti-Slavery Policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including but not limited to the Modern Slavery Act 2015.

3. DUE DILIGENCE

- 3.1. The Supplier acknowledges and confirms that:
 - 3.1.1. it has had an opportunity to carry out a thorough due diligence exercise in relation to the requirements of the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - 3.1.2. it has received all information requested by it from the Council pursuant to clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - 3.1.3. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 3.1.2;
 - 3.1.4. it has raised all relevant due diligence questions with the Council before the Effective Date; and
 - 3.1.5. it has entered into this agreement in reliance on its own due diligence.
- 3.2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3. The Supplier shall promptly notify the Council in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information

provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service levels.

- 3.4. The Supplier shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Supplier in accordance with clause 3.3 save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the parties in good faith.
- 3.5. Nothing in this clause shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

4. DEVELOPMENT OF RELEVANT DOCUMENTATION

- 4.1. The Supplier shall prepare and deliver to the Council for the Council's approval a draft of each of the Implementation Documents, as listed below, within 10 Business Days of the Effective Date and in compliance with any Council-mandated timescales as set out in schedule 1:
 - 4.1.1. the Implementation Plan; and
 - 4.1.2. the Implementation Specification.
- 4.2. If the Council rejects any of the draft Implementation Documents, the Council shall inform the Supplier in writing of its reasons for the rejection. The Supplier shall then revise the draft of the relevant document, (taking reasonable account of the Council's comments) and shall re-submit a revised draft to the Council for the Council's approval within 10 Business Days of the date of the Council's notice of rejection. The provisions of this clause shall apply again to any resubmitted draft until all Implementation Documents are agreed.

5. PREPARING THE SAAS SPECIFICATION

- 5.1. The Supplier shall, in performing the Implementation Services, prepare the SaaS Specification such that it:

- 5.1.1. fully satisfies the applicable part of the Council Requirements by the applicable date set out in the Implementation Plan; and
 - 5.1.2. identifies each element of the Software which will be used in the provision of the SaaS Services (provided always that, in so doing, the Supplier shall not be entitled to vary any of the Service Charges).
- 5.2. In developing the SaaS Specification, the Supplier shall organise collaborative workshops with the Council for the purpose of discussing the contents of the SaaS Specification and for the purpose of obtaining the views, input and co-operation of the Council on the manner in which it is intending to reflect the Council Requirements in the SaaS Specification.
- 5.3. The Supplier shall provide a draft of the SaaS Specification to the Council for review either on or before the applicable date set out in the Implementation Plan.
- 5.4. The Council shall, on or before the date set out in the Implementation Plan, give the Supplier written notice of specific comments on, or requests for amendment to, the SaaS Specification as it reasonably considers necessary to bring the SaaS Specification into conformity with the Council Requirements.
- 5.5. If the Council provides comments or requests for amendment to the SaaS Specification, the Supplier shall immediately meet with the Council to discuss such comments with a view to agreeing appropriate changes to the SaaS Specification. The Supplier shall take account of all comments and requests for amendment received from the Council pursuant to Clause 5.4. The Supplier shall incorporate appropriate changes into a revised version of the SaaS Specification, which shall be submitted to the Council within the timescale set out in the Implementation Plan. In making such changes, the Supplier shall not seek to vary any of the Service Charges and/or any of the Key Milestones.

6. IMPLEMENTATION SERVICES

- 6.1. The Supplier shall perform the Implementation Services substantially in accordance with the Implementation Documents.
- 6.2. The Supplier shall perform each of the tasks identified in the Implementation Plan by the applicable Milestone Date assigned to the particular task in the Implementation Plan. The Supplier shall ensure that:
 - 6.2.1. it has completed all of the required development and internal testing which is required to ensure that the Software and the Council IT

Infrastructure are capable of passing the relevant acceptance tests by the date set out for the commencement of the testing; and

6.2.2. the Software (or any relevant module) shall successfully pass the applicable test by the planned Milestone Date.

6.3. The Supplier shall co-operate with the Council in connection with the transition and migration of the Council Data to the Supplier, and in all other respects, such that there is a seamless transition from the Council or (where applicable) any outgoing supplier to the Supplier with minimal disruption to the Council's operations.

6.4. If, at any time, the Supplier becomes aware that it will not (or is unlikely to) successfully achieve any Milestone by the applicable Milestone Date, it shall immediately notify the Council of the fact of the delay, the reasons for the delay, the consequences of the delay for the rest of the Implementation Plan and how the Supplier proposes to mitigate the delay. The Supplier shall also inform the Council if it believes that the delay is wholly or partly due to the fault of the Council.

Whether the delay is due to the Council or not, the Supplier shall deploy all additional resources and efforts, and take all reasonable steps, to eliminate or mitigate the consequences of the delay.

6.5. The parties acknowledge that it may be necessary for the Supplier to integrate the SaaS Software with the pre-existing Council IT Infrastructure, in order to permit the flow of Council Data between the Council IT Infrastructure and the SaaS Services.

6.6. As part of the Implementation Services, the Supplier shall develop (and configure the Council IT Infrastructure to use) the Integration Software in accordance with the Implementation Documents, with such supervision and assistance from appropriate Council personnel as the Council shall deem reasonable.

7. TESTING

7.1. Before implementing any Software, the Supplier shall carry out reasonable tests to ensure that such item of Software is in operable condition and is capable of meeting the Council Requirements once properly implemented.

7.2. The Council shall endeavour to deliver to the Supplier within 20 days of the date upon which the Implementation Plan is agreed, proposed user acceptance

criteria and test data for the Acceptance Tests for the Software. These criteria and data shall be such as are reasonably required to show that the Software complies with the Implementation specification and SaaS Specification (as applicable). The Supplier shall provide the Council with reasonable assistance to prepare such user acceptance criteria and test data at the Council's request. The parties shall use best endeavours to agree the Acceptance Tests for the Software within 5 Business Days from the date of delivery to the Supplier of the proposed criteria and data.

- 7.3. The parties shall cooperate to carry out the agreed Acceptance Tests for each module of the software within 10 Business Days of the relevant Milestone date. The Acceptance Tests shall be started as soon as reasonably possible and shall be run continuously during Normal Business Hours. The Supplier shall carry out the agreed Acceptance Tests for each module of Integration Software unless the Council notifies the Supplier, not later than 5 Business Days after the Milestone date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least 24 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.
- 7.4. If any module of Software fails to pass the Acceptance Tests, the Council shall, within 5 days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 7.5. If any module of Integration Software fails to pass any repeated Acceptance Tests within 4 weeks from the date of its second submission to the Acceptance Tests, then the Council may, by written notice to the Supplier, choose at its sole discretion:
 - 7.5.1. to fix (without prejudice to the Council's other rights and remedies) a new date for carrying out further tests on the same terms and conditions. If the Software module fails such further tests then the Council may request a repeat test under this clause 7 or to proceed under clause 7.5.2 or clause 7.5.3;
 - 7.5.2. to accept the relevant module of Integration Software subject to such change of acceptance criteria, amendment of the relevant

specification and/or reduction in the Service Charges as, after taking into account all the relevant circumstances, is reasonable; or

- 7.5.3. if the Supplier is unable to correct defects within a period of 3 months from the commencement of Acceptance Tests under clause 7.3, to reject the relevant Software as not being in conformity with the Agreement, in which event the Council may terminate this Agreement (or, at its discretion, a part thereof).

- 7.6. On completion of all acceptance tests on the individual modules of the Software as provided in clause 7.3, clauses 7.4 and 7.5 of this Agreement, the Supplier shall carry out the agreed Acceptance Tests for the Software as a whole to ensure that it meets the Council's requirements. The relevant provisions of clauses 7.3 - 7.5 of this Agreement shall apply to these acceptance tests.

8. ACCEPTANCE

- 8.1. Acceptance of the SaaS Software shall occur only where the Council has signed an acceptance certificate for it following successful completion of the testing under clause 7 above.

9. LICENCE

- 9.1. Subject to the Council paying the Service Charges and complying with the restrictions set out in this clause 9 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Council a non-exclusive, non-transferable right, during the Term and solely for the Council's internal business operations to:
 - 9.1.1. permit the Authorised Users to use the Software and the Documentation; and
 - 9.1.2. following the occurrence of a Trigger Event, access and use the source code of the Software to continue to develop and maintain it.
- 9.2. In relation to the Authorised Users, the Council undertakes that:
 - 9.2.1. each Authorised User shall keep a secure password for his use of the SaaS Software and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential; and

- 9.2.2. it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times.
- 9.3. The Council shall use reasonable endeavours to not access, store, distribute or transmit any Viruses, or any material during the course of its use of the SaaS Services that:
 - 9.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 9.3.2. facilitates illegal activity;
 - 9.3.3. depicts sexually explicit images;
 - 9.3.4. promotes unlawful violence;
 - 9.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 9.3.6. is otherwise illegal or causes damage or injury to any person or property.
- 9.4. The Council shall not:
 - 9.4.1. except as may be allowed by any Applicable Law which is incapable of exclusion by Agreement between the parties and except to the extent expressly permitted under this Agreement:
 - 9.4.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or the Documentation (as applicable) in any form or media or by any means;
 - 9.4.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, save to the extent that clause 9.1.2 applies;
 - 9.4.1.3. access all or any part of the SaaS Services and Documentation in order to build a product or service which competes with the SaaS Services and/or the Documentation; or
 - 9.4.1.4. use the Services commercially to provide services to third-parties; attempt to obtain, or assist third parties in

obtaining, access to the Services and/or Documentation,
other than as provided under this clause 9.

- 9.5. The Council shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the SaaS Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

10. SUPPORT SERVICES

- 10.1. The Supplier shall perform the Support Services in accordance with this Agreement and the Support Specification, as well as any service levels indicated therein.
- 10.2. Each party shall at all times cooperate with the other with respect to the Support Services.
- 10.3. The Supplier shall ensure that the Environment complies, at a minimum, with the requirements set out in schedule 2.

11. THIRD PARTY SOFTWARE

- 11.1. The terms of this clause 11 apply where the Council orders Third Party Software as part of the SaaS Services from the Supplier.
- 11.2. The Council acknowledges and agrees that:
- 11.2.1. the Supplier is acting as an agent of the third party from whom Third Party Software is licensed;
 - 11.2.2. the Supplier is not directly providing the Third party Software to the Council; and
 - 11.2.3. the Council shall be licensed to use the Third Party Software only as specified in the End User Agreement. For the avoidance of doubt, no licence is granted by the Supplier in respect thereof.
- 11.3. The Council shall comply with the terms of the End User Agreement.
- 11.4. At the Council's request, the Supplier shall use its reasonable endeavours to assist the Council when it interacts with the provider of the Third Party Software, and in particular, shall assist the Council to enforce the terms of the End User Agreement.

12. COUNCIL AND THIRD PARTY DATA

- 12.1. Although provided in good faith, the Council shall not be liable to the Supplier for and the Supplier shall not seek to recover from the Council any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Council Data by, or on behalf of, the Supplier or any Supplier party.
- 12.2. The Council gives no warranty or undertaking of whatever nature in respect of the Council Data and the Council does not warrant that the Council Data represents all of the information in its possession or power (either during the conduct of the tender process or at the time of execution of this Agreement) relevant or material to or in connection with the Agreement or the obligations of the Supplier under this Agreement. Also, the Council shall not be liable to the Supplier in respect of any failure to disclose or make available to the Supplier (whether before, on or after the execution of this Agreement) any information, documents or data, nor any failure to review or to update the Council Data, nor any failure to inform the Supplier (whether before, on or after the execution of this Agreement) of any inaccuracy, error, omission, defects or inadequacy in the Council Data.
- 12.3. The Council will use all reasonable endeavours to ensure that all information supplied by third parties is complete and accurate, but the Council makes no warranties in this respect.
- 12.4. The Supplier acknowledges and confirms that:
 - 12.4.1. it has conducted its own analysis and review of the Council Data and has, before the execution of this Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Council Data upon which it places reliance; and
 - 12.4.2. it shall not be entitled to and shall not make any claim against the Council whether in contract, tort or otherwise including any claim in damages, for extensions of time or for additional payments under this Agreement on the grounds:
 - 12.4.2.1. of any misunderstanding or misapprehension in respect of the Council Data; or
 - 12.4.2.2. that incorrect or insufficient information relating to the Council Data was given to it by any person, whether or not the Council.

13. DATA PROTECTION

- 13.1. The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the **Controller** and the Supplier is the **Processor** unless otherwise specified in writing. The only processing that the Processor is authorised to do is listed in schedule 9 by the Council and may not be determined by the Supplier.
- 13.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 13.3. 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:
 - 13.3.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 13.3.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 13.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 13.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 13.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 13.4.1. process that Personal Data only in accordance with schedule 6, 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;
 - 13.4.2. 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:
 - 13.4.2.1. nature of the data to be protected;
 - 13.4.2.2. harm that might result from a Data Loss Event;
 - 13.4.2.3. state of technological development; and

13.4.2.4. cost of implementing any measures;

13.4.2.5. ensure that:-

13.4.2.5.1 the Staff do not process Personal Data except in accordance with this Agreement (and in particular schedule 6);

13.4.2.5.2 it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:-

- (A) are aware of and comply with the Supplier's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
- (C) 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 Council or otherwise permitted by this Agreement;
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (E) 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.

13.5. The Council shall own all right, title and interest in and to all of the Council Data that is not Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Council Data.

13.6. Both parties will comply with all applicable requirements of the Data Protection Legislation and any Applicable Laws. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

13.7. Without prejudice to the generality of clause 13.6, the Controller 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.

13.8. Without prejudice to the generality of clause 13.6, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

13.8.1. process that Personal Data only on the written instructions of the Controller (as set out in schedule 6), unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Applicable Laws;

13.8.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Controller, 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);

13.8.3. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

13.8.3.1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer;

13.8.3.2. the Data Subject has enforceable rights and effective remedies;

- 13.8.3.3. 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; and
- 13.8.3.4. the Processor complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 13.8.4. notify the Controller immediately if it receives:
 - 13.8.4.1. a request from a Data Subject to have access to that person's Personal Data;
 - 13.8.4.2. a request to rectify, block or erase any Personal Data;
 - 13.8.4.3. any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - 13.8.4.4. any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data Processed under this Agreement;
 - 13.8.4.5. 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
 - 13.8.4.6. awareness of a Data Loss Event;
- 13.8.5. assist the Controller 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;
- 13.8.6. notify the Controller immediately and in any event within 24 hours on becoming aware of a Personal Data breach including any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
- 13.8.7. at the written direction of the Controller, delete or return Personal Data and copies thereof to the individual on termination or expiry of the Agreement unless required by the applicable Laws to store the Personal Data; and

- 13.8.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for audits by the Council or the Controller's designated auditor.
- 13.9. The Processor shall indemnify the Controller against any losses, damages, cost or expenses incurred by the Controller arising from, or in connection with, any breach of the Processor's obligations under this clause 13.
- 13.10. Before allowing any Sub-contractor or Sub-Processor to process any Personal Data, it shall:
 - 13.10.1. notify the Controller in writing of the intended processing by the sub-contractor;
 - 13.10.2. obtain prior written consent to the processing; and
 - 13.10.3. ensure that any Sub-contract imposes obligations on the Sub-contractor to give effect to the terms set out in this clause 13, and the Supplier shall remain fully liable and hold the Controller harmless against any acts or omissions of any Sub-contractor or Sub-processor of the Personal Data.
- 13.11. Either party may, at any time on not less than 30 Business Days' written notice to the other party, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.
- 13.12. Each party shall designate its own Data Protection Officer if required by the Data Protection Legislation.
- 13.13. The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 13.14. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Business Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 13.15. The Processor acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data, the Controller may be irreparably harmed (including harm to its reputation). In such circumstances, the Controller may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

- 13.16. In the event that through failure by the Processor to comply with its obligations under the Agreement, the Personal Data is transmitted or processed in connection with the Agreement is either lost or sufficiently degraded so as to be unusable, the Processor shall be liable for the cost of reconstitution of that data and shall reimburse the Controller in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Processor.
- 13.17. In the event that the Processor is placed into liquidation or the Agreement is terminated by the Controller pursuant to the provisions of the Agreement relating to termination on insolvency, the Supplier (or a liquidator or provisional liquidator acting on behalf of the Processor) shall at its own cost and at no cost to the Controller:-
- 13.17.1. conduct a full and thorough search for any electronic and paper records held by the Processor which contain Controller Personal Data and/or Council Data in accordance with the Controller's instructions;
 - 13.17.2. return all such records to the Controller in accordance with the Controller 's instructions;
 - 13.17.3. permanently destroy all copies of any relevant electronic records; and
 - 13.17.4. provide written confirmation to the Controller that the actions outlined above in this clause 13.17 have been completed.
- 13.18. In the event of a sub-contractor of the Supplier being in liquidation then it is the responsibility of the Supplier to recover records and Controller Personal Data held by the sub-contractor and/or Sub-processor and provide assurance to the Controller that they have been recovered.
- 13.19. In the event that the Processor is put into administration the Controller shall work closely with the administrator to ensure that the Processor is able to maintain the Controller's Personal Data and other records they have created in accordance with this Agreement and maintain the standards of safekeeping as set out in this Agreement.
- 13.20. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

14. SUPPLIER'S OBLIGATIONS

- 14.1. The Supplier warrants and represents to the Council that:

- 14.1.1. it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement and shall hold the Council harmless against any claims whatsoever in this respect;
 - 14.1.2. it has adequate resources to meet its obligations under this Agreement in a timely and reliable manner; and
 - 14.1.3. the Services will substantially conform with all descriptions, specifications, samples and drawings provided to the Council by the Supplier.
- 14.2. With respect to the Software, the Supplier warrants to the Council on an ongoing basis that:
 - 14.2.1. it shall maintain the Environment in order to allow Authorised Users to access the SaaS Software via the Integration software;
 - 14.2.2. subject to the Supplier's Tender Submission, the SaaS Software will conform in all material respects with the SaaS Specification as agreed between the parties, and be free from material defects during the Term;
 - 14.2.3. the SaaS Software and the Integration Software is free from viruses and other malicious code; and
 - 14.2.4. neither the Integration Software nor the SaaS Software operates in such a way that it is compiled with or linked to any Open-Source Software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) so as to trigger the requirement to publish the Integration Software or the SaaS Software (or any part of it) along with its source code as an Open-Source project.
- 14.3. The Council shall conduct a review of performance of this Agreement at least annually during the Term. During this review, a performance report shall be agreed.
- 14.4. The Supplier shall, upon request in order to support performance of its obligations maintain on such terms as the Council shall require, either:
 - 14.4.1. a Parent Company Guarantee issued by the Supplier's Holding Company; or

- 14.4.2. a Bond to secure the performance of the Supplier of this Agreement with a value no less than 3 months' worth of the Service Charges issued in the name of the Council.

15. **CHARGES AND PAYMENT**

- 15.1. In consideration of the Supplier's proper performance of its obligations under this Agreement, the Council shall pay the service Charges in accordance with this clause 15 and schedule 3 (Payment Mechanism).
- 15.2. All amounts and fees stated or referred to in this Agreement shall be payable in pounds sterling.
- 15.3. The Supplier shall not be entitled to increase the Service Charges except by written Agreement with the Council at the start of a Renewal Period and in line with the change in the CPI index in the 12 month period immediately prior to the date of the increase, 90 days' prior written notice to the Council will be required.
- 15.4. In consideration of the performance of the Supplier's obligations under the Agreement, the Council shall pay the Fees set out in schedule 3 within thirty (30) days of a correctly rendered invoice in accordance with any requirements of the Council notified to the Supplier from time to time. No extra charges shall be effective unless agreed in writing and signed by the Council.
- 15.5. The Council shall pay all undisputed invoices submitted to it by the Supplier in accordance with the payment arrangements set out in schedule 3, to a bank account nominated in writing by the Supplier. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 15.6. The Council may reduce payment in respect of any Services which the Supplier has either failed to provide or has, in the Council's reasonable opinion, provided inadequately.
- 15.7. All amounts payable by the Council under the Agreement are exclusive of amounts in respect of valued added tax chargeable from time to time (the "VAT"). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the performance of the Services at the same time as payment is due for the performance of the Services.

- 15.8. The Supplier shall use its best endeavours to reduce its costs for the provision of the Services, without detracting from the quality of the provision of the same. Where the Supplier identifies any cost savings, such reductions shall be shared between the parties on a 50:50 basis.
- 15.9. If the Council fails to pay any amount properly due and payable by it under the Agreement, the Supplier shall have the right to charge interest on the overdue amount at the rate of 1% per annum above the base rate for the time being of the Bank of England, accruing on a daily basis from the due date up to the date of actual payment. This clause shall not apply to payments that the Council disputes in good faith.
- 15.10. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in the performance of the Services, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.
- 15.11. Payment by the Council shall be without prejudice to any claims or rights which the Council may have against the Supplier and shall not constitute any admission by the Council as to the performance by the Supplier of its obligation hereunder.
- 15.12. The Council may at any time, without notice to the Supplier, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Council of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 15.13. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- 15.13.1. provisions having the same effect as clauses 15.2-15.6 of this Agreement; and
 - 15.13.2. a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 15.2 - 15.6 of this Agreement.
- 15.14. The Supplier shall maintain up-to-date personnel records on its Staff engaged in the provision of the Services and shall provide information to the Council as the Council reasonably requests on the Supplier's Staff. The Supplier shall ensure at

all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

16. DELAY DEDUCTIONS

- 16.1. In respect of a Service to be provided by the Supplier under this Agreement, where Delay Deductions accrue, the Council may claim such Delay Deductions if a Key Milestone is not successfully achieved by the Milestone Date to the extent that such delay is attributable, in whole or in part, to the Supplier.
- 16.2. Subject to any limits on Delay Deductions (as set out in the Implementation specification), Delay Deductions shall accrue from the relevant Milestone Date until the date when the applicable Key Milestone is successfully achieved.
- 16.3. The Delay Deductions shall be payable by the Supplier on demand.
- 16.4. Where it is stated in the **Implementation Specification** that:
 - 16.4.1. Delay Deductions are not an exclusive financial remedy, the application of Delay Deductions shall not preclude the Council exercising any other right or remedy against the Supplier in respect of such delay;
 - 16.4.2. Delay Deductions are an exclusive financial remedy, the Delay Deductions shall be the exclusive financial remedy for the Council for each delay for which a Delay Deduction has been set, unless:
 - 16.4.2.1. a delay represents a period of time beyond which the Delay Deduction for the particular delay has been capped;
 - or
 - 16.4.2.2. the Council is otherwise entitled to terminate this Agreement (or a part thereof) for the Supplier's default;
 - 16.4.2.3. the failure to perform the relevant Services has arisen due to theft, gross negligence, fraud, fraudulent misrepresentation or wilful default; or
 - 16.4.2.4. the failure to perform the relevant Services results in a material and irredeemable corruption or loss of data, in which case the Council may obtain such other remedies as may be available to it, either under this Agreement or otherwise at law or in equity, including the right to terminate this Agreement in accordance with clause 28.

- 16.5. The parties agree that any such Delay Deductions have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Council.

17. SERVICE LEVELS

- 17.1. With effect from the Go Live Date, the Supplier shall:
- 17.1.1. comply with any agreed Service Levels; and
 - 17.1.2. endeavour to keep any interruptions to the Services to a minimum.
- 17.2. The Supplier does not warrant that:
- 17.2.1. the Council's use of the Software will be uninterrupted or error-free; or
 - 17.2.2. the Council's access to the Council Data will be uninterrupted or error-free.
- 17.3. Where Service Credits accrue in respect of a Service to be provided by the Supplier under this Agreement, subject to any specified Service Credit limit, the Supplier shall automatically credit the Council with the applicable Service Credits. Service Credits shall either be shown as a deduction from the amount due from the Council to the Supplier in the next invoice then due, or the Supplier shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within 10 Business Days of issue of the credit note.
- 17.4. Where it is stated in relation to a given Service Level that:
- 17.4.1. Service Credits are not an exclusive financial remedy, the application of Service Credits shall not preclude the Council exercising any other right or remedy against the Supplier in respect of such service failure; or
 - 17.4.2. Service Credits are an exclusive financial remedy, the Service Credits shall be the exclusive financial remedy for the Council for each service failure for which a Service Credit has been set, unless:
 - 17.4.2.1. any failure to meet the Service Levels (either on an individual basis or in aggregate) constitutes a failure beyond that for which the Service Credits have been set;
 - 17.4.2.2. the Council is otherwise entitled to terminate this Agreement (or a part thereof) for the Supplier's default;
 - 17.4.2.3. the failure to perform the relevant Services in accordance with the Service Levels has arisen due to theft, gross

negligence, fraud, fraudulent misrepresentation or wilful default; or

- 17.4.2.4. the failure to perform the relevant Services in accordance with the Service Levels results in a material and irredeemable corruption or loss of data, in which case the Council may obtain such other remedies as may be available to it, either under this Agreement or otherwise at law or in equity, including the right to terminate this Agreement in accordance with clause 28.

18. CONTRACT MANAGEMENT

- 18.1. The Supplier shall provide the Council with a report every quarter or otherwise as required by the Council detailing its performance in respect of each of the Service Levels. The Supplier shall provide each report to the Council no less than 4 Business Days prior to the date of each meeting referred to in clause 18.2.
- 18.2. The Contracts Managers of both parties shall have regular meetings at intervals of no more frequently than every 6 Months or otherwise as required by the Council to monitor and review the performance of this Agreement, the achievement of the Service Levels and the provision of the Services. Such meetings shall be recorded in writing by the Council's Contracts Manager and these written records shall be circulated to and approved by both parties.
- 18.3. Prior to each meeting, the Council's Contracts Manager shall notify the Supplier's Contracts Manager, and vice versa, of any problems relating to the provision of the Services for discussion. At the meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree a plan, the procedures set out in clause 30 (Dispute Resolution) shall apply. Progress at implementing the plan shall be included in the agenda for the next meeting.
- 18.4. The Council and the Supplier shall review the Service Levels every quarter or otherwise as required by the Council throughout the Term.
- 18.5. The Supplier shall at its own expense attend all such other meetings and provide such reports as may reasonably be required by the Council.

- 18.6. The Supplier shall work with the Council to establish and maintain an effective and beneficial working relationship to ensure the Agreement is delivered to at least the minimum required standard as specified. This shall include but not be limited to corresponding with the Council in order to ensure that the Services are provided in accordance with this Agreement.
- 18.7. The Supplier shall work with the Council to establish suitable administrative arrangements for the effective management and performance monitoring of the Agreement and shall provide information as requested to monitor and evaluate the success of the Agreement and the Supplier's management and delivery of it.
- 18.8. The Supplier shall supply information requested relevant to the delivery of the Services to the Council, using formats and to the timescales specified by the Council.
- 18.9. The Council intends, wherever it can, to capture and collate information through the Council IT Infrastructure. However, the Council does reserve the right to make reasonable requests for information (at no additional charge) from the Supplier including ad-hoc requests for information from time to time.
- 18.10. Any additional requests for information shall be considered in consultation with the Supplier as shall the process of defining the methods of collection.
- 18.11. Where an ongoing, short-term or one-off requirement is agreed, both parties agree that it shall be included, or deemed to be included within the Agreement.
- 18.12. Review meetings as referred to in clause 18.2 between the Council and the Supplier shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Agreement.
- 18.13. The Council may undertake spot checks at any time to ensure that the Supplier is complying with its obligations under this Agreement and the Supplier shall co-operate fully, at its own cost, with the Council.
- 18.14. The Supplier shall be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, change control procedures and the prompt resolution of any problems. The Council shall agree with the Supplier day-to-day relationship management, contact points, communication flows and escalation procedures.

- 18.15. The Supplier shall be expected to continuously improve the quality of the provision of the Services including that delivered by sub-contractors.

19. TUPE

- 19.1. In the event that the Supplier enters into any Sub-Contracts in connection with this Agreement, it shall impose obligations on its sub-contractors in the same terms as those imposed on it pursuant to this clause 19 and shall ensure that each sub-contractor complies with such terms. The Supplier shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability or losses awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of a sub-contractor to comply with such terms.
- 19.2. The parties believe that TUPE will not apply to the transaction which is the subject matter of this Agreement either on entry into or exit of this Agreement. However, in the event that a transfer of the performance of the Services which are the subject of this Agreement in whole or in part is considered a relevant transfer for the purposes of TUPE, the parties shall comply with all their respective obligations thereunder. Without prejudice to the foregoing, the Supplier shall promptly furnish to the Council on request all information relating to the Agreement prior to and during the relevant transfer reasonably required by the Council.
- 19.3. On termination or expiry of this Agreement for any reason, the Supplier shall provide access, during Normal Business Hours, to the Council and/or the replacement Supplier for up to twelve months after the expiry or termination of the Agreement, to:
- 19.3.1. such information relating to the Agreement as remains in the possession or control of the Supplier; and
- 19.3.2. such members of the Supplier's Personnel as have been involved in the development and provision of the Services and who are still employed by the Supplier, provided that the Council and/or the replacement Supplier shall pay the reasonable costs of the supplier actually incurred in responding to requests for access in accordance with this clause 19.3, unless the Agreement has been terminated by

the Council pursuant to a material breach by the Supplier, in which event such costs shall be for the sole account of the Supplier.

- 19.4. In the event of a relevant transfer under TUPE, the Supplier may at its option cease employment of any individuals claiming that they are transferring personnel. The Supplier hereby indemnifies and holds the Council harmless from and against any and all losses, costs and expenses arising from the relevant transfer, including the Council ceasing the employment of any transferring personnel and any claims whatsoever from individuals who previously were personnel involved/engaged in the provision of the Services.

20. STAFF AND KEY PERSONNEL

- 20.1. Each party shall appoint the persons named as such in Schedule 7 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 20.2. The Supplier shall not remove or replace any of the Key Personnel unless:
- 20.2.1. requested to do so by the Council;
 - 20.2.2. the person is on long-term sick leave;
 - 20.2.3. the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
 - 20.2.4. the person resigns from their employment with the Supplier; or
 - 20.2.5. the Supplier obtains the prior written consent of the Council.
- 20.3. The Supplier shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 5 Business Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

- 20.4. Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Business Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Council becoming aware of the role becoming vacant.
- 20.5. The Council may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 20.6. If the Supplier replaces the Key Personnel as a consequence of this clause 19, the cost of effecting such replacement shall be borne by the Supplier.
- 20.7. The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 20.8. At all times, the Supplier shall ensure that:-
- 20.8.1. each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;
 - 20.8.2. there is an adequate number of Staff to provide the Services properly;
 - 20.8.3. where applicable, Staff are registered with the appropriate professional regulatory body;
 - 20.8.4. all of the Staff comply with all of the Council's policies as notified to it from time to time;
 - 20.8.5. all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working; and
 - 20.8.6. Staff are aware of and respect equality and human rights of colleagues.
- 20.9. The Supplier shall notify its entire Staff about the Supplier's obligations under the terms of this Agreement and about any Applicable Law.

- 20.10. In the event of industrial disputes or action by any of the Staff, it remains the Supplier's responsibility to meet the requirements of this Agreement. The Supplier shall inform the Council immediately of impending or actual industrial disputes or action, which may affect the Supplier's ability to deliver the Services and of the Supplier's contingency plans for dealing with such disputes or action.
- 20.11. The Supplier shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-
- 20.11.1. proper and sufficient continuous professional and personal development, training and instruction; and
 - 20.11.2. full and detailed appraisal (in terms of performance and on-going education and training), each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.
- 20.12. The Council may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, any Council Premises:
- 20.12.1. any member of Staff; or
 - 20.12.2. any person employed or engaged by the Supplier, where in the reasonable opinion of the Council they have failed to carry out their duties with reasonable skill and care.
- 20.13. At the Council's written request, the Supplier shall provide a list of the names of all persons who may require admission in connection with this Agreement to any Council Premises, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Council may reasonably request.
- 20.14. The Staff, engaged within the boundaries of any Council Premises, shall comply with such Mandatory Policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside any Council Premises.
- 20.15. The decision of the Council as to whether any person is to be refused access to any Council Premises and as to whether the Supplier has failed to comply with this Agreement is final and conclusive.
- 20.16. The Supplier shall replace any of the Staff who the Council reasonably determines have failed to carry out their duties with reasonable skill and care.

Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services at no additional cost to the Council.

21. PROPRIETARY RIGHTS

- 21.1. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 21.2. All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):-
 - 21.2.1. furnished to or made available to the Supplier by or on behalf of the Council, including but not limited to the Council Data shall remain the property of the Council;
 - 21.2.2. prepared by or for the Supplier on behalf of the Council for use, or intended use, in relation to the performance by the Supplier of its obligations shall remain the property of the Supplier; and
 - 21.2.3. each party shall not (except when necessary for the performance of this Agreement) without prior approval, use or disclose any Intellectual Property Rights in the IP Materials which is the property of the other party.
- 21.3. The parties shall grant to each other a non-exclusive, revocable, free licence for the Subscription Term to use the IP Materials where it is necessary for each party to undertake their obligations under this Agreement. The parties shall have the right to sub-licence such use of the IP Materials. At the end of the Agreement or early termination thereof the parties shall cease to use and shall ensure that any sub-contractor ceases to use the IP Materials which is the property of the other party.
- 21.4. The parties shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Agreement grants a non-exclusive licence or, if itself a licensee of those rights, shall grant to the other party an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be

non-exclusive, perpetual, royalty free and irrevocable. The licence or sub-licence from the Supplier shall also include the right for the Council to sub-licence, transfer, novate or assign to other Contracting Bodies, the Replacement Supplier or to any other third party supplying services to the Council.

- 21.5. The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Supplier shall, during and after the Term, indemnify and keep indemnified and hold the Council harmless from and against all Losses which the Council may suffer or incur as a result of or in connection with any breach of this clause 21.5, except where any such claim arises from:-
- 21.5.1. items or materials based upon designs supplied by the Council; or
 - 21.5.2. the use of data supplied by the Council which is not required to be verified by the Supplier under any provision of this Agreement.
- 21.6. The Council shall notify the Supplier in writing of any claim or demand brought against the Council for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Supplier.
- 21.7. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:-
- 21.7.1. shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 21.7.2. shall take due and proper account of the interests of the Council; and
 - 21.7.3. shall not settle or compromise any claim without the Council's approval (not to be unreasonably withheld or delayed).
- 21.8. The Council shall at the request of the Supplier provide the Supplier with all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Council or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this Agreement.
- 21.9. The Council and the Supplier shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Council or the Supplier in connection with the performance of this Agreement.

- 21.10. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Council and, at its own expense and subject to the approval of the Council (not to be unreasonably withheld or delayed), use its best endeavours to:-
- 21.10.1. modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
 - 21.10.2. procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council,
- and in the event that the Supplier is unable to comply with clauses 21.10.1 or 21.10.2 within twenty (20) Business Days of receipt of the Supplier's notification the Council may terminate this Agreement with immediate effect by notice in writing.

22. ESCROW AND INSOLVENCY PROTECTION

- 22.1. Following the Go Live Date, the parties shall work together in good faith to agree the identity of an Escrow Agent, and the terms on which the parties shall enter into the Escrow Agreement with the same.
- 22.2. Pursuant to clause 22.1 above:
 - 22.2.1. the Council shall be permitted to take part in an existing multi-licensee Escrow Agreement; or
 - 22.2.2. the Supplier and the Council mutually undertake, promptly following signature of this Agreement, to enter into a single licensee Escrow Agreement in relation to the Software and the Supplier additionally undertakes to procure that the Escrow Agent promptly signs such Escrow Agreement.
- 22.3. The Supplier and the Council mutually undertake to abide by the terms of the Escrow Agreement.
- 22.4. For the purposes of the Escrow Agreement:

- 22.4.1. the source code of the SaaS Software and all technical information and documentation required to enable the Supplier to modify and operate the SaaS Software shall constitute the “Material”;
- 22.4.2. this Agreement shall constitute the “Licence Agreement”;
- 22.4.3. the applicable SaaS Software, together with the details required pursuant to clause 22.7.3 below, shall constitute the “Package”; and
- 22.4.4. The “Trigger Events” shall be:
 - 22.4.4.1. termination of any agreement between the Supplier and the Council concerning the maintenance and/or support of the SaaS Software due to the Supplier's material or persistent breach of such agreement howsoever arising;
 - 22.4.4.2. termination by the Escrow Agent of the Escrow Agreement, if such termination is occasioned by any breach or default by the Supplier of its obligations under the Escrow Agreement howsoever arising including failure by the Supplier to pay any of the Escrow Agent's fees; or
 - 22.4.4.3. the insolvency of the Supplier.
- 22.5. Costs relating to the Escrow Agreement shall be borne by the Supplier.
- 22.6. It is a condition of this Agreement that, following a Trigger Event, the Council is entitled to interact directly with the Hosting Provider in order for the Council (without input or other involvement from the Supplier) to continue to:
 - 22.6.1. use the SaaS Software and to maintain and develop it; and
 - 22.6.2. access, add to and vary the Council Data held within the SaaS Software and the Environment.
- 22.7. No later than 20 Business Days from the Go Live Date, the Supplier shall:
 - 22.7.1. ensure that the Hosting Provider agrees to the Assignment Right by signing and issuing a letter in the form agreed in writing by the parties and the Hosting Provider (“**Assignment Letter**”);
 - 22.7.2. countersign the Assignment Letter and issue the same to the Council;
 - 22.7.3. in addition to the items placed into Escrow pursuant to clause 22.2, place into Escrow the following, which the Council shall be entitled to access following the occurrence of a Trigger Event:
 - 22.7.3.1. the account access credentials (username, password) for the SaaS Software environment used by the Council,

with sufficient privileges to ensure continuing operation of the SaaS Software; and

22.7.3.2. a copy of the then-current Documentation, with sufficient details necessary to ensure the continuing operation of the Software.

22.8. The Supplier shall not be entitled to change to an alternative Hosting Provider without first:

22.8.1. obtaining the prior written consent of the Council, not to be unreasonably withheld or delayed; and

22.8.2. ensuring that the activities detailed in clauses 22.7 have been completed in respect of the planned replacement Hosting Provider.

23. CONFIDENTIALITY AND COMPLIANCE WITH POLICIES

23.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

23.1.1. is or becomes publicly known other than through any act or omission of the receiving party;

23.1.2. was in the other party's lawful possession before the disclosure;

23.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

23.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

23.2. Subject to clause 23.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

23.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

23.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by any Applicable Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so,

it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 23.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 23.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 23.6. The Council acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 23.7. The Supplier acknowledges that any Council Data is Confidential Information.
- 23.8. No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by any Applicable Law, any governmental or regulatory authority (including, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 23.9. The above provisions of this clause 23 shall survive termination of this Agreement, however arising.
- 23.10. In performing its obligations under this Agreement the Supplier shall comply with the Mandatory Policies.

24. **BENCHMARKING**

- 24.1. For the purposes of this clause, a Benchmarked Service shall be “Good Value”, or the Benchmarked Services as a whole shall be Good Value where:
 - 24.1.1. in relation to the Service Charges if the Service Charges attributable to a Benchmarked Service or Benchmarked Services are, having regard to the Service Levels, less than or equal to the Benchmark Price for Equivalent Services provided by a Comparison Sample; and
 - 24.1.2. in relation to the Service Levels, if the Service Levels attributable to Benchmarked Services are, having regard to the Service Charges, equal to or better than the Benchmark Value for the Service Levels for Equivalent Services provided by a Comparison Sample.

- 24.2. The Council may, by written notice to the Supplier, require a Benchmark Review of any or all of the Service Charges, the Services and the Service Levels in accordance with the provisions of this clause.
- 24.3. The first Benchmark Review may be requested by The Council to occur at any time following [INSERT]. The Council may not request a subsequent Benchmark review until a period no less than 3 years has expired from the date of the last Benchmarking report.
- 24.4. Subject to clause 24.5, if any Benchmark Review determines that any or all of the Service Charges, Services and Service Levels do not represent Good Value, the Council may require the Supplier to reduce the Service Charges and/or implement improvements to the Services or Service Levels in accordance with the relevant Benchmarking Report within a period no longer than [INSERT] months from receipt of the Benchmarking Report.
- 24.5. If the Supplier reasonably believes the Benchmarker has not complied with the provisions of this clause in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Supplier may dispute the Benchmarking Report and the matter shall be dealt with in accordance with clause 30.
- 24.6. The Benchmarked Services shall be identified by the Council in the written request it gives under clause 24.2. Prior to issue by the Council of such written request, the Council shall consult the Supplier (but shall not be obliged to agree with the Supplier) about those Services it proposes to benchmark.
- 24.7. Each Benchmark Review shall be performed by an independent third party appointed in accordance with the Benchmarker Appointment Procedure.
- 24.8. Each party shall bear its own costs (other than the costs of the Benchmarker) relating to a Benchmark Review. The costs and expenses of the Benchmarker shall be shared equally by the parties, unless the Benchmarking Report states that the Benchmarked Services are not Good Value, in which case the costs and expenses of the Benchmarker shall be borne solely by the Supplier.
- 24.9. The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
- 24.9.1. benchmarking shall be carried out in an independent and objective manner;
 - 24.9.2. the Benchmarker shall be jointly instructed by the parties;

- 24.9.3. benchmarking shall be truly comparative in respect of the technology, services and service levels;
 - 24.9.4. benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
 - 24.9.5. immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.
- 24.10. The Council's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within 15 Business Days after the date of appointment of the Benchmarker. The plan shall include:
- 24.10.1. a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
 - 24.10.2. a description of the information that the Benchmarker requires each party to provide;
 - 24.10.3. a description of the benchmarking methodology to be used; and
 - 24.10.4. details of any organisations providing Equivalent Services which The Council proposes, having consulted with the Supplier (and including any organisations providing Equivalent Services reasonably proposed by the Supplier), are included within the Comparison Sample.
- 24.11. Each party shall give notice in writing to the Benchmarker and to the other party within 15 Business Days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.
- 24.12. Where a party suggests amendments to the draft plan under clause 24.10, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Clauses 24.10 and 24.11 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within 30 Business Days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with clause 30.

- 24.13. Failure by a party to give notice under clause 24.12 shall be treated as approval of the draft plan by that party.
- 24.14. The Council shall instruct the Benchmarker to produce the Benchmarking Report within 30 Business Days of the appointment of the Benchmarker. Any correspondence between either of the parties and the Benchmarker shall be copied to the other party at the same time. The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 24.15. Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker. The Supplier shall use its best endeavours to obtain authority from such third parties to disclose such information to the Benchmarker solely for the purposes of enabling him to carry out the Benchmark Review.
- 24.16. Each party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker. The Benchmarker shall be instructed by The Council to minimise any disruption to the Services.
- 24.17. The Council shall instruct the Benchmarker to produce the Benchmarking Report within 30 Business Days of the appointment of the Benchmarker. Any correspondence between either of the parties and the Benchmarker shall be copied to the other party at the same time. The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 24.18. Either party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 24.19. Once it has received the information it requires, the Benchmarker shall:
- 24.19.1. identify the Comparison Sample in accordance with the agreed methodology;
 - 24.19.2. compare the Charges attributable to the Benchmarked Services (having regard to the Service Levels and other relevant factors) with the benchmark price of the Equivalent Services provided by the

- Comparison Sample and determine whether or not each Benchmarked Service, and/or the Benchmarked Services as a whole, are Good Value in relation to the Charges; and
- 24.19.3. compare the Service Levels attributable to the Benchmarked Services (having regard to the Charges and other relevant factors) with the median service levels of the Equivalent Services provided by the Comparison Sample and determine whether or not each Benchmarked Service, and/or the Benchmarked Services as a whole, are Good Value in relation to the Service Levels.
- 24.20. In conducting the Benchmark Review, the Benchmarkers shall apply correction factors to the information to take account of reasons for difference in accordance with Good Industry Practice. Such normalisation information shall be available for approval by the parties prior to the production of the Benchmarking Report.
- 24.21. The Benchmarkers shall prepare a Benchmarking Report setting out its findings at the time specified in the plan approved under clause 24.12 (being no later than that specified in clause 24.14). Those findings:
- 24.21.1. shall include a finding as to whether or not each Benchmarked Service is Good Value and/or whether the Benchmarked Services as a whole are Good Value;
- 24.21.2. may include other findings regarding the quality and competitiveness or otherwise of the Services; and
- 24.21.3. if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges or Service Levels, that would be required to make that Benchmarked Service or those Benchmarked Services Good Value.
- 24.22. If the Benchmarking Report states that the Services, Charges or Service Levels (or any part of them) that are benchmarked are not Good Value then clause 24.4 shall apply.

25. **FREEDOM OF INFORMATION**

- 25.1. The Supplier recognises that the Council has information disclosure obligations under the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (“**EIR**”). The Supplier agrees to provide such

assistance and support as may be requested from time to time by the Council for the purposes of enabling or assisting the Council to comply with these information disclosure obligations in respect of matters relating to or arising out of this Agreement.

- 25.2. In the event that a request is made to the Council for access to information under the FOIA or the EIR, or any notice, recommendation or complaint is made to or against the Council in relation to its obligations under the FOIA or EIR, the Supplier will within 5 Business Days of the date of a request from the Council provide to the Council, any details in its possession relating to this Agreement or to the Supplier as the Council may require to deal with such access request or deal with such notice, recommendation or complaint.
- 25.3. The Supplier acknowledges the Council may be obliged under the FOIA or EIR to disclose information to third parties, including information relating to the appointment of the Supplier to provide the Services under this Agreement, and the terms of this Agreement, subject to certain exemptions. The Supplier further acknowledges and accepts that the decision to disclose information and the application of any such exemptions under the FOIA or EIR will be at the Council's sole discretion provided that the Council shall act reasonably and proportionately in determining whether any exemptions under the FOIA or EIR may apply to protect the Supplier's legitimate commercial interests trade secrets.

26. **LIMITATION OF LIABILITY**

- 26.1. Except as expressly and specifically provided in this Agreement:
 - 26.1.1. the Council assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Council, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Council in connection with the Services, or any actions taken by the Supplier at the Council's direction; and
 - 26.1.2. the Services and the Documentation are provided to the Council on a 'fit for purpose' basis.
- 26.2. Subject to clause 26.3, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for

- any indirect or consequential loss arising under or in connection with this Agreement.
- 26.3. Notwithstanding the provisions of clause 26.2, but subject to clause 26.5, the Supplier assumes responsibility for and acknowledges that the Council may, amongst other things, recover:
- 26.3.1. sums paid by the Council to the Supplier pursuant to this Agreement, in respect of any services not provided in accordance with the Agreement;
 - 26.3.2. wasted expenditure;
 - 26.3.3. additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - 26.3.4. losses incurred by the Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the Council) against the Council caused by the act or omission of the Supplier; or
 - 26.3.5. any anticipated savings.
- 26.4. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this Agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this Agreement.
- 26.5. Subject to clauses 26.2 and 26.7, the Supplier's aggregate liability is unlimited in respect of:
- 26.5.1. the indemnities set out in clauses 13.9 19.1, 19.4 and 21.5;
 - 26.5.2. any breach of its obligations under schedule 5;
 - 26.5.3. the Supplier's wilful default; or
 - 26.5.4. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement, shall be limited in each Contract Year to the greater of [PERCENTAGE]% of the total Service Charges that are paid and/or payable in such Contract Year.

- 26.6. Subject to clauses 26.2 and clause 26.7, the Council's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited in any Contract Year to the Service Charges payable under this Agreement.
- 26.7. Notwithstanding any other provision of this Agreement neither party limits or excludes its liability for:
 - 26.7.1. fraud or fraudulent misrepresentation;
 - 26.7.2. death or personal injury caused by its negligence (or the negligence of its personnel, agents or sub-contractors); or
 - 26.7.3. any other liability which may not be limited under any Applicable Law.

27. INSURANCE

- 27.1. During this Agreement and for a period of six years afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
 - 27.1.1. public liability insurance with a limit of at least £10million a claim; and
 - 27.1.2. employer's liability insurance with a limit of at least £10million for claims arising from a single event or series of related events in a single calendar year.
- 27.2. The Supplier shall ensure that the Council's interest is noted on each insurance policy or that a generic interest clause has been included.
- 27.3. On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to the Council. On the Council's written request, the Supplier shall provide the Council with copies of the insurance policy certificates and details of the cover provided.
- 27.4. The Supplier shall ensure that any sub-contractors also maintain adequate insurance having regard to their obligations under this Agreement.
- 27.5. The Supplier shall notify the Council if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.
- 27.6. The Supplier's liabilities under this Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause 27.1.

28. TERM AND TERMINATION

- 28.1. This Agreement shall, unless otherwise terminated as provided in this clause 28, commence on the Effective Date and shall continue for the Initial Term, and thereafter, this Agreement may be renewed by the Council, for a further period of five (5) years by serving notice to that effect on the Council no later than six months prior to the end of the Initial Term or the relevant Renewal Period, as the case may be. The Initial Term, together with any subsequent Renewal Periods shall constitute the “**Term**”.
- 28.2. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 28.2.1. the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 days after being notified in writing to do so;
 - 28.2.2. the other party repeatedly breaches any of the terms 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 of this Agreement;
 - 28.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in Sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - 28.2.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 28.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent

- amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 28.2.6. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 28.2.7. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 28.2.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 28.2.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 28.2.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 28.2.3 to clause 28.2.9 (inclusive);
- 28.2.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 28.2.12. there is a change of control of the Supplier;
- 28.2.13. any warranty given by the Supplier in clause 17.1.1 of this Agreement is found to be untrue or misleading; or
- 28.2.14. any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply to this Agreement, namely where:
- 28.2.14.1. the Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9);
- 28.2.14.2. the Supplier has, at the time of the contract award, been in one of the situations referred to in Regulation 57(1),

including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure; or

28.2.14.3. the Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

28.3. Without prejudice to clause 28.2, in the event of:

28.3.1. the passing by the Supplier of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Supplier or the dissolution of the Supplier; or

28.3.2. the making of an administration order in relation to the Supplier or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Supplier's assets; or

28.3.3. the Supplier making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally,

the Council may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Agreement forthwith by notice and the Supplier shall indemnify the Council against all costs, expenses and damages for which the Council becomes liable arising from such termination.

28.4. Without prejudice to the parties other rights and remedies, either party may forthwith terminate the Agreement by notice if the other:

28.4.1. commits or attempts a Prohibited Act;

28.4.2. fails to comply with Good Industry Practice, Data Protection Legislation and/or Applicable Law;

28.4.3. commits any material breach of the terms of this Agreement and fails to remedy such breach within fifteen (15) days of being given written notice to do so by the other; or

28.4.4. fails to perform its obligations under the Agreement with due diligence,

the termination shall be at no loss or cost to the Council and the Supplier hereby indemnifies the Council against all costs, expenses and damages for which the Council may suffer as a result of any such termination.

28.5. Notwithstanding the generality of this clause 28 the Council shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one month's written notice to the Supplier.

28.6. On termination of this Agreement for any reason:

28.6.1. in consideration for the payment of the Transition Assistance Charges, the Supplier shall provide the Transition Assistance to the Council;

28.6.2. all licences granted under this Agreement shall immediately terminate;

28.6.3. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

28.6.4. the Supplier may not destroy or otherwise dispose of any of the Council Data in its possession in accordance with clause 13, unless the Supplier receives consent in writing to do so from the Council. The Supplier shall, no later than 30 days after the effective date of the termination of this Agreement, a written request for the delivery to the Council of the then most recent back-up of the Council Data. The Council shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Council Data; and

28.6.5. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

29. **CHANGE IN LAW**

29.1. The Supplier shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Agreement following any Change in Law.

29.2. The Supplier shall comply with any General Change in Law concerning the Supplier's performance of the Services at the Suppliers sole risk and cost.

- 29.3. If a Specific Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:
- 29.3.1. any necessary changes to the Services;
 - 29.3.2. whether any changes are required to the terms of this Agreement to deal with the Change in Law;
 - 29.3.3. whether relief from compliance with obligations is required;
 - 29.3.4. any Estimated Revised Costs that directly result from the Specific Change in Law, or
 - 29.3.5. in each case giving in full detail the procedure for implementing the change in Services.
- 29.4. As soon as practicable after receipt of any notice from either party under clause 29.3 the parties shall discuss and agree the issues referred to therein and any ways in which either party can mitigate the effect of the Qualifying Change in Law, accepting the general principle that such Change in Law requires appropriate action to be taken to ensure legal compliance.
- 29.5. If the parties agree to a change in the Services or where if the parties fail to agree, the Council instructs the Supplier to vary the Contract to comply with the Change in Law, the Variation shall go through the procedure for Council Change set out in clause 33 of this Agreement.

30. **DISPUTE RESOLUTION**

- 30.1. If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("**Dispute**"), then, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- 30.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Council and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
 - 30.1.2. if the [EMPLOYEE TITLE] of the Council and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Council and [SENIOR

OFFICER TITLE of the Supplier who shall attempt in good faith to resolve it; and

30.1.3. if the **[SENIOR OFFICER TITLE]** of the Council and **[SENIOR OFFICER TITLE]** of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties may elect to resolve the dispute in accordance with clauses 29.2 or 29.3 below.

30.2. The parties may agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 60 days of service of the Dispute Notice, the mediator shall be nominated by CEDR or as otherwise agreed in writing by the parties. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than **[NUMBER]** days after the date of the ADR notice.

30.3. Alternatively, the parties may agree to refer the matter to expert determination. The parties shall agree on the appointment of an independent expert, and shall agree with the expert the terms of their appointment. Where the parties fail to agree on a suitable expert or the terms of their appointment within 7 days, the expert shall be appointed in accordance with **[insert relevant trade body here]**.

30.4. The commencement of mediation or expert determination shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 45 (Jurisdiction) which clause shall apply at all times.

31. **FORCE MAJEURE**

31.1. 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 results from events, circumstances or causes beyond its reasonable control excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier's or a sub-contractor's supply chain.

31.2. The affected party shall as soon as reasonably practicable, notify the other party including details of the circumstances which are out of its reasonable control, including its effects on the obligations of that party and the remedial action which it proposes to take to mitigate its effect.

- 31.3. As soon as possible following a notice under clause 31.2, and at regular intervals thereafter, the parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken to ensure the provision of the Services.
- 31.4. Subject to clauses 31.2 and 31.3 the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 60 days or more, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.
- 31.5. In the event that any event notified under this clause 31 continues to affect the ability of either party to fulfil their obligations under the Agreement for a period of longer than (180) days or more, either party may serve notice of termination with immediate effect on the other party.
- 31.6. If the Council terminates this agreement under this clause 31, all sums paid to the Supplier by the Council under this Agreement shall be refunded to the Council, except that the Supplier shall be entitled to payment on a *quantum meruit* basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

32. **TRANSITION ASSISTANCE**

- 32.1. In the event that the Council requires any Transition Assistance (other than the return of the Council Data), the parties shall agree upon the scope of such Transition Assistance and the Charges and expenses payable for such Transition Assistance.
- 32.2. During the Transition Assistance Period, the Supplier will provide the Transition Assistance as agreed between the parties pursuant to clause 32.1 above.
- 32.3. Subject to the Council's continued payment of the Charges applicable to the Services which are the subject of Transition Assistance, the Council may extend the provision of Services for the duration of the Transition Assistance Period following any termination or expiry of this Agreement. The terms of this Agreement shall continue in force with respect to any such extension, except that the Council may terminate the Transition Assistance Period, in whole or in part, at any time upon 20 Business Days' written notice to the Supplier.

33. **VARIATIONS FOR CHANGE IN SERVICE**

33.1. Council Changes

- 33.1.1. The Council has the right to propose changes in Service in accordance with this clause and clause 40. If the Council requires a change in Service, it must serve a notice (a "Council Notice of Change") on the Supplier.
- 33.1.2. The Council Notice of Change shall:
 - 33.1.2.1. set out the change in Service required in sufficient detail to enable the Supplier to calculate and provide an Estimated Revised Costs in accordance with sub-clause 33.1.3 below;
 - 33.1.2.2. require the Supplier to provide the Council within fifteen (15) Business Days of receipt of the Council (or such longer period as shall be agreed between the parties) Notice of Change with the Estimate (the "Estimate").
- 33.1.3. As soon as practicable and in any event within fifteen (15) Business Days after having received the Council Notice of Change, the Supplier shall deliver to the Council the Estimate. The Estimate shall include the opinion of the Supplier on:
 - 33.1.3.1. any impact on the provision of the Services;
 - 33.1.3.2. any amendment required to this Agreement as a result of the change in Service; and
 - 33.1.3.3. any Estimated Revised Costs that result from the change in Service.
- 33.1.4. As soon as practicable after the Council receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate. In such discussions the Council may modify the Council Notice of Change, in which case the Supplier shall, as soon as practicable, notify the Council of any consequential changes to the Estimate.
- 33.1.5. If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with clause 30 (Dispute Resolution).

- 33.1.6. As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to clause 30 (Dispute Resolution), the Council shall:
 - 33.1.6.1. confirm in writing the Estimate (as modified); or
 - 33.1.6.2. withdraw the Council Notice of Change.
- 33.1.7. If the Council does not confirm in writing the Estimate (as modified) within ninety (90) Business Days of the contents of the Estimate having been agreed in accordance with sub-clause 33.1.4 above or determined pursuant to sub-clause 33.1.5 above, then the Council Notice of Change shall be deemed to have been withdrawn.
- 33.1.8. In the event that the Estimate has been confirmed by the Council, then the adjustment to the Service Charges shall be determined in accordance with this clause.
- 33.2. Supplier Change in Service
 - 33.2.1. If the Supplier wishes to introduce a change in Service, it must serve a notice (a “**Supplier Notice of Change**”) on the Council.
 - 33.2.2. The Supplier Notice of Change must:
 - 33.2.2.1. set out the proposed change in Service in sufficient detail to enable the Council to evaluate it in full;
 - 33.2.2.2. specify the Supplier’s reasons for proposing the change in Service;
 - 33.2.2.3. request the Council to consult with the Supplier with a view to deciding whether to agree to the change in Service, and, if so, what consequential changes the Council requires as a result;
 - 33.2.2.4. indicate any implications of the change in Service;
 - 33.2.2.5. indicate, in particular, whether a variation to the Service Charges is proposed (and, if so, give a detailed cost estimate of such proposed change); and
 - 33.2.2.6. indicate if there are any dates by which a decision by the Council is critical.

- 33.2.3. The Council shall evaluate the Supplier's proposed change in Service in good faith, taking into account all relevant issues, including whether:
- 33.2.3.1. a change in the Service Charges will occur;
 - 33.2.3.2. the change affects the quality of the Service or the likelihood of successful delivery of the Service;
 - 33.2.3.3. the change will interfere with the relationship of the Council with the third parties;
 - 33.2.3.4. the financial strength of the Supplier is sufficient to perform the changed Service;
 - 33.2.3.5. the change materially affects the risks or costs to which the Council is exposed.
- 33.2.4. As soon as practicable after receiving the Supplier Notice of Change, the parties shall meet and discuss the matter(s) referred to in it. During their discussions the Council may propose modifications or accept or reject the Supplier Notice of Change.
- 33.2.5. If the Council accepts the Supplier Notice of Change (with or without modification), the relevant change in Service shall be implemented within twenty (20) Working Days of the Council's written notice of acceptance, or as otherwise agreed by the Council, acting reasonably. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant Contract document which are necessary to give effect to the Change in Service.
- 33.2.6. If the Council rejects the Supplier Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- 33.2.7. Unless the Council's acceptance specifically agrees to an increase in the Service Charges, there shall be no increase in the Contract Payment as a result of a change in Service proposed by the Supplier.
- 33.2.8. If the change in Service proposed by the Supplier causes or will cause the Supplier's costs or those of a Sub-contractor to decrease, there shall be a decrease in the Contract Payment in accordance with schedule 4 (Payment Mechanism).

- 33.2.9. The Council cannot reject a change in Service which is unavoidably required in order to conform to a Change in Law at no cost to the Council.

34. **ANTI-BRIBERY**

34.1. The Supplier shall:

- 34.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (Relevant Requirements);
- 34.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 34.1.3. comply with any relevant the Council Ethics, Anti-bribery and Anti-corruption Policies as notified to the Supplier from time to time;
- 34.1.4. have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 34.1.2, and will enforce them where appropriate;
- 34.1.5. promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- 34.1.6. immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement); and
- 34.1.7. within 2 months of the date of this Agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Supplier, compliance with this clause 34 by the Supplier and all persons associated with it under clause 34.2. The Supplier shall

provide such supporting evidence of compliance as The Council may reasonably request.

- 34.2. The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 34 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to The Council for any breach by such persons of any of the Relevant Terms.
- 34.3. Breach of this clause 34 shall be deemed a material breach.
- 34.4. For the purpose of this clause 34, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 34 a person associated with the Supplier includes any subcontractor of the Supplier.

35. **ANTI-SLAVERY**

- 35.1. In performing its obligations under this Agreement, the Supplier shall:
 - 35.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
 - 35.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 35.1.3. include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 35.
- 35.2. The Supplier represents and warrants that at the Effective Date neither the Supplier nor any of its officers, employees or other persons associated with it:

- 35.2.1. has been convicted of any offence involving slavery and human trafficking; and
- 35.2.2. neither the Supplier nor any of its officers, employees or other persons associated with it:
 - 35.2.2.1. has been convicted of any offence involving slavery and human trafficking; or
 - 35.2.2.2. has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 35.3. The Supplier shall implement due diligence procedures for its direct subcontractors, and suppliers, to ensure that there is no slavery or human trafficking in its supply chains.
- 35.4. The Supplier shall notify the Council as soon as it becomes aware of:
 - 35.4.1. any breach, or potential breach, of any the Council policies;
 - 35.4.2. any actual or suspected slavery or human trafficking in a supply chain that has a connection with this Agreement.
- 35.5. The Supplier shall prepare and deliver to the Council, by 30 September each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 35.6. The Supplier shall implement a system of training for its employees, suppliers and subcontractors to ensure compliance with any Anti-slavery Policy.
- 35.7. The Supplier shall keep a record of all training offered and completed by its employees, suppliers and subcontractors to ensure compliance with any Anti-slavery Policy and shall make a copy of the record available to the Council on request.
- 35.8. The Supplier indemnifies and keeps The Council indemnified against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against, The Council as a result of any breach of this clause 36.

35.9. The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with any Anti-slavery Policy provided by the Council from time to time.

35.10. Breach of this clause 35 is a material breach.

36. WAIVER

36.1. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

37. RIGHTS AND REMEDIES

37.1. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

38. SEVERANCE

38.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

38.2. If any provision or part-provision of this Agreement is deemed deleted under clause 38.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

39. ENTIRE AGREEMENT

39.1. This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

39.2. Nothing in this clause shall limit or exclude any liability for fraud.

40. ASSIGNMENT, NOVATION AND SUB-CONTRACTING

- 40.1. The Council may at any time assign, novate, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice of such dealing to the Supplier. For the avoidance of doubt, the Council shall have an absolute right to assign or novate this Agreement to a successor local authority or combined authority following a reorganisation of local government or otherwise.
- 40.2. The Supplier shall not assign, novate, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement, without the prior written permission of the Council.
- 40.3. In the event that the Supplier enters into any sub-contract in connection with this Agreement, it shall:
 - 40.3.1. remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-contractor and be responsible for the acts omissions and neglects of its Sub-contractors;
 - 40.3.2. 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;
 - 40.3.3. provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council; and
 - 40.3.4. deal with any invoice submitted to it by a sub-contractor in a timely fashion and pay any sums due under such invoice no later than a period of 30 days from the date on which the Supplier had determined that the invoice is valid and undisputed.

41. NO PARTNERSHIP OR AGENCY

- 41.1. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of

any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

42. THIRD PARTY RIGHTS

42.1. This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third parties) Act 1999.

43. NOTICES

43.1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, **or sent by fax** to the other party's fax number as set out in this Agreement.

43.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice **sent by fax** shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

44. GOVERNING LAW

44.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.

45. JURISDICTION

45.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

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

SIGNED by
for and on behalf of

Limited

.....

Director

SIGNED by
for and on behalf of

Limited

.....

Director

SCHEDULE 1: COUNCIL REQUIREMENTS

SCHEDULE 2: MINIMUM ENVIRONMENT REQUIREMENTS

1. The Environment

The Supplier will provide the environment, including the hardware, equipment, and systems software configuration on which the Supplier supports use of the SaaS Services, on servers located at a facility selected by the Supplier and managed by the Hosting Provider. The Supplier may change the location of the data centres, provided that where such change would result in the processing of personal data (as defined in the Data Protection Legislation) outside of either the United Kingdom or the European Economic Area, the Supplier must obtain the Council's prior written consent to such change.

The SaaS Services shall be supported by commercially reasonable redundant infrastructure including:

- Power infrastructure that includes redundant sources (multiple power feeds, generators, battery backups), multiple power distribution systems, and redundant power supplies;
- Environmental controls that include highly available precision HVAC systems, humidity controls, and water detection systems;
- Network infrastructure that includes redundant edge routers, firewalls, and switches;
- Hardware and software redundancy in support of virtualized and physical servers; and
- Storage solutions that provide redundant back end data storage.

2. User Accounts

The Council is responsible for adopting controls to maintain its own Authorised User UserIDs and passwords, which can be managed through the interface to the SaaS Services. The Council is responsible for adopting controls to maintain the confidentiality of the Council's UserIDs and passwords and shall cause its Authorised Users to maintain the confidentiality of their UserIDs and Passwords. As between the Supplier and the Council, the Council is responsible for all uses of and activities undertaken with UserIDs registered on the Council's account. The Council agrees to immediately notify the Supplier of any unauthorised use of the Council's UserIDs of which the Council becomes aware.

3. Connectivity

The Supplier will be responsible for maintaining connectivity from its network to the Internet, which is capable of servicing the relevant Internet traffic to and from the Environment. the Council is

responsible for providing connectivity to the Internet for itself and its Authorised Users. the Council shall also be responsible for ensuring that latency and available bandwidth from the user's desktop to the Supplier's hosted routers complies with the following minimum requirements: at least 40kbps per user per location, no less than 256kbps per location. If the Council requires a VPN or private network connection to the Subscription Services, the Council is responsible for all costs associated with any specialised network connectivity required by the Council.

4. Planned Maintenance

It is acknowledged that the Supplier will be required to undertake planned maintenance to the SaaS Services in order to resolve minor issues, maintain its performance and make improvements/enhancements to the functionality of the SaaS Software, during which the SaaS Services may be Unavailable (**"Planned Maintenance"**).

The Supplier shall endeavour to undertake all Scheduled Maintenance within a regular maintenance window, the date/time of which will be agreed in advance by the parties before the Go Live Date (**"Planned Maintenance Window"**). the Council may request a change to the Planned Maintenance Window on an ad hoc basis by giving at least 24 hours' advance notice to the Supplier, and the Supplier shall use its best endeavours to comply with such request, acting reasonably and in good faith at all times.

While most of the Supplier's maintenance can be completed during the Planned Maintenance Windows, from time to time maintenance may need to be performed outside of the Planned Maintenance Windows to maintain the integrity and security of the SaaS Services. In such cases, the Supplier will provide the Council's primary point of contact (notified by the Council to the Supplier from time to time) with as much advance notice of the planned maintenance as is technically feasible (**"Planned Maintenance Outside the Window"**).

The combination in any month of Unavailability:

- (i) within the regularly Scheduled Maintenance Windows; and
- (ii) resulting from Scheduled Maintenance Outside the Window in respect of which:
 - (a) the Supplier has afforded the Council at least 24 hours' advance notice; and
 - (b) the Council has consented to the performance of such Scheduled Maintenance Outside the Window (such consent not to be unreasonably withheld or delayed), shall constitute the **"Planned Maintenance Unavailability Period"** for that month.

The Supplier agrees that:

- Subject to the following bullet point, the Planned Maintenance Unavailability Period per calendar month shall not exceed:
 - (i) For Contract Year 1 - **[insert]**;
 - (ii) For the remainder of the Term - **[insert]**.
- (the **"Maximum Monthly Planned Unavailability"**)

5. Availability

The Supplier's goal is to provide access to the SaaS Services at the Supplier's Internet gateway(s) 24 hours per day, 7 days a week, except during Planned Maintenance (up to the Maximum Monthly Planned Unavailability for that month).

The Supplier's service level objective is **[insert]** %. Availability measured on a monthly basis. Availability for the SaaS Services is measured monthly as a percentage of the "Planned Available Minutes".

• **"Available Minutes"** means the number of Planned Available Minutes in a month less the aggregate number of minutes the SaaS Services were Unavailable outside of the Planned Maintenance Unavailability Period for the applicable month (up to the Maximum Planned Unavailability for that month).

• **"Availability"** is a percentage calculated as the Available Minutes in a month divided by the Planned Available Minutes in the month.

- **“Planned Available Minutes”** are the total minutes in a month less the Planned Maintenance Unavailability Period for the applicable month (up to the Maximum Monthly Planned Unavailability for that month).
- **“Unavailable”** save in respect of the Unavailability Exceptions set out below, the SaaS Services shall be considered “unavailable”:
- During a failure that prevents or restricts **[insert/amend]**.

For example, in a 30 day month with 4 weekly Scheduled Maintenance windows of 2 hours, there are 42,720 Planned Available Minutes ((60 min. x 24 hrs. x 30 days)-(60 min. x 2 hrs. x 4 weeks) = 42,720). If the SaaS Services experienced an outage of two hours outside of Planned Maintenance, there were 42,600 Available Minutes in the month (42,720 Scheduled Available Minutes – 120 minutes of unavailability). The resulting Availability percentage is 42,600 / 42,720 = 99.7%.

The SaaS Services shall not be considered Unavailable in the following circumstances (“Unavailability Exceptions”):

- Unavailability that results from Force Majeure events;
- Unavailability that results from the Council’s wide area network and the Council’s directly contracted data processing facilities (including the Council’s equipment, software, or other technology and/or third party equipment, software or other technology) which are not under the Supplier’s control;
- Unavailability attributable to the acts or omissions of the Council or the Council’s employees, agents, contractors, or vendors in breach of this agreement, or anyone gaining access to the services by means of UserIDs or equipment controlled by the Council as a result of a failure by the Council to appropriately secure the same;
- Periods of Unavailability at the Council’s request, including requested maintenance outside of the Planned Maintenance Windows (provided such request is not a movement of maintenance, which would otherwise take place within the Planned Maintenance Window;
- Unavailability that results from performance degradation due to:
 - (i) the Council's use of the SaaS Services in excess of the scope of the Council’s licence;
 - (ii) usage restrictions or product limitations detailed in the SaaS Specification.

6. Service Credit

Where the availability service level is not achieved, the Council shall be entitled to service credits as follows:

[insert]

SCHEDULE 3: SUPPORT SPECIFICATION

SCHEDULE 4: PAYMENT MECHANISM

SCHEDULE 5: MANDATORY POLICIES

SCHEDULE 6: DATA PROCESSING PARTICULARS

This schedule describes the processing that the Supplier will perform on behalf of the Council in order to provide the Services.

Council: Controller

Please document the Council's activities (as a controller) relevant to the processing:

Supplier: Processor **Documented instructions**

The personal data will be subject to the following processing activities:

Duration of Processing

Please document the duration of the processing activities:

Categories of data subjects

The personal data to be processed concern the following categories of data subjects (please specify):

Types of data

The personal data to be processed concern the following types of data (please specify):

Special categories of data (if appropriate)

The personal data to be processed concern the following special categories of data (please specify):

SCHEDULE 7: KEY PERSONNEL