



**Clackmannanshire
Council**

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Version 2 - August 2014

**Clackmannanshire Council
ICT Services Agreement**

(1) Clackmannanshire Council

-and-

(2) The Contractor

Agreement

relating to

The Supply of Services set out in the Invitation to Tender

Guidance Note to Users

These terms and conditions should be selected where the purchasing officer is seeking offers for the supply of IT Services or Goods. These terms and conditions should be used in un-amended form, unless otherwise approved by Legal Services and the Procurement Manager.

These conditions are not suitable for use for:

1. The purchase of services, being any services from consultancy, ongoing service provision or one for which registration is required with the Care Inspectorate;
2. The supply and fit of goods in respect of or ancillary to a public works contract;
3. Any public works contract; or
4. Any services contract that would fall within the meaning of construction operations in terms of section 104 and 105 of the Housing Grants, Construction and Regeneration Act 1996.

These guidance notes are for the assistance of internal Council officers and do not form part of the Contract between the Council and the Supplier.

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The Schedule

Part

1. **Definitions**
 2. **Change Control**
 3. **Pricing Schedule**
 4. **Dispute Resolution Procedure**
 5. **Standard Third Party License Terms**
-

These terms and conditions shall govern the relationship between the Council and the Contractor, and no other terms and conditions shall be accepted.

BETWEEN:

- (1) Clackmannanshire Council, a local authority established under the Local Government etc (Scotland) Act 1994 and having its Principal Offices at Council Offices, Greenside Street Alloa FK10 1EB ("**Council**"); and
- (2) The successful contractor set out in their Tender Submission and such Tender as been accepted by the Award Letter; ("**Contractor**").

INTRODUCTION

- A The Council has by contract notice sought expressions of interests from economic operators to perform the Services set out in the Services Description. The Contractor has submitted a Tender for the provision of the Services.
- B. The Council has evaluated the Contractors Tender in accordance with the Invitation to Tender, and having completed the due process required by the Procurement Regulations, has issued the Award Letter; and
- C. The Council and the Contractor wish to regulate the terms and conditions on which the contractual obligations incumbent on the parties shall be performed.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the definitions set out in schedule part 1 (Definitions) shall apply.
- 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it. The impact of any such amendment, extension or re-enactment on this Agreement shall be dealt with in accordance with clause 37 (Change in Law); and
 - 1.2.4 any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.4 References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.
- 1.5 Without prejudice to clauses 3.4 and 6.2, if there is any conflict between the clauses and the schedules and/or any annexes to the schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.5.1 the clauses and schedule 1 (Definitions);
 - 1.5.2 the Services Description and the Service Levels;

- 1.5.3 under exception of the Contractor Solution, any other schedules and their annexes;
 - 1.5.4 the Contractor Solution; and
 - 1.5.5 any other document referred to in this Agreement or any other document attached to this Agreement.
- 1.6 Save in respect of the Charges (which shall be adjusted only if it is explicitly stated within the terms of the Pricing Schedule) if an amount or sum is expressed to be "subject to indexation" at a point in time, it shall be adjusted by reference to the percentage change in the CPI Consumer Prices Index over the most recent 12 months for which published data is available at that point in time.
- 1.7 Neither party to this Agreement shall be liable for any Default of its obligations under this Agreement to the extent that such Default is caused by a failure or delay by the other party in performing its obligations under this Agreement, provided and to the extent that the affected party notifies the other party of such failure or delay within 30 days of the affected party becoming aware of its occurrence and of its likely impact.

2. DUE DILIGENCE

- 2.1 The Contractor acknowledges that on or before the submission of its Tender it:
- 2.1.1 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 Authority;
 - 2.1.2 has raised all relevant due diligence questions with the Council (including the submission of any questions or clarifications through the Public Contracts Scotland Portal) before the Effective Date; and
 - 2.1.3 has entered into this Agreement in reliance on its own due diligence alone.

- 2.2 The Contractor acknowledges that it has inspected the Operating Environment and has advised the Council of any aspect of the Operating Environment that is not suitable for the provision of the Services and that the specified actions to remedy the unsuitable aspects of the Operating Environment, together with a timetable for and the costs of those actions, have been specified in the relevant parts of the Agreement for the Pre-Operational Phase. Such specified actions must be set out as a qualification within the Contractors Tender as a derogation, failing which the Contractor shall have no entitlement to compensation and the terms of clause 2.3 shall apply.
- 2.3 If the Contractor has either failed to inspect the Operating Environment or failed to notify the Council of any required remedial actions in accordance with clause 2.2 then the Contractor shall not be entitled to recover any additional costs or charges from the Council relating to any unsuitable aspects of the Operating Environment except in respect of any latent structural defect in the Council Premises. The onus shall be on the Contractor to prove to the Council that any work to the Council Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Contractor shall not incur such additional costs or charges without obtaining the Council's prior written consent.
- 2.4 Any disputes relating to due diligence shall be resolved through the Dispute Resolution Procedure.

SECTION B - SERVICE SUPPLY

3. SERVICES

- 3.1 Subject to meeting the Test Success Criteria, the Contractor shall provide the Services from the Commencement Date and shall ensure that the Services:
 - 3.1.1 where specified in the Invitation to Tender, prior to implementation of the Services, the Contractor shall carry out any Tests in accordance with the Testing Procedures.
 - 3.1.2 comply in all respects with the Services Description as set out in the Invitation to Tender; and
 - 3.1.3 are supplied in accordance with the Contractor Solution and the terms of this Agreement.
- 3.2 Without prejudice to clause 3.1, the Contractor shall supply the Operational Services:
 - 3.2.1 from the Commencement Date in respect of Authority to Proceed; and
 - 3.2.2 in accordance with clause 4.
- 3.3 The Contractor shall perform its obligations under this Agreement including those in relation to the Services in accordance with:
 - 3.3.1 Good Industry Practice;
 - 3.3.2 the Contractor's own established procedures and practices;
 - 3.3.3 the Security Policy;
 - 3.3.4 the Quality Plans; and
 - 3.3.5 the Council's ICT strategy.
- 3.4 The Contractor shall draw any conflict between any of the requirements of clause 3.1 and the requirements of clause 3.3 to the attention of the Council and shall comply with the Council's decision on the resolution of that conflict.

- 3.5 The Contractor shall ensure that the Services and the Contractor System integrate with the Council System as set out in the Services Description
- 3.6 In the event of the Contractor's failure to provide the Services or to comply with its obligations in accordance with this Agreement, the Council may, without prejudice to its other rights, require the Contractor to re-perform the Services or to comply with its obligations.

Additional Services

- 3.7 Subject to the compliance with the Procurement Regulations, the Council may require the Contractor to provide any or all of the Additional Services by giving notice in writing. The Contractor acknowledges that the Council is not obliged to take any Additional Services from the Contractor and that nothing prevents the Council from receiving services that are the same as or similar to the Additional Services from any third party.
- 3.8 If there has been an agreed Change to the Contractor Solution prior to the Council's request for the Additional Services, then the Contractor shall notify the Council within 10 Working Days of the request (or such other period as the parties may agree) of the impact that the agreed Change will have on the relevant Additional Services.
- 3.9 If, following receipt of the Contractor's impact analyses pursuant to clause 3.8, the Council confirms in writing that it wishes to proceed with its requirement for the Additional Services the Contractor shall:
- 3.9.1 implement the relevant Additional Services in accordance with the Additional Services Implementation Plan; and
 - 3.9.2 subject the relevant Additional Services to Testing.
- 3.10 Following the successful implementation of the Additional Services:
- 3.10.1 any additional charges for the Additional Services shall be incorporated in the Charges as specified in the Payment Schedule;
 - 3.10.2 any services levels in respect of the Additional Services shall be incorporated in the Service Levels schedule; and

3.10.3 the relevant Additional Services implemented in accordance with these clauses 3.7 and 3.10 (inclusive) shall become part of the Services for the purpose of all other sections, clauses, obligations and rights contained within this Agreement.

3.11 The parties shall implement any Additional Services requested by the Council in accordance with the Change Control Procedure modified to reflect the fact that the terms on which the Additional Services will be supplied have already been agreed.

4. SERVICE LEVELS

4.1 The Contractor shall provide the Operational Services to meet or exceed the Service Levels from the Commencement Date. The remaining provisions of this clause 4 are subject to the provisions of clause 5 (Effect of Council Cause in the Operational Phase).

4.2 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, the Contractor shall notify the Council promptly of the Service Failure or likely Service Failure;

4.3 If there is a Service Failure or if the Contractor believes that there will be a Service Failure, which takes the Service Levels below the Service Notification Threshold the Contractor shall:

4.3.1 provide the Council with a Correction Plan of the action that it will take to rectify the Service Failure or to prevent the Service Failure from taking place or recurring, within 10 Working Days from the day the Contractor notifies the Council under clause 4.2;

4.3.2 take all remedial action that is reasonable to rectify or to prevent the Service Failure from taking place or recurring; and

4.3.3 carry out the action plan agreed under clause 4.3.1 in accordance with its terms.

4.4 Subject to the annual Service Credit limit in clause 42.2.4, where applicable the Contractor shall automatically credit the Council with Service Credits in accordance with the Pricing Schedule. Service Credits shall be shown as a

deduction from the amount due from the Council to the Contractor in the next invoice then due to be issued under this Agreement. If no invoice is due to be issued then the Contractor shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 10 Working Days of issue.

4.5 Where Service Credits are provided as a remedy for Service Failure in respect of the relevant Services it shall be the Council's exclusive financial remedy except where:

4.5.1 the aggregate number of Service Failures (whether the Service Failure relates to the same or to different parts of the Services) exceeds the number specified in the Services Description and/or the Invitation to Tender over a period of three consecutive months;

4.5.2 any Service Failure that exceeds the Service Threshold;

4.5.3 the failure to perform the Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, or wilful default; or

4.5.4 the Service Failure results in corruption or loss of data;

4.5.5 the Council is otherwise entitled to or does terminate this Agreement for the Contractor's Default pursuant to clauses 45.1 and **Error! Reference source not found..**

4.6 Where Service Credits are not provided as a remedy for a Service Failure and the Contractor has failed to address such a Service Failure to the reasonable satisfaction of the Council, then the Council may, on written notice to the Contractor, withhold a proportionate amount of the Service Charges for those Services until such time as the relevant Service Failure is remedied or Services are restored. Provided that the relevant Service Failure is remedied and/or Services are restored, the Council shall resume payment of the relevant part of the Service Charges, including payment of the amount retained.

- 4.7 The Council and the Contractor shall review the Service Levels annually throughout the Term and make any changes in accordance with the Change Control Procedure to reflect changes in the Council's requirements.
- 4.8 Not more than once per annum during the Term the Council may, on at least three months written notice, change the Service Credits applicable to one or more Service Levels provided that:
- 4.8.1 the principal purpose of this change is to reflect changes in the Council's business requirements and priorities, or to reflect changing industry standards;
- 4.8.2 the change is not specifically intended to penalise the Contractor for poor performance in relation to any particular Service Levels; and
- 4.8.3 there is no increase in the total value of Service Credits potentially payable.
- 4.9 If the Contractor reasonably believes that any proposed change, which is requested by the Council under Clause 4.7, would materially and adversely increase Costs, the Contractor shall be entitled to submit a price variation request (supported by appropriate evidence, the content and scope of which the Council shall determine at its entire discretion), which within 10 Working Days of the date of receiving the Council's written notice.
- 4.10 The Council shall then review the Contractor's price variation request submitted under Clause 4.8 and, within 15 Working Days shall respond to the Contractor and do one of the following:
- 4.10.1 accept the Contractor's price variation request and make any required changes in accordance with the Change Control Procedure; or
- 4.10.2 decide not to proceed with the change.

5. EFFECT OF COUNCIL CAUSE IN THE OPERATIONAL PHASE

- 5.1 If the Contractor would have provided the Operational Services in accordance with the Service Levels and/or this Agreement but has failed to do so as a

result of an Council Cause the Contractor will have the rights and relief set out in clause 5.2.

5.2 The Contractor shall:

5.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Service had met the relevant Service Level to the extent that the Service Failure is due to any Council Cause; and

5.2.2 not be treated as being in breach of this Agreement to the extent that non-performance or breach is due to any Council Cause; and

5.2.3 be entitled to the Charges for the relevant Services affected by the Council Cause as if it had not occurred.

5.3 If the Contractor claims that clause 5.1 applies, and in order to claim the rights and reliefs in clause 5.2, it shall provide the Council with details of the Council Cause within 10 Working Days.

5.4 Any Disputes about or arising out of whether an Council Cause applies to the Contractor's failure to provide the Services in accordance with the Service Levels and/or this Agreement shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to resolve the causes of, and mitigate the effects of such failure.

6. STANDARDS

6.1 The Contractor shall comply with the Standards in performing its obligations under this Agreement.

6.2 The Contractor shall discuss with the Council any conflict that the Contractor reasonably believes that there is or will be between any of the Standards or between any of the Standards and any other obligation under this Agreement, and shall comply with the Council's decision on the resolution of that conflict.

7. QUALITY ASSURANCE AND PERFORMANCE MONITORING

Quality Plans

- 7.1 Where specified in the Invitation to Tender, the Contractor shall develop and provide before the Effective Date, Quality Plans that:
- 7.1.1 ensure that all aspects of the Services are the subject of quality management systems; and
 - 7.1.2 are consistent with ISO 9001:2000 or any equivalent standard which is generally recognised as having replaced it.
- 7.2 The Contractor shall obtain the Council Representative's written approval of the Quality Plans developed pursuant to clause 7.1 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Contractor acknowledges and accepts that the Council's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Contractor of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.
- 7.3 The Contractor shall procure that the Services are carried out in compliance with the Quality Plans.
- 7.4 Any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Quality Monitoring

- 7.5 The Council Representative may carry out audits of the Contractor's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) at regular intervals. The parties anticipate that these audits will be carried out at intervals of approximately six months, but the Council Representative may carry out other periodic monitoring or spot checks at any other time. In each case, the Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Council Representative, including by providing the Council Representative with all information and documentation, and access to any relevant Contractor Personnel and/or to any relevant Site, which he reasonably requires in

connection with his rights under this clause 7.5 at no additional charge to the Council.

Performance Monitoring

- 7.6 The Council may monitor the performance of the Services by the Contractor.
- 7.7 The Contractor shall co-operate, and shall procure that its Sub-contractors co-operate, with the Council in carrying out the monitoring referred to in clause 7.6 at no additional charge to the Council.
- 7.8 If the Contractor believes that the Council's monitoring of the Services is unreasonable the Contractor may escalate the issue with the Council using the Escalation Process.

Warning Notices and Increased Monitoring

- 7.9 Without prejudice to the other rights or remedies of the Council, if at any time the Contractor has:
- 7.9.1 committed any material breach of its obligations under this Agreement; or
 - 7.9.2 in respect of its performance of the Services, fallen to or below a Service Threshold;
 - 7.9.3 accrued two (2) or more Service Failures in any three (3) month period;
 - 7.9.4 accrued five (5) or more events giving rise to Service Credits in any calendar month;
- then the Council may, but is not obliged to, give a written notice (a **Warning Notice**) to the Contractor setting out the matter or matters giving rise to such notice and containing a reminder to the Contractor of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.
- 7.10 Without prejudice to the other rights or remedies of the Council, if the Contractor receives two (2) or more Warning Notices in any period of three (3) calendar months in respect of any Services (or any part thereof), the

Council may, by written notice to the Contractor, reasonably increase the level of its monitoring of the Contractor, or (at the Council's option) require the Contractor to increase the level of its monitoring of its own performance of its obligations under this Agreement, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that it shall perform (and is capable of performing) its obligations under this Agreement, in which case, the following provisions shall apply:

7.10.1 any such notice to the Contractor shall specify in reasonable detail the additional measures to be taken by the Council or by the Contractor (as the case may be) in monitoring the performance of the Contractor;

7.10.2 if the Contractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the Council in writing within two (2) Working Days of the receipt of the notice referred to in clause 7.10.1 of the measures objected to (and of any changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Agreement);

7.10.3 the measures to be taken by the Council and/or the Contractor (as the case may be) shall be agreed the parties or, in the absence of agreement within three (3) Working Days of the Council's receipt of the Contractor's objection, determined pursuant to the Dispute Resolution Procedure; and

7.10.4 the Contractor shall bear its own costs and shall reimburse the Council in respect of any additional costs that are directly incurred by the Council in respect of any such additional measures.

7.11 If at any time the Contractor is in Default such that any element of the Services has become materially unfit for purpose such that the Contractor cannot deliver a material part of that Service the Council shall notify the Contractor that it requires a Remedial Plan which should be prepared in accordance with the Remedial Plan Process detailed in clause 56 (Remedial Plan Process).

8. SERVICES IMPROVEMENT

- 8.1 The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this clause 8 and schedule 2.4 (Continuous Improvement). As part of this obligation the Contractor shall identify and report to the Council once every six months throughout the Term on:
- 8.1.1 the emergence of new and evolving relevant technologies which could improve the ICT Environment and/or the Services, and those technological advances potentially available to the Contractor and the Council which the parties may wish to adopt; and/or
 - 8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and/or
 - 8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and/or
 - 8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Authority; and/or
 - 8.1.5 changes to the ICT environment, business processes and ways of working that would enable reductions in the total energy consumed annually in the delivery of Services.
- 8.2 The Contractor shall ensure that the information that it provides to the Council shall be sufficient for the Council to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Council requests.
- 8.3 The Council shall at all times be responsible for determining its own ICT strategy. The Council may notify the Contractor of any changes to the Council's ICT strategy and request the Contractor to consider, review and

respond to that strategy. If, in the Contractor's opinion, any notified change to the Council ICT strategy would impact upon the provision of the Services, the Contractor shall refer the matter to the Change Control Procedure.

8.4 If the Council wishes to incorporate any improvement identified by the Contractor the Council shall send the Contractor a Change Request and the parties shall:

8.4.1 develop a plan for the implementation of the improvement within 20 Working Days of the Council's Change Request for the approval of the Authority;

8.4.2 implement the improvement in accordance with the provisions of an implementation plan approved by the Authority; and

8.4.3 submit the improvements to testing in accordance with the provisions of clause **Error! Reference source not found.** (Testing).

9. EQUIPMENT

9.1 Unless otherwise agreed in writing by the Council, all Contractor Equipment will be used by the Contractor solely for the purposes of providing the Services to the Council and will not be used for the Contractor's own purposes or in providing any other services to third parties.

9.2 The Contractor shall be solely responsible for the cost of carriage of Contractor Equipment to the Sites and to the Council Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry the Contractor shall be responsible for the removal of all relevant Contractor Equipment from the Council Premises, including the cost of packing, carriage and making good the Council Premises following removal.

9.3 All the Contractor's property located on the Sites, including Contractor Equipment, shall remain at the sole risk and responsibility of the Contractor, except that the Council shall be liable for loss of or damage to any of the Contractor's property located on Council Premises which is due to the negligent act or omission of the Council.

9.4 Subject to any express provision of the Business Continuity and Disaster Recovery Plan to the contrary, the loss or destruction for any reason of the Contractor Equipment held on any Site shall not relieve the Contractor of its obligation to supply the Services in accordance with the Service Levels.

SECTION C - PAYMENT AND VALUE FOR MONEY PROVISIONS

10. CHARGING AND INVOICING

- 10.1 In consideration of the Contractor carrying out its obligations, including the provision of the Services under this Agreement, and where specified in the Invitation to Tender, subject to meeting the Test Success Criteria, the Council shall pay the Charges to the Contractor in accordance with the payment profile and the invoicing procedure specified in the Pricing Schedule.
- 10.2 The Contractor shall ensure that a term is included in any Sub-contract permitted under this Agreement which requires the Contractor to pay any undisputed sums due to the relevant Sub-contractor within a specified period that does not exceed 30 days from the date the Contractor receives the Sub-contractor's invoice.
- 10.3 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate this Agreement under clause 45.5 for failure to pay undisputed Charges. Interest shall be payable on the late payment of any undisputed Charges properly invoiced at the Interest Rate.
- 10.4 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under clauses 7 (Quality Assurance and Performance Monitoring), 15 (Audits), 31 (Protection of Personal Data), 32 (Freedom of Information) and, to the extent specified therein, clause **Error! Reference source not found.** (Step-In Rights).

11. TAX

- 11.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice.
- 11.2 The Contractor shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Agreement. Any amounts due under this

clause 11.2 shall be paid in cleared funds by the Contractor to the Council not less than five Working Days before the date upon which the tax or other liability is payable by the Council.

12. RECOVERY OF SUMS DUE

The Council may retain or set off any amount owed to it by the Contractor against any amount due to the Contractor under this Agreement or under any other agreement between the Contractor and the Council.

SECTION D - CONTRACT GOVERNANCE

13. REPRESENTATIVES

- 13.1 Each party appoints the persons named as the Council Representative and the Contractor Representative respectively. Such respective Representatives shall be set out in the Invitation to Tender and the Tender, failing which, agreed in writing on or before the Commencement Date. The Representatives shall have the authority to act on behalf of their respective party on the matters set out in, or in connection with, this Agreement. Either party may, by further written notice to the other party, revoke or amend the Council of its Representative or appoint a new Representative.
- 13.2 The respective Representatives shall be sufficiently senior within the organisation of the appointing party, and granted sufficient Council by that party, to ensure full cooperation in relation to the operation and the management of this Agreement.
- 13.3 The Council may require the Contractor to replace the Contractor Representative in accordance with clause 19.10 (Key Personnel).

14. SUPPLY CHAIN RIGHTS

Sub-contracting

- 14.1 The Contractor shall not sub-contract any of its obligations under this Agreement without the Council's prior written consent, which, subject to clause 14.2, shall not be unreasonably withheld or delayed.
- 14.2 The Council may withhold or delay its consent where it considers that:
- 14.2.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority; and/or
 - 14.2.2 the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or
 - 14.2.3 the proposed Sub-contractor employs unfit persons.

- 14.3 Subject to clause 14.4, in making a request pursuant to clause 14.1 the Contractor shall provide the Council with the following information about the proposed Sub-contractor:
- 14.3.1 its name, registered office and company registration number;
 - 14.3.2 a copy of the proposed Sub-contract;
 - 14.3.3 the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor;
 - 14.3.4 if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant Service Levels;
 - 14.3.5 where the proposed Sub-contractor is also an Affiliate of the Contractor, evidence that demonstrates to the reasonable satisfaction of the Council that the proposed Sub-contract has been agreed on "arms-length" terms; and
 - 14.3.6 any further information reasonably requested by the Council.
- 14.4 If the supply of information required pursuant to clause 14.3 would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall provide the Council with the relevant information to the fullest extent permitted by those rules and regulations.
- 14.5 The Council has consented to the engagement of the Sub-contractors listed in the Contractors Invitation to Tender subject to the provision by the Contractor of the information listed in clause 14.3 within 20 Working Days of the Effective Date (or such other period that the Council may permit and notified to the Contractor in writing).

- 14.6 The Contractor shall not make use of a pre-existing contract with any Sub-contractor without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.
- 14.7 Except where the Council has given its prior written consent under Clause 14.6, the Contractor shall ensure that each Sub-contract shall include:
- 14.7.1 a right for the Council to enforce the terms of that Sub-contract as if it were the Contractor;
 - 14.7.2 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Council;
 - 14.7.3 a provision requiring the any Sub-contractor to enter into a direct confidentiality agreement with the Council on the same terms as set out in clause 33 (Confidentiality);
 - 14.7.4 a provision requiring any Sub-contractor to comply with protection of data requirements pursuant to clauses 30 (Council Data) and 31 (Protection of Personal Data);
 - 14.7.5 a provision requiring any Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 52 (Prevention of Corruption);
 - 14.7.6 a provision restricting the ability of any Sub-contractor to further Sub-contract elements of the service provided to the Contractor without first seeking the consent of the Council; and
 - 14.7.7 a provision enabling the Contractor, the Council or any other person on behalf of the Council to step-in on substantially the same terms as are set out in clause **Error! Reference source not found.** (Step-in Rights); and
 - 14.7.8 a provision requiring any Sub-contractor to notify the Council promptly in writing of any material non-payment or late payment of any sums properly due to any Sub-contractor from the Contractor

under the Sub-contract, under a specified valid invoice and not subject to a genuine dispute ;

- 14.8 As a condition of its consent under Clause 14.1, the Council may require that the Sub-contractor enters into a direct agreement with the Council, in which case the Contractor shall procure that any Sub-contractor enters into a direct agreement with the Council as soon as reasonably practicable and on such terms as may be reasonably requested by the Council.

Termination of Sub-contracts

- 14.9 The Contractor shall not terminate or materially amend the terms of any Sub-contract without the Council's prior written consent, which shall not be unreasonably withheld or delayed.
- 14.10 The Council may terminate require the Contractor to terminate the relevant Sub-contract if there is a Change of Control of any Sub-contractor on the same terms as those set out in clause 45.3 (Termination for Change of Control).

Competitive Terms

- 14.11 If the Council is able to obtain from any Sub-contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Contractor or the Contractor Personnel in the supply of the Services, then the Council may:
- 14.11.1 require the Contractor to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Council in respect of the relevant item; or
 - 14.11.2 subject to clause 14.13, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 14.12 If the Council exercises either of its options pursuant to clause 14.11, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

14.13 The Council's right to enter into a direct agreement for the supply of the relevant items is subject to:

14.13.1 the Council making the relevant item available to the Contractor where this is necessary for the Contractor to provide the Services; and

14.13.2 any reduction in the Charges taking into account any unavoidable costs payable by the Contractor in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

14.14 Despite the Contractor's right to sub-contract pursuant to this clause 14, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

15. AUDITS

15.1 Except where an audit is imposed on the Council by a Regulatory body, the Council may, not more than twice in any Contract Year and for a period of 12 months following the Term, conduct an audit for the following purposes:

15.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this Agreement), any cost reduction and income generation initiatives carried out pursuant to clause 8 (Services Improvement), and/or the costs of all suppliers (including Sub-contractors) of the Services;

15.1.2 to review the integrity, confidentiality and security of the Council Data;

15.1.3 to review the Contractor's compliance with the Data Protection Act 2018, the Freedom of Information (Scotland) Act 2002 in

accordance with clauses 31.2.10 (Protection of Personal Data) and 32 (Freedom of Information) and any other legislation applicable to the Services;

- 15.1.4 to review the Contractor's compliance with its obligations under clauses 3.1 and 3.3 (Services) and 7 (Quality Assurance and Performance Monitoring);
 - 15.1.5 to review any records created during the design and development of the Contractor's System and pre-operational environment such as information relating to Testing;
 - 15.1.6 to review any books of account kept by the Contractor in connection with the provision of the Services;
 - 15.1.7 to carry out the audit and certification of the Council's accounts;
 - 15.1.8 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - 15.1.9 to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
 - 15.1.10 to inspect the ICT Environment (or any part of it);
 - 15.1.11 to inspect the Council's Assets, including the Council's IPRs, equipment, facilities and maintenance, for the purposes of ensuring that the Council's assets are secure and that any register of assets is up to date; and/or
 - 15.1.12 to ensure that the Contractor is complying with the Standards;
 - 15.1.13 to review the accuracy and completeness of the Registers.
- 15.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

- 15.3 Subject to the Council's obligations of confidentiality, the Contractor shall on demand provide the Council (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 15.3.1 all information requested by the Council within the permitted scope of the audit;
 - 15.3.2 reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 15.3.3 access to the Contractor System; and
 - 15.3.4 access to Contractor Personnel.
- 15.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 15.5 The Council shall endeavour to (but is not obliged to) provide at least 15 Working Days notice of its intention to conduct an audit.
- 15.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material Default by the Contractor in which case the Contractor shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
- 15.7 If an audit identifies that:
- 15.7.1 the Contractor has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information;

15.7.2 the Council has overpaid any Charges, the Contractor shall pay to the Council the amount overpaid within 20 Working Days. The Council may deduct the relevant amount from the Charges if the Contractor fails to make this payment; and

15.7.3 the Council has underpaid any Charges, the Council shall pay to the Contractor the amount of the under-payment less the cost of audit incurred by the Council if this was due to a Default by the Contractor in relation to invoicing within 20 Working Days.

16. RECORDS AND REPORTS

The Contractor keeps and maintains until seven (7) years after the completion of the Services under this Agreement or earlier termination, or as long a period of retention as may be set out in the Services Description , full and accurate records of the contract including the services supplied under it, all expenditure reimbursed by the Council and all payments made by the Council. The Contractor, on request, affords the Council or the Council's representatives such access to those records as may be requested by the Council in connection with the contract.

17. CHANGE CONTROL

Any requirement for a Change shall be subject to the Change Control Procedure.

18. DISPUTES

18.1 The parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

18.2 The Contractor shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

SECTION E - PERSONNEL

19. CONTRACTOR PERSONNEL

- 19.1 The Council may refuse admission to the Council Premises and/or direct the Contractor to end the involvement in the provision of the Services of any of the Contractor Personnel whom the Council believes represents a security risk or does not have the required levels of training and expertise or where the Council has other grounds for doing so. The decision of the Council shall be final and it shall not be obliged to provide any reasons.
- 19.2 The Contractor shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments in any Contract Year.

Relevant Convictions

- 19.3 The Contractor ensures throughout the duration of the contract that any person employed by him or acting on his behalf is suitable to provide the Services given the nature of any third parties with whom there may be some contact in the normal performance of the contract. The Council may instruct the Contractor to remove from premises any individual employed by the Contractor or acting on his behalf where the Council deems the individual not to be suitable and on receipt of such instruction the Contractor will remove such individual from premises forthwith.
- 19.4 Where services are Regulated Work the Contractor and any person employed by him or acting on his behalf ensures compliance with all of the relevant requirements of the PVG Act, including the establishment of and adherence to effective procedures in respect of the Contractor and any person employed by him or acting on his behalf.
- 19.5 Where services require the Contractor or any person employed by him or acting on his behalf to have been Disclosure checked then the Contractor shall, obtain the appropriate level of Disclosure directly from Disclosure Scotland.

Key Personnel

- 19.6 The parties have agreed to the appointment of the Key Personnel as at the Effective Date. The Contractor shall and shall procure that any Sub-contractor shall obtain the prior written consent of the Council before removing or replacing any member of the Key Personnel from their corresponding role during the Term and, where possible, at least three months written notice must be provided by the Contractor of its intention to replace any member of Key Personnel from their corresponding role.
- 19.7 The Council shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of Key Personnel by the Contractor or Sub-contractor. The Council may interview the candidates for Key Personnel roles before such candidate is appointed to such role.
- 19.8 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Council. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 19.9 The Contractor shall ensure that each of the Key Personnel shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Council otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Contractor shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 19.10 The Council may identify any of the roles performed by Contractor Personnel as Key Personnel, who will then be included on the list of Key Personnel by the Contractor. The Council may also require the Contractor to remove any member of the Key Personnel that the Council considers in any respect unsatisfactory.

19.11 The Council shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Contractor shall indemnify the Council against all Employee Liabilities that may arise in this respect.

Terms and Conditions of Services Employees

19.12 The Council has a statutory duty pursuant to Part I of the Local Government in Scotland Act 2003 to have regard to any guidance issued by Scottish Ministers on Workforce Matters in Local Authority Service Contracts. Accordingly, the Contractor shall comply with, and shall procure that any Sub-contractor complies with any guidance issued under the above legislation.

20. EMPLOYMENT INDEMNITY

The Contractor shall indemnify the Council against all Employment Liabilities that may arise as a result of any claims brought against the Council by any of the Council's employees or former employees and/or any of the Contractor Personnel where such claim arises from any act or omission of the Contractor or any Contractor Personnel.

21. STAFF TRANSFER

21.1 In the event that the Services are put out to tender by the Council in furtherance of their obligations under the Procurement Regulations, the Contractor shall co-operate with the Council and any Replacement Contractor in ensuring the smooth handover of the Services.

21.2 The Contractor shall at any time during the Transfer Assistance Period:

21.2.1 on receiving a request from any Council promptly provide, subject to legal obligations regarding data protection and confidentiality, in respect of any persons wholly or mainly engaged or employed by the Contractor in the provision of the Services (the **Assigned Employees**) full and accurate details regarding the number, job title, grade, salary and benefits relating or payable to the Assigned Employees together with such other information relating to the Assigned Employees which is in the possession of the Contractor or which can reasonably be obtained by the Contractor from any third party as may reasonably be required by such Council or any

prospective Replacement Contractor (the **Re-tendering Information**);
and

21.2.2 notify the Council in writing of any material changes to the Re-tendering Information promptly as and when such changes arise.

21.3 The Contractor undertakes that in the Transfer Assistance Period it shall not without the prior written consent of the Council:

21.3.1 materially vary the terms and conditions of any of the Assigned Employees (including without limitation remuneration, benefits and other perquisites and collective agreements which relate to the employment of such employees); or

21.3.2 increase the number of Assigned Employees; or

21.3.3 replace any of the Assigned Employees, save where the Contractor replaces any such individuals with individuals of substantially equivalent employees in relation to grade and remuneration.

21.4 The Contractor shall during the Service Period maintain personnel records in the format normally adopted regarding the service of each of the Assigned Employees including all personnel records required to be maintained by law and deliver the records of relating to any Assigned Employee to the Council or the Replacement Contractor on the Transfer Date.

21.5 The Parties acknowledge that by virtue of the cessation or partial cessation of the provision of the Services by the Contractor the contracts of employment of each Transferring Employee may have effect after such cessation as if originally entered into between a Replacement Contractor or the Council and each Transferring Employee pursuant to the TUPE Regulations but the Parties agree that the provisions of Clauses 21.6 to 21.9 inclusive shall apply irrespective of whether or not the TUPE Regulations do apply.

21.6 All remuneration of any kind due to the Transferring Employees during the period of this Agreement applicable to them shall be paid or settled in full by the Contractor in each case no later than the date such remuneration is due to be paid.

- 21.7 At the earlier of (i) a contract notice being published by the Council in respect of the provision of the Services (or part thereof) or (ii) 21 days prior to any prospective Transfer Date the Contractor will supply to the Council or the Replacement Contractor (as the case may be) information regarding the identity, age, sex, length of service, job title, holiday entitlement, workplace, and terms and conditions of employment affecting each of the Assigned Employees at that time and the Contractor will update the Council or the Replacement Contractor (as the case may be) in respect of any changes to the information supplied by it pursuant to this condition in a timely fashion throughout the period between the information being provided and the applicable Transfer Date.
- 21.8 Without prejudice to the generality of clause 20, the Contractor shall indemnify the Council and/or any Replacement Contractor (as the case may be) against all Employment Liabilities which it incurs in connection with or as a result of:
- 21.8.1 any claim by any of the Transferring Employees (or any person who would have been a Transferring Employee but for their dismissal prior to the Transfer Date) arising out of their employment with the Contractor or the termination thereof, providing that such liabilities arise from any act or omission prior to the Transfer Date and this shall not include any such liabilities which arise from any act or omission of such Council or any Replacement Contractor (as the case may be); or
- 21.8.2 any misrepresentation or mis-statement, whether negligent or otherwise, made by the Contractor to the Transferring Employees or their representatives before the Transfer Date and whether liability for any such claim arises before, on or after the Transfer Date.
- 21.9 The Contractor acknowledges and agrees that the Councils may grant an indemnity in favour of any Replacement Contractor to the same extent that the Contractor is undertaking to indemnify that Council in terms of this Clause 21 or that the Council may assign such indemnity to any Replacement Contractor and agrees that in the event of a claim on any indemnity in terms of this Clause 21 for loss incurred by the Council, that loss shall include the amount, if any, which the Council has paid or is required to pay to any

Replacement Contractor by virtue of any indemnity granted by that Council in its favour in accordance with the provisions of this Clause 21.9.

21.10 In the event that the Contractor fails to provide any of the Re-tendering Information requested by any of the Councils during the Transfer Assistance Period, then the Councils shall be entitled to withhold up to a maximum of 10% of the Charges for the Services from the Contractor without penalty until such time as the Contractor provides the Re-tendering Information.

21.11 Without prejudice to the obligations under clause 21.7, the Contractor shall be under an obligation to provide the information detailed within clause 21.7 to the Council within 28 days of the Contractor executing this Agreement.

21.12 In this Agreement, the following words have the following meanings:

"Employment Liabilities" means all claims, including (without prejudice to the generality) claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in delict, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses.

"Replacement Contractor" means any third party service provider appointed by the Council from time to time, to provide 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 termination or partial termination of this Agreement.

"Transfer Assistance Period" means in relation to the Contractor and the Council (i) the period of six months immediately preceding the expiry of the Agreement or (ii) following notice of termination of this Agreement;

"Transfer Date" means the date on which any cessation or partial cessation of the Services takes effect so as to transfer the contracts of employment of the Transferring Employees by virtue of the TUPE Regulations.

"Transferring Employees" means those employees who immediately prior to the expiry or earlier termination (or partial termination) of this Agreement are wholly or mainly engaged or employed in the provision of the Services (or the terminating part thereof).

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

22. HEALTH AND SAFETY

22.1 The Contractor acknowledges that it has been supplied with a copy of the Council's rules regarding health and safety. The Contractor agrees to comply with these rules, and any additional rules made known to the Contractor from time to time by the Council together with all applicable statutory rules and regulations regarding these matters. The Council will be responsible for procuring that its employees and agents also comply with these rules and regulations.

22.2 Either party shall notify the other as soon as practicable of any health and safety hazards at the Council Premises of which it becomes aware. The Contractor will draw these hazards to the attention of the Contractor Personnel and will instruct those persons in connection with any necessary associated safety measures.

23. EQUALITY AND DIVERSITY

23.1 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation contrary to the Equality Act 2010 (the "Act").

23.2 The Contractor shall monitor its own staff and sub-contractors and provide such information on request to the Council. The Contractor shall provide such

information as the Council requires about its policies and practices concerning the prevention of unlawful discrimination and the promotion of equality and diversity and equality both in terms of employment and customer service. The Council and the Contractor shall continue to monitor the performance and objectives of the Contract throughout the duration of the Contract and to make any amendments or changes necessary to the Contract or its performance or objectives in order further to promote equality.

23.3 The Contractor shall notify the Council immediately in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Act.

23.4 Where any investigation is undertaken by a person or body empowered to conduct such an investigation and/or proceedings are instituted following such an investigation against the Contractor or against the Council either in connection with the performance of the Contract or otherwise, the Contractor shall at its own expense:

23.4.1 provide any information requested in the timescale allotted;

23.4.2 attend any meetings as required and permit its staff and sub-contractors to attend any meetings as required;

23.4.3 promptly allow access to and investigation of any documents or data deemed to be relevant to the investigation;

23.4.4 allow itself and any of its Staff and sub-contractors to appear as witnesses in any proceedings; and

23.4.5 co-operate fully and promptly with the person or body conducting the investigation during the course of the investigation.

23.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its Staff or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Contractor shall, without prejudice to indemnify the Council with respect proceedings, costs, expenses (including legal and administrative expenses), liabilities, injury, loss or damages arising from or incurred by the Council during or in connection with any such

investigation or proceedings and further indemnify the Council for any compensation, loss or damages, costs, expenses (including legal and administrative expenses) or other award the Council may be ordered or required to pay to a third party.

- 23.6 If a finding of unlawful discrimination or breach of equality and diversity legislation is made against the Contractor or against the Council arising from the conduct of the Contractor, the Contractor shall take such immediate remedial steps, as the Council may reasonably require, to prevent any further unlawful discrimination or breaches of equality and diversity legislation.
- 23.7 If the Contractor enters into any sub-contract in connection with this Contract, the Contractor shall impose obligations on its sub-contractors terms which are identical to those imposed on it in this clause 23. The Council expects that the Contractor will not subcontract to any business, service or group which has a poor history of discrimination in employment or service delivery.
- 23.8 In recognition of the Council's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies under the Act, the Council may from time to time require the Contractor complete a questionnaire and/or provide information to the Council on the extent and quality of the Contractor's equalities and diversity policies and practice.

24. NON-SOLICITATION

- 24.1 Except in respect of any Staff Transfer, the Council and the Contractor shall not, and the Contractor shall procure that any Sub-contractor shall not, during the Term and for 12 months following the termination of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other party any person employed by such other party in the provision of the Services or (in the case of the Authority) in the receipt and/or administration of the Services.
- 24.2 The above clause 24.1 shall not apply to any where any such person is successful in applying for employment with either party where the position that they are so employed in has been subject to an open and transparent recruitment exercise, which shall include advertisement on the National

Advertising Portal (myjobscotland.gov.uk) or such other recruitment portal that may be in place from time to time.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Except as expressly set out in this Agreement:

25.1.1 the Council shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, including:

25.1.1.1 the Contractor Software;

25.1.1.2 the Third Party Software;

25.1.1.3 the Project Specific IPRs;

25.1.1.4 the Specially Written Software; or

25.1.1.5 the Contractor's Background IPRs; and

25.1.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors, including:

25.1.2.1 the Council Software;

25.1.2.2 the Council Data;

25.1.2.3 the Database;

25.1.2.4 the Project Specific IPRs;

25.1.2.5 the Council's documentation, processes and procedures; and

25.1.2.6 the Council's Know-How

25.2 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in clause 25.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).

26. LICENCES GRANTED BY THE CONTRACTOR

- 26.1 The Contractor hereby grants, or shall procure the direct grant, to the Council of a licence of the Specially Written Software (including any Contractor's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Specially Written Software) on the Enhanced Licence Terms.
- 26.2 The Contractor hereby grants, or shall procure the direct grant, to the Council of a licence to Use the Project Specific IPRs for any purpose relating to the Services or to the exercise of the Council's business or function on the Enhanced Licence Terms, including the right to sub-licence the Project Specific IPRs to other Contracting Authorities, to the Replacement Contractor or to any other third party providing services to the Council, provided in each case that such rights shall not extend to the commercial exploitation of the Project Specific IPRs.
- 26.3 The Contractor hereby grants to the Council a licence of the Contractor Software on the Standard Licence Terms.
- 26.4 The Contractor shall procure that the owners or the authorised licensors of any Third Party Software hereby grants a direct licence to the Council on the Standard Licence Terms. If the Contractor cannot obtain for the Council a licence materially in accordance with the Standard Licence Terms the Contractor will consult with the Council on whether the rights that can be obtained are nevertheless acceptable to the Council or whether the Contractor should seek to use an alternative provider of software.
- 26.5 The Contractor shall, if requested by the Council grant or procure the grant to the Replacement Contractor of a licence to Use any Contractor Software, Contractor's Background IPRs or Third Party Software on the Standard Licence Terms.
- 26.6 The Contractor hereby grants to the Council a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Council under this Agreement.

27. LICENCES GRANTED BY THE AUTHORITY

27.1 The Council hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use:

27.1.1 the Council Software;

27.1.2 the Database;

27.1.3 the Council's documentation, processes and procedures; and

27.1.4 the Council's Know-How;

27.1.5 the Specially Written Software from the date the relevant rights are transferred to the Council in accordance with clause 29.2;

27.1.6 the Project Specific IPRs from the date the relevant rights are transferred to the Council in accordance with clause 29.2; and

27.1.7 the Council Data;

27.2 The licence granted in clause 27.1:

27.2.1 includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Contractor on the same terms as set out in clause 33 (Confidentiality); and

27.2.2 is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Contractor shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Council.

27.3 Neither party shall have any right to use any of the other party's names, logos or trade marks on any of its products or services without the other party's prior written consent.

27.4 In the event of the termination or expiry of this Agreement, the licence referred to in clause 27.1, any sub-licence granted in accordance with clause

27.2.1 and any licence granted in accordance with clause 27.3 shall terminate automatically and the Contractor shall deliver to the Council all material licensed to the Contractor pursuant to clause 27.1 or clause 27.3 in the Contractor's possession or control.

28. ASSIGNMENT OF IPR IN DATABASES

- 28.1 The Contractor hereby assigns to the Council, with full title guarantee, title to and all rights and interest in the Database or shall procure that the first owner of the Database assigns it to the Council on the same basis.
- 28.2 The assignation under clause 28.1 shall either take effect on the Effective Date or as an assignation of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.
- 28.3 To the extent that it is necessary for the Council to obtain the full benefits of ownership of the Database, the Contractor hereby grants to the Council and shall procure that any relevant third party licensor shall grant to the Council a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Contractor's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Database.

29. PROJECT SPECIFIC IPR AND SPECIALLY WRITTEN SOFTWARE

- 29.1 The Contractor hereby assigns to the Council, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Council on the same basis.
- 29.2 The assignment under clause 29.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate.
- 29.3 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Council under this Agreement.

- 29.4 If requested to do so by the Council, the Contractor shall without charge to the Council execute all documents and do all such further acts as the Council may require to perfect the assignment under clause 29.1 or shall procure that the owner of the Project Specific IPRs and the Specially Written Software does so on the same basis.
- 29.5 The Council shall grant to the Contractor a licence of the Project Specific IPRs and the Specially Written Software to enable the Contractor to provide the Services and for no other purpose whatsoever;
- 29.6 Subject to clause 29.7 and to the extent only that this is necessary to enable the Council to obtain the full benefits of ownership of the Specially Written Software as an integrated product, the Contractor hereby grants to the Council and shall procure that any relevant third party licensor shall grant to the Council a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Contractor's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of the Specially Written Software, provided that, where the Specially Written Software consists of customisation of Contractor Software and/or Third Party Software, this clause 29.6 shall not have the effect of granting to the Council any greater rights over the Contractor Software and/or the Third Party Software than the Standard Licence Terms.
- 29.7 The Contractor will deliver to the Council the Specially Written Software in both Source Code and binary code forms within seven days of the date specified in the Services Description (or such other date as the Council may require) and shall provide updates of the Source Code on each new release of the Specially Written Software on media that is reasonably acceptable to the Council.

30. COUNCIL DATA

- 30.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Council Data.

- 30.2 The Contractor shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council.
- 30.3 To the extent that Council Data is held and/or processed by the Contractor, the Contractor shall supply that Council Data to the Council as requested by the Council in the format specified in the Information Assets Register as set out in the Services Description
- 30.4 The Contractor shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data
- 30.5 The Contractor shall perform secure back-ups of all Council Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Council at all times upon request and are delivered to the Council at no less than the intervals specified in the Services Description.
- 30.6 The Contractor shall ensure that any system on which the Contractor holds any Council Data, including back-up data, is a secure system that complies with the Security Policy.
- 30.7 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Council may:
- 30.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Council Data to the extent and in accordance with the requirements specified in the Services Description or as specified in the Contractors Tender and the Contractor shall do so as soon as practicable; and/or
- 30.7.2 itself restore or procure the restoration of Council Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Services Description or as specified in the Contractors Tender
- 30.8 If at any time the Contractor suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way

for any reason, then the Contractor shall notify the Council immediately and inform the Council of the remedial action the Contractor proposes to take.

31. PROTECTION OF PERSONAL DATA

31.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Council is the Data Controller and that the Contractor is the Data Processor.

31.2 The Contractor shall:

31.2.1 Process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Council to the Contractor during the Term);

31.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

31.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

31.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

31.2.5 obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;

31.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 31;

- 31.2.7 ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 31.2.8 notify the Council (within five Working Days) if it receives:
- 31.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 31.2.8.2 a complaint or request relating to the Council's obligations under the Data Protection Legislation;
- 31.2.9 provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
- 31.2.9.1 providing the Council with full details of the complaint or request;
 - 31.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;
 - 31.2.9.3 providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - 31.2.9.4 providing the Council with any information requested by the Authority;
- 31.2.10 permit the Council or the Council Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 15 (Audits), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

31.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and

31.2.12not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Effective Date, the Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

31.2.12.1the Contractor shall submit a Change Request to the Council which shall be dealt with in accordance with the Change Control Procedure and clauses 31.2.12.2 to 31.2.12.4 below;

31.2.12.2the Contractor shall set out in its Change Request and/or Impact Assessment details of the following:

- (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
- (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
- (c) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
- (d) how the Contractor will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Council's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;

31.2.12.3in providing and evaluating the Change Request and Impact Assessment, the parties shall ensure that they have regard to

and comply with then-current Council, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and

31.2.12.4 the Contractor shall comply with such other instructions and shall carry out such other actions as the Council may notify in writing, including:

- (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Agreement or a separate data processing agreement between the parties; and
- (b) procuring that any Sub-contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Council on such terms as may be required by the Council, which the Contractor acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).”

31.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.

32. FREEDOM OF INFORMATION

32.1 The Contractor acknowledges that the Council is subject to the requirements of the FOI(S)A and the Environmental Information Regulations and shall

assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

- 32.2 The Contractor shall and shall procure that its Sub-contractors shall:
- 32.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 32.2.2 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
 - 32.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 8 of the FOI(S)A or regulation 5 of the Environmental Information Regulations.
- 32.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOI(S)A or the Environmental Information Regulations.
- 32.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 32.5 The Contractor acknowledges that (notwithstanding the provisions of Clause 32) the Council may, acting in accordance with any Scottish Ministers' Code of Practice under Part 6 of the Freedom of Information (Scotland) Act 2002 (“**the Code**”), be obliged under the FOI(S)A, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 32.5.1 in certain circumstances without consulting the Contractor; or
 - 32.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 32.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

32.6 The Contractor shall ensure that all Information is retained for disclosure in accordance with the Services Description and shall permit the Council to inspect such records as requested from time to time.

32.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Contractors Tender is of indicative value only and that the Council may be obliged to disclose it in accordance with clause 32.5.

33. CONFIDENTIALITY

33.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

33.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

33.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

33.2 Clause 33.1 shall not apply to the extent that:

33.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOI(S)A or the Environmental Information Regulations pursuant to clause 32 (Freedom of Information);

33.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

33.2.3 such information was obtained from a third party without obligation of confidentiality;

33.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

33.2.5 it is independently developed without access to the other party's Confidential Information.

- 33.3 The Contractor may only disclose the Council Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.
- 33.4 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Council Confidential Information received otherwise than for the purposes of this Agreement.
- 33.5 The Contractor may only disclose the Council Confidential Information to the Contractor Personnel and who need to know the information, and shall ensure that such Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Contractor Personnel causes or contributes (or could cause or contribute) to the Contractor breaching its obligations as to confidentiality under or in connection with this Agreement, the Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Contractor Personnel, the Contractor shall provide such evidence to the Council as the Council may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Contractor is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Contractor Personnel in connection with obligations as to confidentiality.
- 33.6 At the written request of the Council, the Contractor shall procure that those members of the Contractor Personnel identified in the Council's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

33.7 Nothing in this Agreement shall prevent the Council from disclosing the Contractor's Confidential Information:

33.7.1 to any other Contracting Council. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;

33.7.2 to any consultant, contractor or other person engaged by the Council;

33.7.3 for the purpose of the examination and certification of the Council's accounts; or

33.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.

33.8 The Council shall use all reasonable endeavours to ensure that any government department, Contracting Council, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 33.7 is made aware of the Council's obligations of confidentiality.

33.9 Nothing in this clause 33 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

SECTION G - CONTRACTOR AND COUNCIL PROTECTIONS

34. GENERAL OBLIGATIONS OF THE PARTIES

Contractor's Obligations

34.1 The Contractor shall:

34.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;

34.1.2 subject to clause 37 (Change in Law) obtain, and maintain throughout the duration of this Agreement, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Services;

34.1.3 provide to the Council's other suppliers as are notified to the Contractor periodically, such reasonable co-operation, information (including any Documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Contractor; and

34.1.4 provide the Council with such assistance as the Council may reasonably require during the Term in respect of the supply of the Services.

34.2 In respect of network, communications, computer or other equipment provided by a third party contractor that do or are required to interface with the Contractor System, the Contractor shall have primary management responsibility for incident or problem resolution, including:

34.2.1 for ensuring that such requirement does not interfere with the provision of the Services in accordance with this Agreement; and

34.2.2 for taking all necessary steps within its power to ensure that the interface is successfully achieved,

provided that if it is subsequently agreed by the parties, or determined in accordance with the Dispute Resolution Procedure, that the third party supplier should have been responsible, or partly responsible, for resolving the relevant incident, the Contractor may recover its reasonable additional expenses for resolving the issue to the extent that the third party contractor is agreed or is determined to have been responsible and to the extent that the Council is able to recover an equivalent amount from the relevant third party contractor.

34.3 The Contractor shall ensure that the release of any new Software or upgrade to Software complies with the interface requirements in the Services Description, shall notify the Council three months before the release of any new Software or upgrade to Software, and will co-ordinate its activity with the Council to ensure it minimises any disruption to the Services, the ICT Environment or the Council's operations.

34.4 Any change in the way in which the Contractor provides the Services which would materially increase the Council's risk or reduce the effect of the governance provisions of the Agreement shall require the Council's prior written approval.

35. WARRANTIES

35.1 Each party warrants, represents and undertakes that:

35.1.1 it has full capacity and Council to enter into and to perform this Agreement;

35.1.2 this Agreement is executed by a duly authorised representative of that party;

35.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and

35.1.4 once duly executed this Agreement will constitute its legal, valid and binding obligations.

35.2 The Contractor warrants, represents and undertakes for the duration of the Term that:

35.2.1 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards;

35.2.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Agreement;

35.2.3 it has and will continue to have all necessary rights in and to the Contractor Software or the Third Party Software and/or the Contractor's Background IPRs, or any other materials made available by the Contractor and/or the Sub-contractors to the Council necessary to perform the Contractor's obligations under this Agreement;

35.2.4 in performing its obligations under this Agreement, all Software used by or on behalf of the Contractor will:

35.2.4.1 be currently supported versions of that Software; and

35.2.4.2 perform in all material respects in accordance with its specification,

35.2.5 as at the Effective Date all statements and representations in the Contractor's Tender are to the best of its knowledge, information and belief, true and accurate and that it will advise the Council of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading; and

35.2.6 the Contractor System and assets used in the performance of the Services:

35.2.6.1 will be free of all encumbrances;

35.2.6.2 will be Date Compliant; and

35.2.7 it shall at all times comply with Law in carrying out its obligations under this Agreement.

35.3 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

35.4 For the avoidance of doubt the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination the Council may have in respect of breach of that provision by the Contractor.

36. GUARANTEE

36.1 Where notified by the Council in the Award Letter, and in any event before the Effective Date, the Contractor shall procure that the Guarantor shall:

36.1.1 execute and deliver to the Council the Guarantee; and

36.1.2 deliver to the Council a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

37. CHANGE IN LAW

37.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of:

37.1.1 a General Change in Law; or

37.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Effective Date.

37.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 37.1.2), the Contractor shall notify the Council of the likely effects of that change, including:

37.2.1 whether any Change is required to the Services, the Charges or this Agreement; and

- 37.2.2 whether any relief from compliance with the Contractor's obligations is required, including any obligation to meet the Service Levels at any time.
- 37.3 As soon as practicable after any notification in accordance with clause 37.1, the parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:
- 37.3.1 providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- 37.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- 37.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- 37.3.4 demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 8 (Services Improvement), has been taken into account in amending the Charges.
- 37.4 Any increase in the Charges or relief from the Contractor's obligations agreed by the parties pursuant to clause 37.3 shall be implemented in accordance with the Change Control Procedure.

SECTION J - RISK PROTECTION

38. SECURITY REQUIREMENTS

- 38.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Management Plan and the Contractor shall ensure that the Security Management Plan produced by the Contractor fully complies with the Security Policy.
- 38.2 The Council shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 38.3 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 38.4 Until and/or unless a change to the Charges is agreed by the Council pursuant to clause 38.3 the Contractor shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

- 38.5 The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
- 38.6 Notwithstanding clause 38.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

38.7 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 38.6 shall be borne by the parties as follows:

38.7.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor (except where the Council has waived the obligation set out in Clause 38.5) or the Council Data (whilst the Council Data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Council when provided to the Contractor; and

38.7.2 by the Council if the Malicious Software originates from the Council Software (in respect of which the Council has waived its obligation set out in Clause 38.5) or the Council Data (whilst the Council Data was under the control of the Authority).

39. BUSINESS CONTINUITY AND DISASTER RECOVERY

39.1 The parties shall comply with the provisions of the BCDR Plan.

39.2 The Contractor shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.

39.3 The Contractor shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Council promptly in writing following each review.

39.4 The Contractor shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

40. FORCE MAJEURE

- 40.1 Subject to the remaining provisions of this clause 40, either party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event. In particular, the Contractor shall be relieved from its Service Credits obligation to the extent that the Services are affected by the Force Majeure Event and the Charges shall be reduced to the extent that the Council does not receive the Services as a result of the Force Majeure Event.
- 40.2 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 40.3 The Contractor cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so (unless this failure is also due to a Force Majeure Event affecting the operation of the BCDR Plan).
- 40.4 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 40.5 The Affected Party shall immediately give the other party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 40.6 As soon as practicable following after the Affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

- 40.7 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

SECTION I - INDEMNITIES, LIABILITY AND INSURANCE

41. IPR INDEMNITY

- 41.1 The Contractor shall at all times, during and after the Term, on written demand indemnify the Council and keep the Council indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Council arising from an IPR Claim.
- 41.2 The Council agrees that:
- 41.2.1 it will notify the Contractor in writing of any IPR Claim;
- 41.2.2 it will allow the Contractor to conduct all negotiations and proceedings and will provide the Contractor with such reasonable assistance required by the Contractor, each at the Contractor's cost, regarding the IPR Claim; and
- 41.2.3 it will not, without first consulting with the Contractor, make an admission relating to the IPR Claim.
- 41.3 The Contractor shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Council into disrepute.
- 41.4 The Contractor shall not settle or compromise any IPR Claim without the Council's prior written consent (not to be unreasonably withheld or delayed).

41.5 If an IPR Claim is made, or the Contractor anticipates that an IPR Claim might be made, the Contractor may, at its own expense and sole option, either:

41.5.1 procure for the Council the right to continue using the relevant item which is subject to the IPR Claim; or

41.5.2 replace or modify the relevant item with non-infringing substitutes provided that:

41.5.2.1 the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

41.5.2.2 the replaced or modified item does not have an adverse effect on any other Services or the ICT Environment;

41.5.2.3 there is no additional cost to the Authority; and

41.5.2.4 the terms of the Agreement shall apply to the replaced or modified Services.

41.6 If the Contractor elects to modify or replace an item pursuant to clause 41.5.2 or to procure a licence in accordance with clause 41.5.1, but this has not avoided or resolved the IPR Claim, then the Council may terminate this Agreement by written notice with immediate effect and, without prejudice to the indemnity set out in clause 41.1, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

41.7 The provisions of clauses 41.1 to 41.6 (inclusive) shall not apply in respect of any IPR Claim caused by:

41.7.1 any use by or on behalf of the Council of the Software, or the use of the Council Software by or on behalf of the Contractor, in either case in combination with any item not supplied pursuant to this Agreement;
or

41.7.2 the use by the Council of the Software, or the use of the Council Software by the Contractor, in either case in a manner not reasonably to be inferred from the Services Description or the provisions of this Agreement.

42. LIMITATIONS ON LIABILITY

42.1 Neither party limits its liability for:

42.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or

42.1.2 fraud or fraudulent misrepresentation by it or its employees; or

42.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 11B of the Supply of Goods and Services Act 1982.

Financial Limits

42.2 Subject to clause 42.1, the Contractor's total aggregate liability:

42.2.1 in respect of the indemnity in clauses 11.2 (Tax), 20 (Employment Indemnity) and 41 (IPR Indemnity), shall be unlimited;

42.2.2 for all loss of or damage to the Council Premises, property or assets (including technical infrastructure, assets or equipment but excluding any loss or damage to the Council's Data or any other data) of the Council caused by the Contractor's Default shall in no event exceed the amount stated under the relevant insurance heading within the Invitation to Tender;

42.2.3 for all loss, destruction, corruption, degradation, inaccuracy or damage to the Council Data caused by the Contractor's Default shall be unlimited unless stated in the Invitation to Tender;

42.2.4 in respect of Services Credits shall be limited in each Contract Year to 100% of the annual Charges;

42.2.5 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no event exceed an amount equivalent to 115% of the aggregate Charges paid, due or which would have been payable in the future (prior to the calculation of any reduction to those Charges pursuant to this Agreement) under this Agreement.

42.3 Subject to clause 42.1, the Council's total aggregate liability, in addition to its obligation to pay the Charges as and when they fall due for payment:

42.3.1 for all Defaults by the Council resulting in loss of or damage to the property or assets (including technical infrastructure, assets or equipment) of the Contractor shall in no event exceed (i) the lower of the Council's requisite level of insurance; and (ii) the actual losses incurred by the Contractor;

42.3.2 in respect of all other Defaults by the Council shall in no event exceed the greater of:

42.3.2.1 an amount equivalent to the total Charges paid or properly invoiced and due to be paid under this Agreement in the 12 month period immediately preceding the event giving rise to the liability; or

42.3.2.2 £25,000.

42.4 Subject to clauses 42.1 and 42.5, neither party will be liable to the other party for:

42.4.1 any indirect, special or consequential loss or damage; or

42.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

42.5 Subject to clause 42.2, the Council may, amongst other things, recover as a direct loss:

42.5.1 any additional operational and/or administrative costs and expenses arising from the Contractor's Default;

42.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's Default; and

42.5.3 the additional cost of procuring Replacement Services for the remainder of the Term;

42.6 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 42 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 42.

42.7 Nothing in this clause 42 shall act to reduce or affect a party's general duty to mitigate its loss.

43. INSURANCE

43.1 Subject to clauses 0 the Contractor shall take out and maintain or procure the maintenance of the Insurances set out in the Invitation to Tender and completed by the Contractor prior to submission of their Tender.

SECTION J - TERM, TERMINATION AND EXIT MANAGEMENT

44. TERM

This Agreement will begin on the Effective Date and, unless terminated at an earlier date by operation of Law or in accordance with clause 45, will terminate at:

- 44.1 the end of the Initial Term; or
- 44.2 if the Council elects to extend the Initial Term, at the end of the Extension Period.

45. TERMINATION RIGHTS

45.1 Termination for Cause by the Authority

45.1.1 The Council may terminate this Agreement by giving written notice of termination to the Contractor if one or more of the circumstances set out in clause 45.1.5 exist.

45.1.2 Where the Council is terminating this Agreement for a material Default of this Agreement or one of the specific provisions in clause 45.1.5.5 it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.

45.1.3 Subject to clause 45.1.4, where a material Default is capable of remedy the parties shall follow the Remedial Plan Process provided that if the Remedial Plan Process fails then termination shall occur on the last day of the period specified by the Council in its Termination Notice served in accordance with the Remedial Plan Process.

45.1.4 Not Used

45.1.5 The circumstances giving rise to the Council's right to terminate are:

45.1.5.1 the Contractor is in material Default which it has failed to remedy in accordance with the Remedial Plan Process;

45.1.5.2 the Contractor commits a material breach of this Agreement which is irremediable;

45.1.5.3 the Contractor's failure to comply with a Correction Plan for a material Service Failure because:

- (i) the Contractor does not submit or resubmit a Correction Plan for approval within the timescales required or at all; or
- (ii) the Council acting reasonably does not approve the proposed Correction Plan on the second occasion of seeking approval; or

45.1.5.4 pursuant to:

- (a) clause 41.6 (where a modification or replacement of an item pursuant to clause 41.5.2 or where procuring a licence in accordance with clause 41.5.1 has not avoided or resolved an IPR Claim); or
- (b) clause 52 (Prevention of Corruption);

45.1.5.5 the Contractor is in material Default of:

- (a) clause 31 (Protection of Personal Data);
- (b) clause 32 (Freedom of Information);
- (c) clause 33 (Confidentiality); or
- (d) the security requirements set out in the Services Description or the Security Policy;

45.1.5.6 an Insolvency Event affecting the Contractor occurs; or

45.1.5.7 as a result of the Contractor's Default the Council suffers damages that exceed 25% of the aggregate value of liability caps as set out in clause 42 (Limitations on Liability);

45.1.5.8 the Guarantor is in breach or anticipatory breach of the Guarantee (without the Guarantee being replaced with a

comparable guarantee to the satisfaction of the Authority) or the Guarantor suffers an Insolvency Event; or

45.1.5.9 the occurrence of:

- (a) any breach; or
- (b) any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of breach,

which is continuing, unremedied and unwaived, under or in connection with any document or arrangement relating to any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) of the Contractor or the Guarantor or any subsidiary undertaking of the Guarantor in respect of money that has been borrowed exclusively for the purposes of financing the provision of the Services by the Contractor;

45.1.5.10 the Contractor committing a Default (other than as a consequence of a Default by the Council) which results in the criminal investigation, prosecution and conviction of the Contractor or any Sub-contractor under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this clause 45.1.5.10 the Council shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (b) give all due consideration, where appropriate, to action other than termination of this Agreement;

45.1.5.11 there has been a disaster and the Contractor has not acted in accordance with its obligations under the BC&DR Plan and such failure to act is in itself a material Default or the result of

such failure to act has a material adverse impact on the Authority; or

45.1.5.12 the Contractor makes any public announcement or a director of the board of directors of the Contractor advises an officer of the Council that the Contractor is no longer going to continue to develop or to offer the provision of services similar to the Services and there is evidence that such announcement will materially adversely impact the ability of the Contractor to provide the Services.

45.2 The rights of the Council (to terminate or otherwise) under this clause 45 are in addition (and without prejudice) to any other right or remedy which the Council may have to claim the amount of loss or damage suffered by the Council on account of the acts or omissions of the Contractor (or to take any action other than termination of this Agreement).

45.3 **Termination for Change of Control**

45.3.1 The Council may terminate this Agreement by written notice without penalty if there is a Change of Control to which the Council objects except where the Authority:

45.3.1.1 has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or

45.3.1.2 has not served its notice within six months of the later of the date the Change of Control took place or the date on which the Council was given notice of the Change of Control.

45.3.2 The Contractor shall notify the Council in writing within one month of any Change of Control taking place.

45.4 **Partial Termination**

45.4.1 Subject to the provisions of clauses 45.4.2, 45.4.3 and 46 (Remedial Plan Process), the Council may, by one month's prior written notice, require the Partial Termination of any part of the Services on the occurrence in relation to that part of a material Default by the

Contractor, where the Default is not capable of remedy or, if the Default is capable of remedy, the Default has not been remedied in accordance with the Remedial Plan Process.

45.4.2 On receipt of the Council's notice of Partial Termination, the Contractor may respond to the Council in writing within the notice period provided for in clause 45.4.1 as follows:

45.4.2.1 accept the Partial Termination of this Agreement; or

45.4.2.2 reject the Partial Termination of this Agreement.

45.4.3 If the Contractor rejects the Partial Termination the Council may, in its sole discretion and within one month of receiving the Contractor's election under clause 45.4.2.2, terminate the whole Agreement.

45.4.4 The parties shall agree the effect of any Change made necessary to the Agreement by the Partial Termination, including the effect the Partial Termination may have on any other Services and the Charges, in accordance with the Change Control Procedure, provided that:

45.4.4.1 the Contractor shall not be entitled to an increase in the charges if the Partial Termination arises pursuant to clause 45.4.1; and

45.4.4.2 any increase to the Charges (if any) shall not be unreasonable and in any event shall be calculated in accordance with the Pricing Schedule; and

45.4.4.3 the Contractor shall not be entitled to reject the Change.

45.4.5 Termination in accordance with this clause 45.4 shall be without prejudice to any right of action or remedy of either party which has accrued or which subsequently accrues.

45.5 Termination by the Contractor

The Contractor may terminate this Agreement only if the Council is in material breach of its obligation to pay undisputed Charges by giving the Council 90 days written notice specifying the breach and requiring its remedy. The

Contractor's right of termination under this clause 45.5 shall not apply to non-payment of the Charges by the Council where such non-payment is due to the Council exercising its rights under clause 12 (Recovery of Sums Due).

45.6 The Contractor shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

45.7 Termination for Continuing Force Majeure Event

Either party may, by written notice to the other, terminate this Agreement, or require the Partial Termination of any part of the Services on the occurrence in relation to that part, if:

45.7.1 a Force Majeure Event occurs which affects all or a substantial part of the Services for a continuous period of more than 90 days; or

45.7.2 a Force Majeure Event occurs which affects a part but not a substantial part of the Services for a continuous period of more than 120 days.

46. REMEDIAL PLAN PROCESS

46.1 Subject to clause 45.1.3 or 45.4.1, if the Contractor commits a material Default and the Default is capable of remedy, the Council may not terminate this Agreement in whole or in part without first operating the Remedial Plan Process.

46.2 The Remedial Plan Process is as follows:

46.2.1 The Council notifies the Contractor that it considers that the Contractor is in material Default and that it requires a Remedial Plan. The notice may specify the matters complained of in outline but must contain sufficient detail so that it is reasonably clear what the Contractor has to remedy.

46.2.2 The Contractor shall serve a draft Remedial Plan within 20 Working Days (or any other period agreed by the parties) even if the

Contractor disputes that it is responsible for the matters complained of.

- 46.2.3 If the Council considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, or will take too long to complete or will not remedy the matters complained of then it may either agree a further time period for the development and agreement of the Remedial Plan or escalate any issues with the draft Remedial Plan using the Escalation Process.
- 46.2.4 If despite the measures taken under clause 46.2.3 a Remedial Plan cannot be agreed within 10 Working Days of the date of its submission then the Council may elect to end the Remedial Plan Process at the end of the escalation period set out in the Dispute Resolution Procedure and serve a Termination Notice which will take effect unless the Contractor remedies the Default within a period specified in the Termination Notice which shall not be less than 30 days from the date on which the Termination Notice is sent to the Contractor.
- 46.2.5 If a Remedial Plan is agreed between the parties but the Contractor fails to implement the Remedial Plan the Council may either give the Contractor a further opportunity to resume full implementation of the Remedial Plan or escalate any issues arising out of the failure to implement the Remedial Plan using the Escalation Process.
- 46.2.6 If the reasons for the Contractor's failure to implement the Remedial Plan have not been resolved despite the use of the Escalation Process in accordance with clauses 46.2.3 or 46.2.5, and the Contractor has not otherwise remedied the Default, then the Council may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Council in its notice, which shall not be less than 30 days from the date on which the Termination Notice is sent to the Contractor.
- 46.2.7 The Council shall not be obliged to follow the Remedial Plan Process if a Remedial Plan has been implemented but the Contractor has

failed to remedy the Default by those means or if there is a repetition of substantially the same material Default within a period of three months following the conclusion of the Remedial Plan. In either case the Council may serve a Termination Notice and the Agreement shall terminate on the last day of the period specified by the Council in its notice, which shall not be less than 30 days from the date on which the Termination Notice is sent to the Contractor, unless the Contractor remedies the Default within that period.

47. CONSEQUENCES OF EXPIRY OR TERMINATION

- 47.1 Following the service of a Termination Notice for any reason the Contractor shall continue to be under an obligation to provide the Services to the required Service Levels and to ensure that there is no degradation in the standards of the Services until the date of the termination.
- 47.2 In the event of termination or expiry, the Contractor shall:
- 47.2.1 repay to the Council all Charges it has been paid in advance in respect of Services not provided by the Contractor as at the date of expiry or termination;
 - 47.2.2 comply with its obligations contained in the Exit Plan; and
 - 47.2.3 subject to the content of the Exit Plan, cease to use the Council Data and, at the direction of the Council provide the Council and/or the Replacement Contractor with a complete and uncorrupted version of the Council Data in electronic form in the formats and on media agreed with the Council and/or the Replacement Contractor; and
 - 47.2.4 on the earlier of the receipt of the Council's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Council Data, excepting a copy of any such Council Data which is also a record as set out in Schedule 8.4 (Records Provisions) and promptly provide written confirmation to the Council that the data has been destroyed; and

47.2.5 provide access during normal working hours to the Council and/or the Replacement Contractor for up to 12 months after expiry or termination to:

47.2.5.1 such information relating to the Services as remains in the possession or control of the Contractor; and

47.2.5.2 such members of the Contractor Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Contractor, provided that the Council and/or the Replacement Contractor shall pay the reasonable costs of the Contractor actually incurred in responding to requests for access under this clause 57.2.5.

47.3 The provisions of clauses 15 (Audits), 20 (Employment Indemnities) 21 (Staff Transfers) 24 (Non-Solicitation), 25 (Intellectual Property Rights), 26 (Licences Granted by the Contractor), 31 (Protection of Personal Data), 32 (Freedom of Information), 33 (Confidentiality), 41 (Indemnities), 42 (Limitations on Liability), 47 (Consequences of Termination), 48 (Payments made on Termination), 54 (Severance), 56 (Entire Agreement), 57 (Third Party Rights) and 59 (Governing Law and Jurisdiction), and the provisions of schedules 1 (Definitions) and the Pricing Schedule shall survive the termination or expiry of this Agreement.

48. PAYMENTS MADE ON TERMINATION

48.1 the Council shall not make a payment to the Contractor:

48.1.1 on the expiry of the Term;

48.1.2 for Termination for Cause by the Council in accordance with clause 45.1 or for Partial Termination in accordance with clause 45.4.1; or

48.1.3 for termination for Change of Control in accordance with clause 45.3.1; or

48.2 The costs of termination incurred by the parties shall lie where they fall if either party terminates or partially terminates this Agreement pursuant to clause 45.7 (Termination for Continuing Force Majeure Event).

SECTION K - MISCELLANEOUS AND GOVERNING LAW

49. ASSIGNMENT AND NOVATION

49.1 The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the Council.

49.2 The Council may:

49.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any other Contracting Authority; or

49.2.2 novate this Agreement and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Council. If this transfer increases the burden of the Contractor's obligations under this Agreement the Contractor shall be entitled to any additional Charges that are reasonable by way of compensation and which can be agreed through the Change Control Procedure.

49.3 A change in the legal status of the Council shall not (subject to clause 49.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Council.

49.4 If this Agreement is novated to a body which is not a Contracting Council, or a body which is not a Contracting Council succeeds the Council, (both "**transferee**" in the rest of this clause):

49.4.1 the Contractor shall be entitled to exercise a right of termination if:

49.4.1.1 the transferee suffers an Insolvency Event; or

49.4.1.2 the transferee commits:

- (a) a material Default which Default, subject to the exercise of a process equivalent to the Remedial Plan Process, is not remedied within 30 days after notice of

Default from the Contractor to the transferee requiring its remedy; or

- (b) a material Default which is irremediable; and

49.4.1.3 the transferee may only assign, novate or otherwise dispose of its rights and obligations under this Agreement (or any part) with the prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed).

50. WAIVER AND CUMULATIVE REMEDIES

- 50.1 The rights and remedies provided by this Agreement may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 50.2 Unless a right or remedy of the Council is expressed to be an exclusive right or remedy, the exercise of it by the Council is without prejudice to the Council's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 50.3 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Agreement.

51. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have Council to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

52. PREVENTION OF CORRUPTION

52.1 The Contractor shall not:

52.1.1 offer or agree to give any person working for or engaged by the Council any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Contractor and the Council, including its award to the Contractor and any of the rights and obligations contained within it; nor

52.1.2 enter into this Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Council by or for the Contractor, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Council before execution of this Agreement.

52.2 If the Contractor (including any Contractor employee, Sub-contractor or agent, in all cases whether or not acting with the Contractor's knowledge) breaches:

52.2.1 clause 52.1; or

52.2.2 Committed an offence under the Bribery Act 2010; or

52.2.3 Shall have given any fee or reward the receipt of which is an offence under section 66 of the Local Government (Scotland) Act 1973 or any re-enactment thereof; or

52.2.4 Committed any breach of the Employment Relations 1999 Act (Blacklists Regulations) 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992; or

52.2.5 Committed any breach of the Data Protection Act 2018 by unlawful processing of personal data in connection with any blacklisting activities described at (iii) above.

in relation to this Agreement or any other contract with the Council.

the Council may terminate this Agreement by written notice with immediate effect.

52.3 Any termination under clause 52.2 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Council.

52.4 Notwithstanding clause 18 (Disputes), any dispute relating to:

52.4.1 the interpretation of clauses 52.1 to 52.3 inclusive; or

52.4.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and the decision shall be final and conclusive.

53. PUBLICITY AND BRANDING

53.1 The Contractor shall not:

53.1.1 make any press announcements or publicise this Agreement or its contents in any way; or

53.1.2 use the Council's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

53.2 Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party (including the Services, the Contractor System and the Council System) and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

53.3 In preparing this Agreement, the parties acknowledge that the content is based on the Model ICT Services Agreement - Baseline Precedent Clauses for Consideration when Contracting for output and outcomes and (C) Crown Copyright is expressly acknowledged.

54. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Contractor and the Council shall immediately commence good faith negotiations to remedy that invalidity.

55. FURTHER ASSURANCES

Each party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement.

56. ENTIRE AGREEMENT

56.1 This Agreement, together with the documents attached to it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

56.2 Each of the parties acknowledges and agrees that in entering into this Agreement and the documents attached to it and does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

56.3 Nothing in this clause 56 shall operate to exclude any liability for fraud.

57. THIRD PARTY RIGHTS

57.1 Subject to clause 33.7 (Confidentiality), a person who is not a party to this Agreement, it is expressly declared that no rights shall be conferred under and arising out of this Agreement upon any person other than the Council and

the Contractor and without prejudice to the generality of the foregoing, there shall not be created by this Contract a *jus quaesitum tertio* in favour of any person whatsoever.

57.2 Any rights created under clause 57.1 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

58. NOTICES

58.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post to the address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this clause.

58.2 A notice shall be deemed to have been received:

58.2.1 if delivered personally, at the time of delivery;

58.2.2 in the case of pre-paid first class post, three Working Days from the date of posting;

58.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that party).

59. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with Scottish law and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the Scottish courts.

SCHEDULE

Definitions

Unless the context otherwise requires the following expressions shall have the meanings set out below.

"Achieve"	in respect of a Test, to successfully pass a Test without any Test Issues in accordance with schedule 6.2 (Testing Procedures), and "Achieved" and "Achievement" shall be construed accordingly;
"Additional Services "	the services which are to be provided by the Contractor if requested by the Council in accordance with clause 3.7 (Additional Services);
"Additional Services Implementation Plan"	the implementation plan to effect the Additional Services agreed between the parties prior to the Effective Date and, if not agreed, to be developed by the Contractor and approved by the Council;
"Affected Party"	the party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Agreement"	the clauses of this Agreement together with the schedules and annexes to it and any documents referred to or attached to it;
"Assets"	means all assets and rights used by the Contractor to provide the Services in accordance with this Service Agreement but excluding the Council Assets;
"Award Letter"	means the formal acceptance letter signed by the proper officer of the Council accepting the Tender by the Contractor;
"Contract Notice"	means the formal contract notice published in the Public Contracts Scotland Portal
"Council Assets"	means the Council Materials, the specially written material, the Council infrastructure and any other data, software, assets, equipment or other property owned by the Council and which is or may be used in connection with the provision or receipt of the Services;

"Council Cause"

any breach by the Council of any of the Council's Responsibilities (except to the extent that it is the result of any act or omission by the Council to which the Contractor has given its prior consent);

"Council Confidential Information"

all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Council, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Council Data"

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Contractor by or on behalf of the Authority; or

(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or

(b) any Personal Data for which the Council is the Data Controller;

"Council Materials"

means the Council Data together with any materials, documentation, information, programs and codes supplied by the Council to the Contractor, the IPR in which:

(i) are owned or used by or on behalf of the Authority; and

(ii) are or may be used in connection with the provision or receipt of the Services,

but excluding any specially written material, Contractor Material and Third Party Material;

"Council Premises"

means premises owned, controlled or occupied by the Council or its Affiliates which are made available for use by the Contractor or its Sub-contractors for provision of the Services (or any of them) on the terms set out in this Agreement or any separate agreement or licence;

"Council Representative"

the representative appointed by the Council pursuant

	to clause 13.1 (Representatives);
"Council Software"	software which is owned by or licensed to the Council, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;
"Council System"	the Council's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Council or the Contractor in connection with this Agreement which is owned by or licensed to the Council by a third party and which interfaces with the Contractor System or which is necessary for the Council to receive the Services;
"Authority to Proceed"	the point at which the Contractor is authorised to provide the Operational Services to the Council;
"BCDR Plan"	any plan that is set out in the Contractors Tender, as may be amended from time to time;
"Change"	any change to this Agreement;
"Change Control Procedure"	the procedure for changing this Agreement, as set out in schedule part 2 (Change Control Procedure);
"Change of Control"	a change in Control of the Contractor or a material Sub-contractor;
"Change in Law"	any change in Law, which impacts on the performance of the Services which comes into force after the Effective Date;
"Charges"	the charges for the provision of the Services set out in and derived in accordance with the pricing schedule set out in the Invitation to Tender and completed by the Contractor in their Tender, including any Stage Payment or Service Charge;
"Commencement Date"	the date on which the Services start, being the date set out in the Award Letter, failing which the Effective Date or such other date as the parties may agree in writing.
"Commercially Sensitive Information"	the information listed as such within the Contractors Tender comprising the information of a commercially sensitive nature relating to the Contractor, its IPR or its business or which the Contractor has indicated to the Council that, if disclosed by the Council, would cause the Contractor significant commercial disadvantage or material financial loss;
"Confidential Information"	the Council's Confidential Information and/or the

	Contractor's Confidential Information;
"Contract Year"	a period of 12 months (or shorter period in the period immediately prior to the end of the Term) commencing on the Effective Date or on an anniversary of the Effective Date;
"Contracting Authority"	any contracting authority as defined in the Procurement Regulations but excluding the Council;
"Contractor's Background IPRs"	<p>(a) IPRs owned by the Contractor before the Effective Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's Know-How or generic business methodologies; and/or</p> <p>(b) IPRs created by the Contractor independently of this Agreement,</p> <p>but excluding IPRs owned by the Contractor subsisting in the Contractor Software;</p>
"Contractor's Confidential Information"	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
"Contractor Equipment"	the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub-contractors (but not hired, leased or loaned from the Council) for the provision of the Services;
"Contractor's Group"	the Contractor, its ultimate holding company and all subsidiaries of its ultimate holding company, the definitions of "holding company" and "subsidiary" being those set out in section 1159 of the Companies Act 2006;
"Contractor Materials"	means the Contractor Software together with the Documentation relating to the Contractor Software;
"Contractor Personnel"	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;
"Contractor Representative"	the representative appointed by the Contractor pursuant to clause 13.1 (Representatives);

"Contractor Software"	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services including the software specified in the Contractors Tender
"Contractor System"	the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Council System);
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Correction Plan"	the Contractor's plan for the remediation of any Service Failure in accordance with clause 4 (Service Levels);
"Costs"	means the costs to be incurred by the Contractor in providing the Services;
"Data Controller"	shall have the same meaning as set out in the Data Protection Act 2018;
"Data Processor"	shall have the same meaning as set out in the Data Protection Act 2018;
"Data Protection Legislation"	the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 2018;
"Database"	the rights in or to the database developed and supplied by the Contractor to the Council in accordance with the terms of this Agreement and/or the Contractor Solution and/or the Service Description;

"Date Compliant"	means that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Contractor System;
"Default"	any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Agreement and in respect of which such party is liable to the other;
"Delay"	the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed arising from a failure to Achieve a Milestone;
"Deliverable"	an item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Contractor at a Milestone Date or at any other stage during in the performance of this Agreement;
"Detailed Implementation Plan"	means the plan developed in accordance with clause 3 of this Agreement
"Dispute"	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in schedule part 4 (Dispute Resolution Procedure);
"Documentation"	descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: <ul style="list-style-type: none"> (a) is required to be supplied by the Contractor to the Council under this Agreement; (b) is required by the Contractor in order to provide the Services; or (c) has been or shall be generated for the

	purpose of	providing the Services;
"Effective Date"	the date on which this Agreement is signed by both parties;	
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Council Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;	
"Environmental Information Regulations"	the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or Scottish Ministers in relation to such regulations;	
"Escalation Process"	the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in paragraph) schedule part 4 (Dispute Resolution Procedure);	
"Force Majeure Event"	any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster, challenge raised by an economic operator under the Procurement Regulations but excluding any industrial dispute relating to the Contractor, the Contractor Personnel or any other failure in the Contractor or the Sub-contractor's supply chain;	
"FOI(S)A"	the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant Government Department in relation to such legislation;	
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor)	
"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;	

"Guarantee"	the guarantee or such other approved form of financial security in favour of the Council entered into by the Guarantor on or about the date of this Agreement (or any guarantee acceptable to the Council that replaces it from time to time);
"Guarantor"	means the corporate entity that is acceptable to the Council, as agreed in writing between the Council and the Contractor
"Health and Safety Regime"	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc. Act 1974 (and associated regulations), the Fire (Scotland) Act 2005, the Environmental Protection Act 1990, the Water Industry (Scotland) Act 2002, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
"ICT"	information and communications technology;
"ICT Environment"	the Council System and the Contractor System;
"Implementation Plan"	means the Outline Implementation Plan specified as being required by the Council in the Invitation to Tender or (if and when approved by the Council pursuant to clause Error! Reference source not found. (Implementation Plan)) the Detailed Implementation Plan as updated from time to time;
"Information"	has the meaning given under section 73 of the Freedom of Information (Scotland) Act 2002;
"Information System"	means a system for generating, sending, receiving, storing or otherwise processing electronic communications;
"Initial Term"	the period of specified in the Invitation to Tender and the Award Letter
"Insolvency Event"	<p>the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than Scotland) in relation to the relevant entity:</p> <ul style="list-style-type: none"> (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved; (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or

administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;

- (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors;
- (d) the entity being unable to pay its debts or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the entity entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide solvent reconstruction or amalgamation shall not amount to an Insolvency Event;

"Insurances"

all or any of the insurances required to be maintained by the Contractor pursuant to this Agreement as set out in the Invitation to Tender

"Intellectual Property Rights" or "IPRs"

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Interest Rate"

means the figure being 2% above the published base rate of the Bank of Scotland plc (or such other rate as the Council shall determine and notify the Contractor thereof);

"Invitation to Tender"

means the invitation to tender either (i) sent out by the

Council to the Contractor (and such other candidates) or (ii) downloaded from the Public Contracts Scotland Portal and completed by the Contractor and in each case such invitation which includes the Services;

"IPR Claim"

any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Contractor (or to which the Contractor has provided access) to the Council in the fulfilment of its obligations;

"Key Personnel"

those members of the Contractor Personnel described as such in the Contractors Tender and as such may be modified by agreement by the parties;

"Know-How"

all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the Contractor's or the Council's possession before this Agreement;

"Law"

any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"Man Day"

means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

"Man Hours"

means the hours spent by the Contractor Personnel properly working on the Services including time spent travelling (other than to and from the Contractor's offices, or to and from the premises at which the services are to be principally performed) but excluding lunch breaks;

"Malicious Software"

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Management Information"

the management information specified in the Invitation to Tender to be used to performance monitor the Contractor in delivering the Services;

"month"	a calendar month and "monthly" shall be interpreted accordingly;
"Non-conformance Report"	a report including detail of the reasons why any Test has failed or of any non-conformities in respect of any Milestone;
"Operational Phase"	the phase in which the Contractor will deliver the Operational Services, identified as such in the Implementation Plan and commencing from the Operational Service Commencement Date;
"Operational Service Commencement Date"	The date on which the Operational Services commence as identified in the Implementation Plan;
"Operational Services"	the operational services described as such in the Services Description;
"Operating Environment"	the Council System and the Sites;
"Outline Implementation Plan"	means the Plan set out at clause 3 of this Agreement;
"Partial Termination"	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Service as further provided for in clause 45.4 (Termination);
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 2018;
"Pre-Operational Phase"	the phase during which the Contractor will deliver Pre-Operational Services, being the period from the Commencement Date until the date of receipt of the Authority to Proceed;
"Pre-Operational Services"	the services provided by the Contractor for the design, build, test, implementation and roll out of the Operational Services as described in the Services Description;
"Pricing Schedule"	means the Pricing Schedule setting out the Charges as set out in the Invitation to Tender and completed by the Contractor at the time of submission of their Tender.

"Process"	has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement, it shall include both manual and automatic processing;
"Procurement Regulations"	means the Public Contracts (Scotland) Regulations 2012, the Local Government (Scotland) Act 1973 and any other legislation governing or regulating the purchase of goods, supplies and services by local authorities constituted under the Local Government etc (Scotland) Act 1994;
"Project Specific IPRs"	<p>(a) IPRs in items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement and updates and amendments of these items; and/or</p> <p>(b) IPRs arising as a result of the performance of the Contractor's obligations under this Agreement;</p> <p>but which shall not include the Contractor's Background IPRs or the Specially Written Software;</p>
"Public Contracts Scotland Portal"	means the national advertising portal maintained by the Scottish Government on behalf of (amongst others) the Council;
"Quality Plans"	the Contractor's plan submitted as part of the Contractors Tender and that reflects the quality management systems as further described in clause 7 (Quality Assurance and Performance Monitoring);
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Council and "Regulatory Body" shall be construed accordingly;
"Remedial Plan"	the plan referred to in clause 46 (Remedial Plan Process) to correct a material Default;
"Remedial Plan Process"	the process set out in clause 46 (Remedial Plan Process);
"Representatives"	either or both of the Council Representative and the Contractor Representative;

"Request for Information"	a request for information or an apparent request under the Code of Practice on Access to Scottish Executive Information, FOI(S)A or the Environmental Information Regulations;
"Security Management Plan"	the Contractor's security plan, to be provided if required to do so by written request of the Council
"Security Policy"	the Council's security policy, which will be made available to the Contractor on written request;
"Service Charges"	period payments made in accordance with the Pricing Schedule in respect of the supply of the Operational Services;
"Service Credits"	the sums payable in respect of the failure by the Contractor to meet one or more Service Levels as specified in the Pricing Schedule
"Service Failure"	a failure to deliver any part of the Services in accordance with the Service Levels;
"Service Levels"	the levels of service required to be provided, as prescribed in the Services Description
"Service Threshold"	the level below which the quality of any Services becomes unacceptable to the Council as set out in the Service Levels;
"Service Notification Threshold"	the level as prescribed in Services Description and which triggers a notification event under this Agreement;
"Services"	any and all of the services to be provided by the Contractor under this Agreement including those set out in the Services Description;
"Services Description"	the description of the Services set out in the Invitation to Tender;
"Sites"	any premises from which the Services are provided or from which the Contractor manages, organises or otherwise directs the provision or the use of the Services or where any part of the Contractor System is situated or where any physical interface with the Council System takes place;
"Software"	Specially Written Software, Contractor Software and Third Party Software;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with

	all technical information and documentation necessary for the use, reproduction, modification and enhancement of such software;
"Specially Written Software"	any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Council;
"Staff Transfer"	the transfer of staff pursuant to the Employment Regulations under this Agreement;
"Stage Payments"	any payment made in accordance with the Pricing Schedule;
"Standard Licence Terms"	the licence terms set out in schedule part 5 and includes the Enhanced Licence Terms where such a requirement is stated in the Invitation to Tender;
"Standards"	The Council's internal policies and procedures and guidance referred to in schedule 2.3 (Standards) together with any other specified policies or procedures identified in schedule 2.3 (Standards);
"Sub-contract"	any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	the third party with whom the Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Contractor Solution"	the Contractor's solution for the Services submitted as part of the Contractors Tender;
"Tender"	means the formal offer to carry out the services by the Contractor to the Council in accordance with the requirements set out in the Invitation to Tender;
"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
"Termination Notice"	a notice to terminate this Agreement or part of the Services either immediately or at a date specified in

	the notice;
"Tests" and "Testing"	any tests required to be carried out under this Agreement, as further described in the Invitation to Tender
"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in the Invitation to Tender
"Test Success Criteria"	the test success criteria set out in the Invitation to Tender
"Third Party Materials"	the Third Party Software together with the Documentation relating to the Third Party Software;
"Third Party Software"	software which is proprietary to any third party other than an Affiliate of the Contractor which is or will be used by the Contractor for the purposes of providing the Services,
"UK"	the United Kingdom;
"Use"	means the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) that Software;
"VAT"	value added tax as provided for in the Value Added Tax Act 1994; and
"Warning Notice"	has the meaning given in clause 7.9;
"Working Day"	any day other than a Saturday, Sunday or public holiday in Scotland.

Part 2 - Change Control Procedure

[Insert Change Control Procedure attached to the Contract Notice]

Part 3 - Pricing Schedule

The Pricing Schedule applicable is set out in the Contractors Tender as accepted by the Council by virtue of the Award Letter.

Part 4 - The Dispute Resolution Procedure

[Insert Dispute Resolution Procedure attached to the Contract Notice]

Part 5 - Third Party Licence Terms

[Insert Third Party Licence Terms]