



**TORBAY COUNCIL TERMS AND CONDITIONS
FOR THE PROVISION OF IT SERVICES**

Contract between

The Authority

Torbay Council of Town Hall, Torquay, Devon, TQ1 3DR

And

The Supplier

**[Insert name, registered office address and, where applicable, the
company number of the Supplier]**

Date

[Insert the date when signed by both parties]

Commencement Date

[Insert the date on which the Services shall commence]

Summary of Services

Asset Management and Facilities Management System

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PLEASE NOTE: Any text within this Agreement which is highlighted in yellow, is for further discussion between the Authority and the Contracted Supplier.

THIS AGREEMENT is dated [DATE]

1. GENERAL PROVISIONS

1.1 Incorporation

These Terms and Conditions shall be incorporated in any Contract (or Purchase Order) made by the Authority for the purchase and provision of Goods and Services unless they are specifically excluded and shall bind the parties unless any Special Condition of Contract have been agreed in writing by the parties

These Terms and Conditions may only be varied with the written agreement of the Authority. No Terms or Conditions put forward at any time by the Contractor shall form any part of the Contract

Nothing in the Contract shall be construed as creating a partnership, a Contract of employment or a relationship of principal and agent between the Authority and the Contractor.

2. INTERPRETATION

2.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance: the acceptance or deemed acceptance of the Software and/or the Web-site by the Authority

Acceptance Certificate: the form of certificate served on the Supplier by the Authority acknowledging acceptance of the Software and/or of the Web-site.

Acceptance Tests: the tests to be carried out on the Software and/or the Web-site as set out and described in Schedule 6.

Affiliate: includes in relation to either party each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party **OR** either party or any business entity from time to time controlling, controlled by, or under common control with, either party.

Change Control Procedures: the procedures set out in Schedule 7

Charges: the charges payable for each of the Products and Services under this agreement, being (where the context so requires) as provided in Schedule 2:

- (a) the charges for the Standard Support Service set out in 0 (which charges also include the Updating Service);
- (b) the charges for the Enhanced Support Service set out in Part 2 of □;
- (c) any charges agreed for Optional Services;
- (d) any charges agreed for New Versions;

- (e) hosting charges
- (f) software licence charges
- (g) any third party software charges
- (h) consultancy/project management (implementation) Services

in each case as the same may be amended from time to time in accordance with clause 7.3

Confidential information: has the meaning given in clause 111.

Contract Year: any 12-month period ending on any anniversary of the date of this agreement.

Control: a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity or any other comparable equity or ownership interest with respect to a business entity other than a corporation OR as defined in section 1124 of the Corporation Tax Act 2010.

Critical Fault: a fault which hinders or prevents the Authority from using a material part of the functionality of the software in question.

Deliverables: including but not limited to any Software, Maintenance, Modification, Documentation, , know-how, web-site or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.

Documentation: the documents including but not limited to those provided by the Supplier for the Software, in either printed text or machine readable form, including the technical documentation, program specification and operations manual.

Enhanced Support Service: the support service more particularly described in which is to be provided by the Supplier to the Authority

Go Live: the date the Software is Accepted in to the live environment for the Authority's productive use.

Intellectual Property Rights: without limitation all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Licence: the licence of [DATE] made between the Supplier and the Authority.

Maintenance Release: a release of Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Manager: the person appointed by the Authority from time to time in order to fulfil the role described in clause 8

Modification: has the meaning given in the Licence and includes but is not limited to any Maintenance Release or New Version which is acquired by the Authority.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Non-Critical Fault: any fault in the Software other than a Critical Fault.

Optional Service: any of the services listed in Part 1 of 0 and any other services that the Authority and the Supplier may from time to time agree shall be supplied to the Authority by the Supplier under the terms of this agreement.

Project Plan: the timetable for implementing the Software and/or Web-site and performing the Services as set out in Schedule 13

Security Breach Notification Procedures: Authority's specific procedures to follow in event of Data Security Breach as set out in Schedule 11 Security Requirements.

Service Levels: the Services as set out in Schedule 5.

Services: includes (as appropriate) any services (including the services of consultant programmers, system maintainers, outsourcing, or disaster recovery or other service suppliers) which are provided to the Authority or any Affiliate for the purpose of, or in connection with, the permitted use, development, modification, maintenance or Hosting of the Software, .

Site: the Web-site at [URL] to be hosted by the Supplier pursuant to this Agreement.

Site Specification: the specification for the Site set out in Schedule 8

Software: as provided in Schedule 1.

Standard Support Service: the support service more particularly described in Schedule 10 which is to be provided by the Supplier to the Authority

Standard Support Hours: 8.00 am to 6.00 pm, Monday to Friday, except on days which are bank holidays in England.

Support Staff: those officers, employees, agents or subcontractors of the Supplier connected with this agreement, including those individuals who perform the Supplier's obligations under this agreement

Supported Software: has the meaning as defined in Schedule 1 in relation to the support services set out in Schedule 10.

Term: Three Years from the Commencement Date and continuing thereafter for each Contract Year until terminated in accordance with the Termination Clause set hereafter.

Updating Service: the service to be supplied by the Supplier to the Authority

Visitor: a visitor to the Web-Site

- 2.2 Unless the context otherwise requires:
- (a) references to the Supplier and the Authority include their permitted successors and assigns;
 - (b) references to statutory provisions include those statutory provisions as amended or re-enacted;
 - (c) references to one gender includes a reference to the other genders; and
 - (d) references to "including" or "includes" shall be deemed to have the words "without limitation" inserted after them.
 - (e) reference to any Act of Parliament and to any orders or regulations or rules made pursuant to any Act or to any European Commission Directive (or European Union Directive) shall include reference to any modification re-enactment or replacement of the same
 - (f) reference to any words in the singular include the plural and those in the plural include the singular.
- 2.3 The headings shall not affect their interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.
- 2.4 In the event of any conflict between any of the clauses of the Contract and any part of the Schedules appendices or annexes then the clauses shall prevail except where expressly specified otherwise.
- 2.5 **Holding company** and **subsidiary** have the meaning as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 2.6 Not used

- 2.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

3. **NOTICES**

Any notice given under or pursuant to the Contract shall be in writing and sent by first (1st) class post to the address of the relevant party shown in the Contract or by facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within seventy-two (72) hours of the posting or twenty-four (24) hours if sent by facsimile transmission or by electronic mail to the correct facsimile number or electronic mail address of the addressee (with in the case of a facsimile transmission a correct answerback.)

4. **IT GOODS AND SERVICES**

- 4.1 This Contract governs the overall relationship of the Supplier and the Authority with respect to the provision of the IT Goods and Services. The Authority has ordered the IT Goods and Services specified in Schedule 1 and the Supplier shall provide those IT Goods and Services
- (a) in accordance with the provisions of this Contract if those IT Goods and Services are to be sold by the Supplier and purchased by the Authority; and
 - (b) in accordance with the provisions of this Contract and any other terms and conditions as are agreed between the Authority and the Supplier and any third party (if any) if the Ordered Goods are to be leased to the Authority.
- 4.2 Upon receipt of the first instalment of the Software Licence Charge, the Supplier grants to the Authority and its Affiliates non-exclusive perpetual licence
- (a) to use the Software;
 - (b) to grant to any Divested Entity a sub-licence to use the Software
- 4.3 The Supplier shall install on the appropriate equipment, whether provided by the Authority or the Supplier, the Software in accordance with the Project Plan as provided under Schedule 13.
- 4.4 The IT Goods and Services specified in Schedule 1 shall also include any Modification which is acquired by the Authority (whether under the Licence, this agreement or any other agreement between the Supplier and the Authority) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence.

- 4.5 Nothing in this Contract shall create an exclusive relationship between the Supplier and the Authority for the provision of any or all IT Goods and Services.
- 4.6 The Supplier shall provide the IT Goods and Services in accordance with:
- (a) any agreed timetable and Implementation Plan in Schedule 13; and
 - (b) the relevant Service Levels in Schedule 5 at all times throughout the Term of this Contract.
- Any failure to meet Service Levels shall entitle the Authority to Service Credits calculated in accordance with the provisions of Schedule 9.
- 4.7 In the provision of the IT Goods and Services, should the Supplier become aware of any breach in its provision of the IT Goods and Services, the Supplier shall, where such breach is capable of remedy, at its own expense use all reasonable endeavours to remedy the same as soon as is reasonably practicable.
- 4.8 Not used
- 4.9 The Supplier accepts responsibility for all damage to, shortage or loss of, the Ordered Goods if:
- (a) the same is notified to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Authority; and
 - (b) the Ordered Goods have been handled by the Authority in accordance with the Supplier's instructions.
- 4.10 Where the Supplier accepts responsibility under Clause 4.6 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit.
- 4.11 The Supplier shall not replace any parts or components of the Ordered Goods used for the provision of the Ordered Software Application Solutions with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by the Authority or a replacement service provider, prior to the expiry or termination (howsoever arising) of this Contract.
- 4.12 In relation to New Versions of the Software, for the duration of this agreement the Supplier shall:
- (i) keep the Authority informed of any planned or actual technical or business developments, whether of the Supplier or of any

relevant third party that may, in the reasonable opinion of the Supplier, be likely to affect the Software;

- (ii) inform the Authority of any planned or completed New Version;
- (iii) offer to the Authority the opportunity to examine any New Version and any tests or results of tests of such New Version that the Supplier may carry out, or may have carried out; and
- (iv) at the Authority's request, install and integrate such New Version into the Software (or, if appropriate, substitute such New Version for the Software)
- (v) if the Supplier releases a New Version and the Authority decides not to acquire and install such New Version, then such decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse effect on the Services or the performance of the Supplier's obligations under this agreement.

4.13 The time for delivery and/or completion of the work to be performed under the Contract shall be of the essence.

4.14 Except where expressly agreed in writing to the contrary the Supplier shall, at its own cost provide all materials, parts, components and replacements.

4.15 The Supplier's obligation to provide on-site services shall extend to all the sites of the Authority situated within the UK. The Authority may change the list of sites from time to time by written notice to the Supplier provided that, without the prior consent of the Supplier (not to be unreasonably withheld or delayed), the Supplier shall not be required to provide on-site services at any site which lies outside the Authority

5 STANDARDS AND REGULATIONS

5.1 The Supplier shall provide the IT Goods and Services and meet its responsibilities and obligations hereunder in accordance with the Standards and Regulations.

5.2 The Supplier shall discuss with the Authority any conflict that the Supplier reasonably believes that there is or will be between any of the Standards and Regulations or between any of the Standards and Regulations and any other obligation under this Contract, and shall comply with the Authority's decision on the resolution of that conflict.

6 STAFF

- 6.1 The Supplier shall provide sufficient Staff to fulfil its obligations under the terms of this Contract and supervise the performance of the Contract. The Staff shall be suitably trained and experienced. The Supplier shall take all reasonable steps to maintain continuity in relation to the Staff provided. The Supplier shall notify the Authority in writing promptly if there is any proposed change to Key Staff.
- 6.2 The Supplier undertakes that it will not introduce or supply any Staff to the Authority unless it has first obtained confirmation of their identity, have obtained security clearance prior to commencement of the Services; have entered into a confidentiality agreement with the Authority in a form acceptable to the Authority and that they have the experience, training, qualifications and any authorisations which the Authority considers are necessary or which are required to deliver the Service.
- 6.3 The Supplier shall ensure that, while on the Authority's premises, the Staff shall adhere to the Authority's security procedures and health and safety regulations. The Authority may remove or refuse admission to any person who is, or has been, in breach of such procedures and regulations.
- 6.4 The Authority will provide access to premises, systems and facilities as may reasonably be required for the purpose of performing the Services. Such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours, provided that system access shall be direct or remote, at the Authority's option, and that, in the latter case, such access will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software specified by the Authority, set out in Schedule 11.
- 6.5 The Authority may restrict access to certain areas of its premises or systems on security grounds or in line with the Authority's standard operating times.
- 6.6 In the absence of any Key Staff for any reason (including the replacement of such person with the consent, or at the request, of the Authority), the Supplier shall supply a replacement person who:
- (a) is appropriately trained and competent to fulfil the role required; and
 - (b) has undergone a suitable period of familiarisation with the Services to enable him to perform the functions of the person whom he is replacing.
- 6.7 The Authority may request, on reasonable grounds, the replacement of Staff. A suitable replacement shall be provided at no additional cost to the Authority.
- 6.8 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Staff. The Supplier

assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Authority.

7. CHARGES

- 7.1 The charges and the payment schedule for the IT Goods and Services are set out in Schedule 2 and shall not increase during the Contract Period unless agreed by both parties.
- 7.2 In consideration of the Supplier's provision of the IT Goods and Services as set out in the Order and in accordance with the terms and conditions of this Contract, the Authority shall pay the Charges to the Supplier.
- 7.3 Without prejudice to this clause 7 the Authority's terms of payment shall be 30 days from the date a valid invoice is received by the Authority quoting the Authority's appropriate purchase order number. Where Value Added Tax (VAT) is payable a VAT invoice is required. The Supplier shall accept payment electronically via BACS.
- 7.4 Charges shall be inclusive of all expenses and the Supplier shall be responsible for all costs and expenses incurred in providing the Services
- 7.5 The Charges are exclusive of VAT. The Authority shall pay the VAT on the Charges at the rate and in the manner prescribed by law from time to time.
- 7.6 The Authority may withhold payment against any invoice not submitted in accordance with this Contract and will immediately notify the Supplier in writing of its reason for so doing. If the invoice is disputed in part only, the Supplier shall issue a credit note in respect of the original invoice and issue an invoice for the part not in dispute. On receipt of such an invoice the Authority shall pay that part of the original invoice which it accepts, whilst any query concerning a disputed sum is resolved.
- 7.7 The Contract price shall be agreed in sterling with the proviso that any changes to the national currency during the period of this Contract or introduction of dual currency shall only be applied to this Contract by way of mutual agreement between the Authority and the Supplier.
- 7.8 Any legislative requirement to account for (or to prepare for such accounting) the Goods or Services in Euro, instead of and/or in addition to sterling, shall be implemented by the Supplier at nil charge to the Authority. The Authority shall provide all reasonable assistance to facilitate such changes.
- 7.9 In relation to Service credits:
 - (a) the Supplier shall, perform the Services in accordance with the Service Levels contained in Schedule 5 and;

- (b) at the end of each Quarter, the Supplier shall provide the Authority with a report setting out the Supplier's performance against the Service Levels in the immediate preceding quarter year (**Preceding Quarter**) and, where the Supplier has failed to attain any Service Level, the Supplier shall credit the Authority with a percentage of the Charges levied in respect of the Preceding Quarter, such percentage to be calculated in the manner set out in Schedule 9. The Authority's right to such credits shall be in addition to, and not in substitution for, any other rights arising from the Supplier's failure to provide the Services in accordance with the terms of this agreement.
- (c) Total value of Service Credits will be limited to 30% of the following year's annual fee. The Supplier should note that if this 30% limit is reached over the term of the Agreement, it will be cause for termination.
- (d) Any service credit values will be credited to the next year's Annual Fee.
- (e) The supplier has confirmed that it has modelled service credits into account in setting the level of charges.

8. **CONTRACT MANAGEMENT**

- 8.1 For the purpose of Implementation and subsequent New Releases each party shall appoint a Project Manager who shall;
 - (a) provide professional and prompt liaison with the other party; and
 - (b) have the necessary expertise and knowledge to obtain the necessary consents to commit their relevant party
- 8.2 The Project Managers shall have regular progress updates (by phone, email or in person) at least once every week until Acceptance and thereafter at least once a month. The Authority shall provide minutes of these updates to the Supplier which shall be deemed to be an accurate record of such updates if the Supplier raises no objection within seven days of receipt.

9. **NON-SOLICITATION**

Neither party shall, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of the other party who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with this agreement to leave the employment of that other party.

10. RISK AND TITLE

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Authority shall remain with the party that holds title to the Software or Documentation and the Supplier warrants and indemnifies the Authority to the extent that it is entitled to licence the Software or documentation to the authority.

11. CONFIDENTIALITY

11.1 The definition in this clause applies in this agreement.

Confidential Information: without limitation all information, whether technical or commercial (including but not limited to all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

11.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

11.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

11.4 The obligations set out in this clause 11 shall not apply to Confidential Information that the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this clause 11; or
- (b) was in the possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement.

11.5 The obligations of confidentiality in this clause 11 shall not be affected by the expiry or termination of this agreement.

12. DATA PROTECTION, SECURITY AND INTEGRITY

12.1 The following definitions apply:

- (a) the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act.
- (b) data includes Personal Data.
- (c) **Authority Personal Data** and **Supplier Personal Data** mean any Personal Data provided by or on behalf of the Authority or the Supplier, respectively.

12.2 The Supplier shall:

- (a) only carry out processing of any Authority Personal Data on the Authority's instructions;
- (b) implement appropriate technical and organisational measures to protect any Authority Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
- (c) only transfer Authority Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject after written authorisation by the Authority which may be granted subject to such conditions as the Authority deems necessary.

12.3 If the Supplier is a co-controller of the Authority Personal Data:

- (a) Clause 12.2 shall not apply;
- (b) the parties' shall maintain joint responsibility for compliance with the data protection principles for the purposes of this agreement,
- (c) each party shall nevertheless remain liable under applicable Data Protection Law to comply with all of the data protection principles; and
- (d) it shall comply with such further obligations as the Authority reasonably requires.

12.4 For the purpose of this agreement, the Supplier shall be deemed to be a co-controller (with the Authority) of the Authority Personal Data if so determined

by a court or a data protection supervisory authority asserting jurisdiction, in either case, or a qualified counsel appointed by the Authority.

12.5 The Supplier shall:

- (a) not subcontract any processing of the Authority Personal Data without the prior written authorisation of the Authority;
- (b) ensure that access to the Authority Personal Data is limited to those employees or authorised subcontractors who need access to the Authority Personal Data to meet the Supplier's obligations under this agreement and that all employees and authorised subcontractors are informed of the confidential nature of the Authority Personal Data;
- (c) comply with its obligations under any applicable Data Protection Law, and shall not, by act or omission, put the Authority in breach of, or jeopardise any registration under, any such Data Protection Law;
- (d) promptly and fully notify the Authority in writing of any notices in connection with the processing of any Authority Personal Data, including subject access requests, and provide such information and assistance as the Authority may reasonably require;
- (e) promptly and fully notify the Authority in writing if any Authority Personal Data has been disclosed in breach of clause 12 and take every step to enable the Authority to comply with the Security Breach Notification Procedures.
- (f) indemnify the Authority against any loss or damage suffered by the Authority in relation to any breach by the Supplier of its obligations under this clause 12 and
- (g) if requested, submit to a data security audit before any Services commence, once during any Contract Year and if any regulator of the Authority requests or requires an audit of the Authority and/or any of its service providers.

12.6 The Supplier warrants that all relevant data subjects have given their informed consent for the Authority to:

- (a) disclose any Supplier Personal Data in response to any subject access request relating to this agreement;
- (b) process the Supplier Personal Data for the purposes of assessing the suitability of all actual or proposed Support Staff for the provision of the Services and general human resource management; and
- (c) retain the Supplier Personal Data for as long as is necessary for such purposes, regardless of whether or not they are subsequently engaged.

12.7 The Supplier shall:

- (a) take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data;
- (b) make a backup copy of such data and record the copy on media from which the data can be reloaded if there is any corruption or loss of the data; and
- (c) in such event and if attributable to any default by the Supplier or any of its Affiliates, promptly restore the data at its own expense or, at the Authority's option, promptly reimburse the Authority for any reasonable expenses it incurs in having the data restored by a third party.

12.8 The Supplier shall not unreasonably hold data and where the Supplier has obtained a copy of data (either complete set or subset thereof) for the investigation of a specific software problem, the Supplier shall dispose of such data (and produce a certificate to this effect) once the software problem has been successfully resolved.

12.9 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any data.

13. EXPORT

13.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

13.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

14. THE SUPPLIER'S WARRANTIES, INDEMNITIES AND UNDERTAKINGS

14.1 The Supplier acknowledges that the Authority has entered into this agreement in reliance on the Supplier's expertise in selecting and supplying goods and supplying services fit to meet the Authority's business requirements.

In respect of the Software Licence

14.2 The Supplier warrants that:

- (a) it has the right to enter into this licence and to grant to the Authority a licence or sub-licence to use the Software as contemplated by this licence;
- (b) the Software will conform in all material respects to the Specification and be free from defects from delivery of the Software to the point of Going Live. If any defects are detected prior to Going Live these will be rectified free of charge in accordance with this Agreement.
- (c) the Software will be free from viruses and other malicious code;
- (d) the media on which the Software is delivered under this licence will be free from defects;
- (e) use of any Open Source Software or any Libraries or code licensed from time to time under the General Public license (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or any thing similar in, or in the development of the Software is declared in writing.

14.3 If prior to Going Live or as soon as reasonably practicable thereafter, the Authority notifies the Supplier of any defect or fault in the Software in consequences of which it fails to conform to any of the Warranties in clause 14.2; the Supplier shall at the Suppliers Option, promptly repair or replace the Software.

14.4 After Going Live on receipt of such notice the Supplier shall respond and resolve the relevant defect or fault within the timescales specified in, and devoting such resources as are required under the Maintenance Agreement (if any) in accordance with the relevant priority classification, as if such defect or fault were within the scope of the obligations concerning services in the Maintenance Agreement.

14.5 The warranties in this clause 14 shall apply to any Modification acquired by the Authority during the course of this licence and continue throughout to the date this licence terminates and without prejudice to references to the date on which such Modification was acquired.

In respect of the Maintenance

- 14.6 The Supplier represents and warrants to the Authority that:
- (a) the Services will be performed:
 - (i) in such a way as not to cause any fault or malfunction in the Supported Software (or any related goods and services or software or system of the Authority);
 - (ii) in such a way as not to cause any interruption to the business processes of the Authority (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner);
 - (iii) in accordance with all applicable laws and regulations; and
 - (iv) with all reasonable skill and care;
 - (b) the possession or use of the Deliverables will not infringe the Intellectual Property Rights of any third party;
 - (c) it shall not introduce any viruses onto the Authority's systems while performing the Services;
 - (d) any Modification provided under this agreement will be of satisfactory quality and conform substantially to specification;
 - (e) at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Services; and
 - (f) the Supplier has adequate resources to meet its obligations under this agreement in a timely and reliable manner.
- 14.7 If the Supplier receives written notice from the Authority of any breach by the Supplier of the representation and warranties contained in clause 14.2, the Supplier shall, at its own expense, remedy that breach within 30 days following receipt of such notice, failing which the Authority may pursue such rights and remedies as are available to it.
- 14.8 The Supplier undertakes to defend the Authority from and against any claim or action that the use or possession of any of the Deliverables or any part of them infringes the Intellectual Property Rights of a third party (**IPR Claim**), and shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with that IPR Claim.
- 14.9 For any Deliverables (not being the Software) provided by the Supplier, the Supplier warrants that it owns or possesses (or at the time of performance will own or possess) all necessary licences or rights required by the Supplier in

order to perform its obligations under this agreement and that such licences and rights will extend to all enhancements, improvements or upgrades to such programs or data. The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim that it does not own or possess such licences and rights.

- 14.10 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with the Supplier's breach of this agreement or any wilful or negligent act or omission of the Supplier, its officers, employees, contractors or agents, including all such liabilities, costs, expenses, damages and losses arising out of or in connection with any of the causes or types of breach of its contractual obligations under this Agreement.
- 14.11 If any third party makes a Claim, or notifies an intention to make a Claim against the Authority, the Authority shall;
- (a) As soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable details;
 - (b) Not make any admission of liability, agreement or compromise in relation to the Claim without the prior written notice of the Supplier (such consent not to be unreasonably withheld or delayed);
 - (c) Give the Supplier and its professional advisors access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Suppliers expense) for the purpose of assessing the Claim; and
 - (d) Subject to the Supplier providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 14.12 Without prejudice to this clause 14 if an Infringement Claim is made, or in the Suppliers reasonable opinion is likely to be made, against the Authority, the Supplier may, at its sole option and expense:

- (a) Procure for the Authority the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this licence;
- (b) Modify the Software so that it ceases to be infringing;
- (c) Replace the Software with non-infringing software; or
- (d) Repay to the Authority all sums which the Authority has paid to the Supplier under this licence.

Provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in this Agreement and the Authority shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

In respect of the Hosting

14.13 The Supplier warrants that the operation of the Site will be uninterrupted and free of errors and material defects, and that the Site will perform substantially in accordance with the Site Specification for a period of 24 months from Acceptance or until termination of the Agreement. If the Site does not so operate and perform, the Supplier shall, for no additional charge, promptly ensure that the Site complies with the terms of this clause 14.13.

15. LIMITATION OF LIABILITY

- 15.1 Nothing in this Agreement shall operate to exclude or limit either party's liability for;
- (a) Death or personal injury caused by negligence; or
 - (b) Fraud; or
 - (c) Any liability which cannot be excluded or limited by statute or applicable law.

16. INSURANCE

- 16.1 The Supplier warrants that it has suitable Employers Liability Insurance and will provide a copy of its certificate of insurance to the Authority on request.
- 16.2 The Supplier shall, during the term of this Agreement and for seven years thereafter and at its own cost:

- (a) effect and maintain in force with insurers the following insurance policies for the payment of a sum up to the amount stated for any claim and in accordance with good industry practice:
 - (i) public liability insurance policy: £5,000,000 million;
 - (ii) professional indemnity insurance: £1,000,000 million;
- (b) provide evidence of such insurance to the Authority on request;
- (c) administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for the Authority and its Affiliates set out in this agreement;
- (d) do nothing to invalidate any such insurance policy or to prejudice the entitlement of the Authority or any of its Affiliates under this agreement;
- (e) procure that the terms of such policy shall not be altered in such a way as to diminish the benefit to the Authority or any of its Affiliates of the policies as provided at the date of this agreement.

17. ASSIGNMENT AND SUBCONTRACTING

- 17.1 The Supplier shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).
- 17.2 The Authority may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Supplier.
- 17.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.4 Notwithstanding clause 11, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 17.4 shall be made until notice of the identity of the proposed assignee has been given to the other party and a suitable non-disclosure agreement has been signed.
- 17.5 In relation to assignment and sub-licensing:
 - (a) the Authority shall not grant sub-licences except as expressly permitted under clause 14.2(b).

- (b) the Authority shall be permitted to assign or novate the benefit and burden of this licence as a whole to any company which at the time in question is an Affiliate of the Authority or to any legal entity which succeeds to all or substantially all of the Authority's assets and business, subject to that assignee or new company first undertaking in writing to the Supplier that it will henceforth perform all the obligations of the Authority under this licence. All references in this licence to the Authority shall be construed as including any such company. The Supplier shall continue to comply with the provisions of this licence after any such assignment or novation.
- (c) Subject to clause 117.5(b), the Authority shall not:
 - (i) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
 - (ii) allow the Software to become the subject of any charge, lien or encumbrance; and
 - (iii) deal in any other manner with any or all of its rights and obligations under this agreement,without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

18. DURATION

- 18.1 Supply of the Services by the Supplier to the Authority shall commence on the date of this agreement and, subject to termination in accordance with the provisions of this agreement, shall continue for a fixed term of two years (**Initial Term**).
- 18.2 After expiry of the fixed term, the supply of the Services shall (subject to any such termination) continue under this agreement from year to year until terminated by the Supplier on 180 days prior written notice or the Authority on 90 days written notice to the other.

19. AUDIT

The Authority has the right to audit the Supplier's compliance with this agreement on giving seven days written notice to the Supplier. At the Authority's option, this audit may cover documents only or may include onsite audit, subject to notifying the Supplier of the identity of any onsite auditors and giving confirmation that any external auditors have entered into appropriate confidentiality agreements.

19.1 For the duration of this agreement, and for a period of seven years from termination or expiry of this agreement, the Supplier shall maintain full and accurate records of:

- (a) all Charges, prices, costs and expenses associated with and invoiced in respect of the Services or any New Version; and
- (b) its performance against Service Levels as referred to in Schedule 5, and

ensure that annual audited accounts are produced and shall, if requested, promptly provide to the Authority copies of such records and accounts and any other financial information reasonably requested by the Authority.

19.2 At the Authority's request and its expense, the Supplier shall grant access to the Authority or its auditors to the premises, records and accounts of the Supplier and its subcontractors, including its and their data processing facilities (where such facilities exist), and to such of its and their supporting documentation and explanations from Support Staff as is reasonable to ascertain compliance with this agreement and the adequacy of the Supplier's financial standing.

19.3 Such access shall be granted during normal business hours and subject to reasonable prior notice from the Authority, except to the extent that such access is required by the Authority's regulators outside of these parameters.

19.4 If, on such examination, the Authority determines that any Charges, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the Authority, the Supplier shall promptly refund to the Authority the amount of such over-charges.

20. TERMINATION

20.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement or part thereof (Software Licence; Software Maintenance; Hosting) with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion of

the Authority that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 20.1(c) to clause 20.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) any warranty given in clause 14 is found to be untrue or misleading.

20.2 The parties acknowledge and agree that any breach of clauses shall constitute a material breach of a term for the purposes of this clause.

- 20.3 Either party may terminate this agreement in accordance with this clause 20.
- 20.4 The Authority may, without prejudice to its other rights or remedies, terminate this agreement immediately by written notice to the Supplier if the Supplier:
- (a) undergoes a change of Control which does not result in Control passing to a company that, immediately before the change in question, was an Affiliate of the Supplier; or
 - (b) sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity.
- 20.5 In relation to termination of the Software Licence the Authority may terminate the Software Licence at any time by giving 90 days' written notice to the Supplier.
- 20.6 In relation to termination of the Hosting the Authority may terminate the Hosting at any time by giving 90 days' written notice to the Supplier.
- 20.7 In relation to termination of the Software Maintenance the Authority may terminate the Software Maintenance at any time by giving 90 days' written notice to the Supplier.
- 20.8 Without prejudice to this clause 20 or to the generality of this Agreement the clauses in respect of Confidentiality, Data Protection, Freedom of Information, Environmental Impact Regulations, Bribery, Corruption and Fraud shall continue in full force and effect for a minimum period of 7 years from the termination of this Agreement or any part of this Agreement thereof.
- 20.9 Upon Termination of this Agreement or any part thereof, the Supplier shall immediately transfer the complete volume of personal data covered by this Agreement to the Authority and thereupon shall immediately delete the data from its own system and data media and shall deliver up a certificate certifying the same has been done.
- 20.10 The Parties agree that the termination of the Agreement or any part thereof at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions under this Agreement as regards the processing of the data transferred.

21. EFFECT OF TERMINATION

- 21.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 21.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement,

- 21.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 21.4 Notwithstanding its obligations in this clause 21 if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 21.5 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
- (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its Information Governance Officer) no later than 21 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 111), provided that the Authority may retain copies of any Supplier Confidential Information incorporated into the Software or to the extent necessary to allow it to make full use of the Software or to receive maintenance or support services from a replacement supplier;
 - (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
- 21.6 On termination of this agreement for any reason, the Supplier shall:
- (a) promptly refund such portion of the Charges as relates to the period after expiry or termination on a pro rata basis;
 - (b) assist the Authority and its Affiliates and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration of the services to the Authority or the replacement supplier. If termination is by the Authority in accordance with clause 20.1, clause 20.3 or clause 20.4, such co-operation and assistance shall be provided at no cost to the Authority. In all other cases, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance;
 - (c) during Normal Working Hours, provide access to the Authority and its Affiliates and any replacement supplier for up to 3 months after

termination of this agreement to such information relating to Confidential matters that remains in the possession or control of the Supplier.

- 21.7 The Authority shall not be liable to the Supplier for redundancy payments and staff termination costs arising from termination or expiry of this agreement.

22. CHANGE CONTROL

Any request to change the scope of this Agreement shall be processed in accordance with the Change Control Procedure set out in Schedule 7.

23. WAIVER

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

24. REMEDIES

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

25. ENTIRE AGREEMENT

- 25.1 This agreement and any documents referred to in it **OR** annexed to it and initialled by the parties and **ANY OTHER NECESSARY REPRESENTATIONS** to include the Supplier's tender constitutes the whole agreement between the parties relating to the subject matter of this agreement.

- 25.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it **OR** annexed to it, it does not rely on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to this agreement or not) other than as expressly set out in this agreement or those documents.

26. PUBLICITY

All media releases, public announcements and public disclosures by the Supplier relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the Authority and approved in writing by the Authority prior to release.

27. SEVERANCE

- 27.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 27.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable..

28. THIRD-PARTY RIGHTS

- 28.1 The Authority and any of its Affiliates may enforce the terms of this agreement subject to and in accordance with this clause 288, this agreement and the Contracts (Rights of Third Parties) Act 1999.
- 28.2 It is agreed that it is intended to confer a benefit on the Authority and its Affiliates by providing the Services to them in accordance with this agreement, provided that the rights of such Affiliates under this agreement shall only be enforceable by the Authority on their behalf. The Authority will owe no duty to them to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 28.3 Except as provided in clause 28.1, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 28.4 The rights of the parties to terminate rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

29. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

30. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party

the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

31. BANKRUPTCY

31.1 If any petition under the Insolvency Act 1986 or any Act amendment the same shall be presented by or against the Supplier or if the Supplier shall become bankrupt or make any composition or arrangement with its creditors or commit any act of bankruptcy or if the Supplier being a company passes any resolution of voluntary winding up or if a provisional liquidator, receiver or manager of the Supplier's business is duly appointed or possession is taken thereof by or on behalf of the shareholders debentures secured by a floating charge the Authority shall be at liberty to determine this agreement forthwith by notice in writing and to employ some other person to perform the same and any additional expense incurred in so doing shall be liquidated damages or may be deducted by the Authority from any monies due or to become due from the Authority to the Supplier.

31.2 On the occurrence of any of the events described in clause 31.1 or if the Supplier shall have committed a material breach of this agreement and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty (30) days of being so required by the Authority in writing or where the Supplier is an individual if they shall die or be adjudged incapable of managing their affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate this agreement by notice to the Supplier with immediate effect. Thereupon without prejudice to any other of the Authority's rights the Authority may themselves complete the provision of the Goods or Services or have them completed by a third party, using for that purpose (making a fair and proper allowance in any payment subsequently made to the Supplier) all materials, plant and Equipment on the premises belonging to the Supplier, and the Authority shall not be liable to make any further payment to the Supplier until the provision of Goods or Services has been completed in accordance with the requirements of the agreement, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Authority (including the Authority's own costs). If the total cost to the Authority exceeds the amount (if any) due to the Supplier the difference shall be paid to the Authority by the Supplier.

31.3 In addition to the Authority's rights of termination under clause 31.2, the Authority shall be entitled to terminate this agreement by giving the Supplier not less than 30 days notice to that effect.

31.4 Termination under the preceding paragraphs shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Authority and shall not affect the continued operation of clause 33 (Prevention of Corruption) and clause 19 (Audit).

32. FREEDOM OF INFORMATION ACT 2000

- 32.1 Any information the Supplier provides to the Authority may be disclosed to anyone making a request under the Freedom of Information Act, 2000 (Fol)
- 32.2 The Fol requires the Authority to confirm whether it holds the information the requestor has asked for, and to provide this information unless an exemption to disclosure applies, including, but not limited to, the exemptions under Section 41 (Information Provided in Confidence) and Section 43 (Commercial Interests). This right is retrospective regardless of the date the information was generated and must be provided within 20 working days. Information held by the Supplier relating to any Contract with the Authority will be subject to the Act in the same way as information held by the Authority.
- 32.3 Even if the information is exempt, the Authority may have to apply a Public Interest Test which operates in favour of disclosure. If the Authority needs to apply this and decide in favour of disclosure, the Authority will make every effort to consult the Supplier first and note their comments or objections.
- 32.4 It is the Supplier's responsibility to make itself aware of the implications of the Fol.
- 32.5 The Supplier should also be aware that in addition to the Fol, there are a number of other statutory provisions that allow members of the public to inspect, amongst other documentation, committee reports and minutes, and the Authority's accounts and supporting documentation including Contracts.
- 32.6 Accordingly, no guarantees or warranties as to the confidentiality of any information that may prejudice or hinder the Authority's ability to comply with its statutory obligations will be given.

33. PREVENTION OF CORRUPTION

- 33.1 The Authority shall be entitled immediately to terminate this agreement and to recover from the Supplier the amount of any loss resulting from such termination if:
- (a) the Supplier shall have offered to give or agreed to give to any person any gift or consideration at any time as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the agreement or any other Contract with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the agreement or any other Contract with the Authority.

- (b) such acts shall have been done by any person employed by the Supplier or acting on their behalf (whether with or without the knowledge of the Supplier)

33.2 In relation to any Contract with the Authority the Supplier or persons employed by it or acting on its behalf shall have committed an offence under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts 1906 to 1916 or will have committed an offence under the Local Government Act 1972 Section 117 if they have given any fee or reward.

33.3 The Supplier when Tendering fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person or before the time specified for the return of Tenders:

- (a) communicated to a person other than the Authority the amount or the approximate amount of its Tender (except where the disclosure in confidence of the appropriate amount of its Tender was essential to obtain insurance premium quotations required for the preparation of its Tender).
- (b) entered into an agreement with any other person whereby that other person would refrain from Tendering or as to the amount of any Tender to be submitted.
- (c) paid or offered to give or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender any act or thing of the sort described above.

33.4 For the purpose of this clause the expression "loss" shall include the reasonable cost to the Authority of the time spent by its officers in terminating the agreement and in making alternative arrangements for the supply of the Goods and Services.

34. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed **OR** the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the other party.

35. DISPUTE RESOLUTION

- 35.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 35 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 35.2 If any disagreement or difference of opinion arises out of this agreement, the Manager and the Account Manager shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter within 14 days of first meeting, then the matter shall promptly be referred by either party to the Information Compliance Officer of the Authority and the [INDIVIDUAL'S POSITION] of the Supplier for immediate resolution.
- 35.3 If, within 14 days of the matter first having been referred to the Information Compliance Officer, no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause 35 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.
- 35.4 This clause 35 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

36. VARIATION AND WAIVER

- 36.1 A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.
- 36.2 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.
- 36.3 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

37. GOVERNING LAW AND JURISDICTION

- 37.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 37.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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

Schedule 1 Tender Specification & Tender Submission

Schedule 2 Pricing

Licence

a) Software Products – Perpetual Licence

- 50% on signature of the Contract;
- 25% on the expiry of the period set out in Acceptance Testing sign-off;
- 25% on implementation of the Software by the Authority in live mode.

OR

b) Software Products – SAAS (Software as a Service)

- 50% of first years' subscription on signature of the Contract;
- 50% of first years' subscription on implementation of the Software by the Authority in live mode.
- Software Subscription Charges shall be paid annually on the anniversary of the system go-live date.
- The schedule in 5 Pricing Submission has been structured to enable pricing to be provided for the Contract term. Thereafter for Subscription Charges any price increases will be CPI or less.

c) Third Party Software

- Full Payment on delivery

d) Hardware Products

- Full Payment on delivery

e) Other Products

- Full Payment on delivery

f) Services

- To be paid as days are taken, with 20% to be retained until the Software is in live mode.

g) Maintenance

- The first year's Charges will be paid from the system go-live date. Maintenance Charges shall be paid annually on the anniversary of the system go-live date.
- The schedule in 5 Pricing Submission has been structured to enable pricing to be provided for the Contract term. Thereafter for

Maintenance any price increases will be CPI or less.

h) Hosting

- The first year's Charges will be paid from the Date that any Torbay site is made available. Hosting Charges shall be paid annually on the anniversary of this date.
- The schedule in 5 Pricing Submission has been structured to enable pricing to be provided for the Contract term. Thereafter for Hosting any price increases will be CPI or less.

Schedule 3 Enhanced Support Service

Part 1. Description

Part 2. Charges (MUST be copied into Schedule 2)

Part 3. Service Levels are defined in Schedule 5.

Schedule 4 Optional Services

Part 1. Description

Part 2. Charges (MUST be copied in to Schedule 2)

Schedule 5 Service Levels

a. Standard Support

- i. Service desk availability for Telephone support – Standard Support Hours, Any email correspondence sent outside of the Standard Support Hours will be treated as if it was received at the commencement of the next working day.
- ii. Resolution times shall be calculated from the first report to the service desk to the time that the incident is deemed to be fixed by the Supplier provided that the Authority can later confirm the incident is closed.
- iii. An incident is closed when the Authority has confirmed in writing that service restoration has been achieved.
- iv. Different incident severity levels have their own corresponding Service level targets as follows:
 - a) Critical (Severity 1) 4 hour resolution (where more than 30% of user base not able to use the system or 30% of the application is not available)
 - b) Important (Severity 2): 8 hours resolution (where up to 30% of users or system is inoperable)
 - c) Minimal (Severity 3): 40 hours (where no more than a few functions or a couple of users are unable to function)
 - d) Minor (Severity 4): On next release (all users are able to function)

b. Hosting

- i. System availability/unavailability: the Authority acknowledges that there will be planned system downtime for maintenance, housekeeping and so on.
- ii. The service level target is defined as 99.5% availability; this excludes planned downtime.

Schedule 6 Acceptance Tests

a. Software

Functionality is acceptable and working as specified in a test environment/pilot. The Authority is able to satisfy itself that the Solution provided is able to deliver the functionality required as defined in 3 Specification by the supplier responses and including any subsequent clarifications made between the supplier and the Authority by whatever means.

b. Hosting

Agreed response times from the server;
Website looks as specified;
Stability of site.

c. Updating Service:

The Authority is able to satisfy itself that the Solution provided is able to deliver the functionality as defined in the modification documentation.

Schedule 7 Change Control Procedures

1. The Supplier and the Authority shall discuss any change to this agreement (**Change**) proposed by either and such discussion shall result in either:
 - i. a written request for a Change by the Authority; or
 - ii. a written recommendation for a Change by the Supplier,or, if neither the Authority nor the Supplier wishes to submit a request or recommendation, the proposal for the Change will not proceed.
2. A Change is permitted where each of requirements (a) to (d) below is satisfied:
 - i. the Change is of the following scope and nature:
 - increase or decrease in modules required; or
 - increase or decrease in users required; or
 - changes in data security requirements; or
 - changes in legislation.
 - ii. the price of the Change is calculated as follows:
 - based on the Supplier's proposal; or
 - by agreement between the two parties.
 - iii. the increase in price does not exceed 50% of the value of the original Contract.
 - iv. the circumstances necessitating the Change are:
 - change in operational requirements; or
 - changes in IT requirements; or
 - changes in legislation.

the Change does not alter the overall nature of the Contract.
3. Where a written request for a Change is received from the Authority, the Supplier shall, unless otherwise agreed, submit a Change control note (**CCN**) to the Authority within the period agreed between them or, if no such period is agreed, within five Business Days from the date of receipt of such request for a Change [, or inform the Authority that the Supplier is not able to comply with such written request for a Change].
4. A written recommendation for a change by the Supplier shall be submitted as a CCN direct to the Authority at the time of such recommendation.

5. Each CCN shall contain:
- a) the title of the Change;
 - b) the originator and the date of the request or recommendation for the Change;
 - c) the reason for the Change;
 - d) the full details of the Change, including any specifications and user facilities;
 - e) the price, if any, of or associated with the Change;
 - f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - g) the impact, if any, of the Change on other aspects of this agreement, including:
 - the Charges;
 - the contractual documentation; and
 - staff resources;
 - h) the date of expiry of validity of the CCN (which shall not be less than 28 working days); and
 - i) provision for signature of the CCN by the Authority and the Supplier.
6. For each CCN submitted, the Authority shall, within the period of validity of the CCN as set out in paragraph 1.h)) of this Schedule 7:
- a) allocate a sequential number to the CCN;
 - b) evaluate the CCN, and as appropriate either:
 - request further information; or
 - approve the CCN; or
 - notify the Supplier of the rejection of the CCN; and
 - c) if approved, arrange for two copies of the approved CCN to be signed for or on behalf of the Authority and the Supplier. The signing of the CCN shall signify acceptance of a Change by both the Authority and the Supplier.
7. Once signed by the Authority and the Supplier in accordance with paragraph 6 of this Schedule 7 the Change shall be immediately effective and the Authority and the Supplier shall perform their respective obligations on the basis of the agreed amendment.

Schedule 8 Site Specification

The Supplier shall update the Site with Materials provided from time to time by the Authority within 7 days of receiving such Materials.

The Supplier shall include only the Materials on the Site agreed with the Authority. The Authority acknowledges that the Supplier has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Supplier may remove content from the Site where it reasonably suspects such content infringes any applicable laws, regulations, or third party right's (such material that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content), provided that the Supplier notifies the Authority immediately if it suspects or becomes aware of any allegation that content on the Site may be Inappropriate Content and gives the Authority a reasonable opportunity to amend it.

The Supplier shall immediately comply with any written request by the Authority to remove any content from the Site or to prevent the Public from gaining access to the Site.

Schedule 9 Service Credits

Incidents

Severity 1 instances: If there are 2 or more outages at Severity 1 that occur in any 3 consecutive months where the resolution times (1 day) are not met then this will equate to a 6% credit. To avoid doubt see the following table:

Month	J	F	M	A	M	J	J	A	S	O	N	D
No. of Incidents outside res. times	1	-	-	1	1	-	-	2	-	-	-	-
Service Credit due	-	-	-	-	6%	6%	-	6%	6%	6%	-	-
Total Service Credit due	-	-	-	-	6%	12%	12%	18%	24%	30%	30%	30%

Severity 2 instances: If there are 4 or more occurrences in any 2 consecutive months where the resolution times (2 days) are not met then this will equate to a 6% credit. To avoid doubt see the following table:

Month	J	F	M	A	M	J	J	A	S	O	N	D
No. of Incidents outside res. times	2	1	2	2	1	3	2	2	2	-	-	-
Service Credit due	-	-	-	6%	-	6%	6%	6%	6%	6%	-	-
Total Service Credit due	-	-	-	6%	6%	12%	18%	24%	30%	30%	30%	30%

If fault was deemed to be a hosting issue then the outage is not to be included in any of the figures above.

If 30% is reached, the Authority can invoke the right to terminate.

Overall volume of occurrences (includes those caused by Hosting downtime):

Severity 1: if there are 6 or more outages, regardless of resolution time in a rolling 12 month period, excluding the first three months of live operation then this invokes our right to termination.

Severity 2: if there are 15 or more outages, regardless of resolution time in a rolling 12 month period, excluding the first three months of live operation then this invokes our right to termination.

Schedule 10 Support Service

Part 1. Description

(For **example only** please replace with your company's own SLA)

[A help desk to provide first-line technical support to users of the Supported Software, more specifically:

- a. to assist the Authority with general enquiries in connection with the Supported Software;
 - b. to assist the Authority in carrying out the Authority's acceptance tests referred to in Schedule 6.
-
- i. Remote diagnosis and, where possible, correction of faults using the software management software, more specifically to correct all errors, bugs and failures of the Software to comply with any warranty or term of the agreement (as if such warranty or term continued beyond its expiry date), deliver the resulting Maintenance Release to the Authority, install it on the Authority's equipment and hand it over to the Authority for testing.
 - ii. Issuing Modifications of the Software following changes in legislation, or regulatory requirements.
 - iii. If required by the Authority, provide its staff, at charges to be agreed, with training in the use of any Modification.

Part 2. Charges

All Charges **MUST** also be shown in Schedule 2

Part 3. Service Levels are defined in Schedule 5.

Schedule 11 Security Requirements

When accessing the Authority's system remotely for configuration changes and technical support, the Supplier must adhere to the following rules:

- The Authority insists on all remote access for support and maintenance being by prior arrangement with nominated Authority employees.
- Authority contacts will provide a one-time pass code for each session. Access is achieved via a suitable remote client (e.g. RDP, SSH) hosted by a public terminal server.
- Data / file transfer must be by prior agreement with Authority contact.
- The Authority requires assurance that all Supplier's technicians requiring Remote Desktop sessions use managed devices (where the configuration is controlled by the Supplier) when connecting to the Authority and the Supplier needs to register the external IP address(s) with our firewall in order to provide remote access.
- Any non-Authority device connecting to the Authority's network must be running up-to-date anti-virus and anti-spyware software and have an active application firewall.

NOTIFYING THE INFORMATION GOVERNANCE FUNCTION OF DATA SECURITY BREACH

When a breach is discovered, the Information Governance Function (IG) should be notified as soon as possible copying in the Manager where appropriate:

Email: Informationgovernance@torbay.gov.uk

Tel: 01803 201201)

Mail: Information Governance, Torbay Council, Town Hall, Castle Circus, Torquay TQ1 3DR

Initial notification of IG can be verbal, but must always be followed with a written report of the data security breach. A breach must be notified to the IG lead

Always ensure that as much information has been gathered prior to notifying IG, so that informed decisions can be made in a timely manner. If there are gaps in the information being presented, indicate what these are.

IG will ask for basic details as a matter of course, when first notified of the breach, not only to establish the situation, but also to facilitate damage limitation and progress any remedial actions.

INFORMATION GOVERNANCE INVESTIGATION OF DATA SECURITY BREACH

From the details supplied, the IGL will decide on the form of the investigation; identify any other officers who need to be involved; and establish immediate actions to contain the breach

IG will maintain a log of all reported incidents to enable a central register to be maintained

SERVICE AREA INVESTIGATION

If you are carrying out/ have carried out an investigation into the data security breach ensure that IG is fully informed of the details of this and of the outcome of the investigation

THIRD PARTY INVESTIGATION

If the breach involves a third party or is the responsibility of a third party, and they are carrying out/ have carried out an investigation, ensure that IG is fully informed of the details of this and of the details of the outcome of the investigation

INFORMATION GOVERNANCE REPORTING BACK

The IGL will compile a report, and - where applicable - an action plan following any breach reported to IG

This will be circulated to the Executive Head of the relevant area, as well as the notifying officer in the first instance. It may also be circulated to the Executive Head, Information Services; the relevant Commissioner and the Chief Executive. Depending on the severity of the breach and the need for ongoing action to minimise future risks, the report and action plan may also be taken to the Audit Committee

All reports and any attendant action plans will re-evaluate after a six month period and any further necessary action initiated

Schedule 12 Hosting Services

Part 1. Description

Full details to be provided by the Supplier but must include:

- i) “Back-Ups”: How often and for what period of time are “Back-ups” retained? How would the Authority access the Back-ups? (Minimum to be 14 daily Back-ups; 5 weekly Back-Ups and; 12 monthly Backups to be retained; All charges to be identified in Schedule 2).
- ii) System Restore: The ability to restore up to the point at which the system failed.
- iii) Data access: How the Authority attains provision for accessing data by interface or regular copies being made along with frequency of copies.
- iv) Environments: The Authority requires at least 2 environments – LIVE and TEST/TRAINING. Separate environments can be provided for TEST and TRAINING. The non-production environments are to be refreshed on a minimum of a monthly basis and pre-arranged with the Authority.
- v) Integration with other systems: How the system will integrate with other systems that may be Hosted. Details to include landing areas for data transfer, messaging, cover if either system goes down, message queuing in order to be re-started seamlessly, etc.
- vi) Applying Patches and or upgrades to base operating systems, third party components as well as business application software – will need to cover frequency.
- vii) Reaction to information on potential security breaches.
- viii) The Authority must be supplied with all of its data (in a format to be specified) at the end of the Contract Period.

Part 2. Charges

All Charges **MUST** also be shown in Schedule 2

Part 3. Service Levels are defined in Schedule 5.

Schedule 13 Project Plan

To be provided by the Supplier post contract award once agreed by the Authority

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF Director
SUPPLIER]

Executed **as a deed** by: The Council of the Borough of Torbay

The Common Seal of the)
Council of the Borough)
Of Torbay was hereunto)
Affixed in the presence)
Of:

.....

Proper Officer and Authorised Signatory