1. AGREEMENT

This is an Agreement made this day of between:

**WARRINGTON BOROUGH COUNCIL**, Town Hall, Sankey Street, Warrington, WA1 1UH (the “Council”)

And

of (Registered Company Number:00000000) (the “Provider”); each one a “Party” and together the “Parties”.

1. **Recitals**
2. On [dd/mm/yyyy] the Council issued an invitation to tender (the “Invitation-to-Tender”) for the provision of Remote Backup Service for Schools.
3. In response to the Invitation-to-Tender, the Provider submitted a tender to the Council on [dd/mm/yyyy] (as set out in Annex 1 (Tender) to Schedule 2 (Service Specification)) through which it represented to the Council that it is capable of delivering the Service in accordance with the Council’s requirements as set out in the Invitation-to-Tender and, in particular, the Provider made representations to the Council in the Tender in relation to its competence, professionalism and ability to provide the Service in an efficient and cost-effective manner.
4. On the basis of the Tender, the Council selected the Provider to enter into an agreement to provide the Service to the Council’s schools ICT customers (the “Indirect Customer”) in accordance with this Agreement.
5. This Agreement entitles the Council to place Purchase Orders for the provision of Remote Backup Service for Schools under the terms of this Agreement as set out here.
6. ARTICLES OF AGREEMENT

The Council wishes to have provided the Service as set out in this Agreement.

And

The Provider is willing to provide the Service in accordance with the provisions of this Agreement.

1. NOW IT IS AGREED
2. That this Agreement constitutes the entire agreement between the Council and the Provider relating to the subject matter of the Agreement. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
3. The Provider shall provide the Service in accordance with the terms of this Agreement for the Contract Period.
4. So long as the Provider provides the Service in accordance with this Agreement and to the satisfaction of the Council, the Council shall make payments to the Provider as provided in the Agreement.
5. COMMENCEMENT DATE OF AGREEMENT 01 March 2017
6. EXPIRY DATE OF AGREEMENT 31 March 2018

IN WITNESS WHEREOF the parties have executed this Agreement as the day and year first before written

Executed and delivered

for and on behalf of Warrington Borough Council by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Signatory

Executed and delivered

by 2 Directors

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FORM OF CONTRACT**

This Agreement is made up of these Articles of Agreement and the following scheduled documents:

SCHEDULE 1: CONTRACT CONDITIONS

SCHEDULE 2: SERVICE SPECIFICATION

SCHEDULE 3: PRICING

SCHEDULE 4: SERVICE SUPPLY

SCHEDULE 5: SECURITY AND THE PROTECTION OF INFORMATION

INDEX TO CONTRACT CONDITIONS

1. [Definitions](#Definitions)
2. [Contract Period](#ContractPeriod)
3. Authorised Officer
4. Designated Manager
5. [Contract Standard](#ContractStandard)
6. Monitoring, Access and Information
7. [Data](#Confidentiality) Protection
8. Intellectual Property Rights
9. Health and Safety
10. Human Rights
11. [Staff Recruitment Training and Supervision](#Staff)
12. [Employees](#Employees)
13. Sub-Contracting and Assignment of Service
14. [Prevention of Bribery](#Bribery)
15. [Insurance](#Insurance)
16. [Pricing](#Pricing)
17. Payment
18. Variation
19. [Corrective Action](#Corrective)
20. [Termination](#Termination)
21. [Dispute Resolution](#DisputeRes)
22. Complaints
23. Indemnity and Liability
24. [Freedom of Information Act 2000](#FOI)
25. Business Continuity
26. [Local Government Ombudsman](#LGOmbudsman)
27. TUPE
28. [Waiver](#Waiver)
29. Notices
30. Rights of Third Parties
31. Severability
32. [Force Majeure](#ForceMaj)
33. The Governing Law and Jurisdiction
34. Headings
35. Transparency Code
36. Blacklisting
37. [Whistleblowing](#Whisteblowing)
38. Equal Opportunities
39. Modern Slavery

Schedule 1: CONTRACT CONDITIONS

If there are any inconsistencies between the documents forming the Agreement then these Contract Conditions shall prevail.

1. DEFINITIONS
   1. In the Conditions and in the Articles of Agreement the following expressions shall have the following meaning:

|  |  |
| --- | --- |
| “Acceptance Certificate” | means the certificate materially in the form of the document contained in Annex 2 of Schedule 3 (Pricing) granted by the Council when the Provider has achieved a Milestone; |
| “Acceptance Criteria” | means the criteria, as validated and approved by the Council and agreed with the Provider, to determine whether the Service delivered by the Provider has met the requirements in accordance with Schedule 2 (Service Specification); |
| “Achieve” | means in respect of a Milestone, the issue of an Acceptance Certificate (Annex 2 of Schedule 3 Pricing) in respect of that Milestone, and Achieved and Achievement shall be construed accordingly; |
| “Agreement” | means this agreement consisting of the Clauses together with the Schedules and any appendices and annexes to the same; |
| “Authorised Officer” | means the person described in Clause 3; |
| “Bribery Act” | meansthe Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| “Charges” | means the charges for the provision of the Service set out in and derived in accordance with Schedule 3 (Pricing); |
| “Commencement and Expiry Date” | means the dates set out in the Articles of Agreement; |
| “Confidential Information” | means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Provider, 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; |
| “Contract Period” | means the period specified in Clause 2; |
| “Contract Standard” | means the standard specified in Clause 5; |
| “COTS” | means commercially available off the shelf software, being software that is commonly used and is provided in a standard form and on standard licence terms which are not typically negotiated by the licensor; |
| “Council Data” | means:  (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:  (i) are supplied to the Provider by or on behalf of the Council (and/or Indirect Customer); and/or  (ii) the Provider is required to generate, process, store or transmit pursuant to this Agreement; and/or  (b) any Personal Data for which the Council (and/or Indirect Customer) is the Data Controller; |
| “Council Property” | means the hardware and software which is either owned or licensed to the Council; |
| “Council System” | means the Council’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by Council or the Provider in connection with this Agreement which is owned by or licensed to the Council by a third party and which interfaces with the Provider System or which is necessary for the Council to receive the Service; |
| “Council’s ICT Technical Environment” | means the Council’s ICT Technical Environment (Appendix B to Schedule 4 (Service Supply)) in operation at the Commencement Date and updated from time to time; |
| “Council’s Premises” | means the premises which are to be made available for use by the Provider for the provision of the Service on the terms set out in this Agreement; |
| “Defect” | means any error or failure of code within the Software which causes a malfunction or to produce unintelligible or incorrect results; |
| “Delay” | means:  (a) a delay in the Achievement of a Milestone by its Milestone Date; or  (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan; |
| “Deliverable” | means a tangible work product, outcome, or related material, or item, feature or service associated with the provision of the Service or a change in the provision of the Service which is required to be delivered by the Provider at a Milestone Date or at any other stage during the performance of this Agreement; |
| “Designated Manager” | means the person described in Clause 4; |
| “Employee” | mean employees of the Council including trainees; |
| “Exit Plan” | means the plan produced and updated by the Provider in accordance with Schedule 4 (Service Supply); |
| “Fault” | in relation to Software means:  (a) a failure by the Software to operate in accordance with the specification and documentation applying to it; or  (b) any other defect in the Software which has a materially adverse effect on the use or operation of the Software; |
| “Good Industry Practice” | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; |
| “ICT” | means information and communications technology; |
| “Implementation Plan” | The implementation plan referred to in the Provider’s Tender submission (Annex 1 to Schedule 2 (Service Specification)) and Appendix A to Schedule 4 (Service Supply) as updated and agreed between the Parties before the commencement of implementation and installation services in accordance with Schedule 4 (Service Supply); |
| “Incident” | means as defined and specified in Annex 3 (Standard Service Levels) of Schedule 2 (Service Specification); |
| “Indirect Customer System” | means the Indirect Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Indirect Customer or the Provider in connection with the Service which is owned by or licensed to the Indirect Customer by a third party and which interfaces with the Provider System or which is necessary for the Indirect Customer to receive the Service; |
| “Indirect Customer” | means the Council’s schools ICT customer who do not contract directly for the Service with the Provider but who receive the Service specified in a Purchase Order placed by the Council in pursuant to this Agreement and “Indirect Customers” shall be construed accordingly; |
| “Intellectual Property Rights” | means registered designs, trademarks and service marks (whether registered or otherwise), copyright, database rights, design rights and other intellectual property rights, including equivalents in other jurisdictions, that grant similar rights as the foregoing, and including those subsisting in inventions, drawings, performances, software, semiconductor topographies, improvements, discussions, business names, goodwill and the style of presentation of goods or services, and in applications for the protection thereof, throughout the world; |
| “Licensed Software” | means all and any Software licensed by or through the Provider, its Sub-Contractors or any third party to the Council for the purposes of providing the Service, including any Provider Software and/or Third Party Software; |
| “Malicious Software” | means any software program or code intended to destroy, interfere with, corrupt, or enable unauthorised access to, or cause other 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; |
| “Milestone Date” | means the date set against the relevant Milestone in the Implementation Plan; |
| “Milestone” | means an event or task described in the Implementation Plan; |
| “New Release” | means an item produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining the original designated purpose of that item; |
| “Other Provider” | means any supplier to the Council (other than the Provider) which is notified to Provider the from time to time and/or of which the Provider should have been aware; |
| “Payment Profile” | means the terms set out under the heading “Payment Profile” in Schedule 3 (Pricing); |
| “Performance Monitoring Report” | means the quarterly report prepared by the Provider in accordance with Schedule 4 (Service Supply); |
| “Performance Review Meeting” | means the regular meeting between the Provider and the Council to manage and review the Provider's performance under the Agreement, as further described in Schedule 4 (Service Supply); |
| “Pricing” | means the prices and Charges offered for the supply of the Service under this Agreement as set out in and derived in accordance Schedule 3 (Pricing) and Clause 16 (Pricing); |
| “Problem” | means as defined and specified in Annex 3 (Standard Service Levels) of Schedule 2 (Service Specification); |
| “Prohibited Act” | means the following constitute Prohibited Acts:   1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: 2. induce that person to perform improperly a relevant function or activity; or 3. reward that person for improper performance of a relevant function or activity; 4. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; 5. committing any offence: 6. under the Bribery Act; 7. under legislation creating offences concerning fraudulent acts; 8. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or 9. defrauding, attempting to defraud or conspiring to defraud the Council; |
| “Provider Equipment” | means Provider’s hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Provider (but not hired, leased or loaned from the Council and/or an Indirect Customer) for the provision of the Service; |
| “Provider Party” | means the Provider's agents and contractors, including each Sub-Contractor; |
| **“**Provider Personnel” | meansall employees, agents, consultants and contractors of the Provider or of any Sub-Contractor; |
| “Provider Software” | means the Software which is proprietary to the Provider, including Software which is or will be used by the Provider for the purpose of providing the Service; |
| “Provider System” | means the information and communications technology system used by the Provider in supplying the Service, including the Provider Software, the Provider Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Council System and Indirect Customer System); |
| “PSN Standards” | means the technical, security and other standards applied to the PSN as specified by the government body which will administer the PSN from time to time; |
| “PSN” | means the public services network for integrated communications between public sector bodies and external third parties; |
| “Purchase Order” | means the order form or document used by the Council to order the Service from the Provider and which specifies that these conditions apply to it; |
| “Review Date” | means the anniversary of the Commencement Date or the first working day thereafter; |
| “Security Breach” | means the following constitutes a breach of security:  (a) unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms;  (b) unauthorised access to network elements, buildings, and tools (including equipment) used by the Provider and any Sub-contractors in the provision of the Goods and/or Services;  (c) use of the Service by any third party in order to gain unauthorised access to any computer resource or Council Data;  (d) loss of availability of Confidential Information due to any failure or compromise of the Service;  (e) loss and/or theft of Council Property used by the Provider and any Sub-contractors in the provision of the Service;  (f) loss and/or theft of Provider Equipment storing Confidential Information;  (g) unauthorised access to, use or disclosure of, or interference with Confidential Information by any person or organisation;  (h) installation and/or execution of unauthorised and/or Malicious Software;  (i) disruption to the Service as a result of any virus, denial of service, hacking attempt or other malicious action or unauthorised access by any third party;  (j) unauthorised altering of operating system(s) and security settings of the Council’s ICT Technical Environment and/or Indirect Customer System used by the Provider and any Sub-contractors in the provision of the Service;  (k) compromise and/or unauthorised disclosure of passwords to equipment and systems storing Confidential Information and/or Council Data used by the Provider and any Sub-contractors in the provision of the Service; |
| “Security Policy” | means the Council’s ICT third party information security policy as updated from time to time which is set out in Appendix A of Schedule 5 (Security and the Protection of Information); |
| “Service Credit Cap” | means as defined and specified in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification); |
| “Service Credit” | means any service credits specified Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification) being payable by the Provider to the Council in respect of any failure by the Provider to meet one or more Service Levels; |
| “Service Level Failure” | means as defined and specified in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification); |
| “Service Level Target” | means as defined and specified in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification) against the relevant Service Level; |
| “Service Level Threshold” | means as defined and specified in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification); |
| “Service Levels” | means any service levels applied to the provision of the Service as specified in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification); |
| “Service” | means the provision of a remote backup service for schools in accordance with the requirements of this Agreement and covered by Purchase Orders issued pursuant to this Agreement; |
| “Software” | means Provider Software, Third Party Software, Specially Written Software, or any of them, listed as such in Schedule 2 (Service Specification) but excluding any internal code; |
| “Specially Written Software” | means any software (including database software, interfaces, linking instructions, test scripts, compilation instructions and test instructions) created by the Provider (or by a Sub-Contractor or other third party on behalf of the Provider) specifically for the purposes of this Agreement, including any modifications or enhancements to Provider Software or Third Party Software created specifically for the purposes of this Agreement; |
| “Specification of Requirements” | means the Council’s specification of requirements for the Service as described in Schedule 2 (Service Requirements); |
| “Staff” | means all persons, including volunteers, involved in the provision of the Service, whether or not the Provider formally employs them; |
| “Standard Licence Terms” | means the licence terms set out in Annex 2 (Standard Licence Terms) to Framework Schedule 2 (Service Requirements); |
| “Standards” | means:   1. any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with; 2. any standards detailed in the specification in Schedule 2 (Service Requirements); 3. any standards specified in the Provider’s Tender (Annex 1 to Schedule 2 (Service Specification)) and agreed between the Parties; 4. any relevant Government codes of practice and guidance applicable from time to time; |
| “Sub-Contract” | means a contract between the Provider and a third party, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement; |
| “Sub-Contractor” | means the third party that enters into a Sub-Contract with the Provider; |
| “Tender” | means the tender submitted by the Provider to the Council on [dd/mm/yyyy] with the Provider’s response to the Council’s Specification of Requirements annexed to Schedule 2 (Service Specification); |
| “Testable Milestone” | means a Milestone as specified in the Payment Profile that shall be subject to testing; |
| “Third Party Software” | means any software which is proprietary to any third party, which is or will be used by the Provider for the purposes of providing the Service); |
| “Transparency Code” | means the Local Government Transparency Code 2014 as issued and updated from time to time; |
| “Update” | means in relation to any Software means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item; |
| “Upgrade” | means any patch, New Release or upgrade of Software, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Provider or a Third Party Software provider (or any affiliate of the Provider or any third party) releases during the Contract Period; |
| “Working Days” | means any day other than a Saturday, Sunday or public holiday in England and Wales. |

* 1. Words imparting the singular also include the plural and vice versa where the context requires.
  2. A reference to any Act of Parliament or any Order, Regulation, Statutory Instrument, Code of Practice, Guidance, British or international standards or the like shall be deemed to include a reference to any amendment or re-enactment of the same.

**Order of Precedence**

* 1. Subject to Clauses 1.5 in the event and to the extent only of a conflict between any of the provisions of this Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:
     1. Schedule 1 (Contract Conditions);
     2. Schedules 2 to 5 inclusive;
     3. Annex 1 (Tender) to Schedule 2 (Service Specification);
     4. Any other document incorporated by express reference as part of the entire Agreement.
  2. Where the Tender contains provisions which are more favourable to the Council in relation to the rest of the Agreement, such provisions of the Tender shall prevail. The Council shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Agreement.

1. CONTRACT PERIOD
   1. This Agreement commences on the Commencement Date and shall continue to be the governing Agreement (subject to variation and termination as provided for in this Agreement) for the Service provided by the Provider until the Expiry Date.
   2. The Council may by giving not less than two (2) months’ written notice prior to the Expiry Date renew the Agreement for further periods of one (1) year, not exceeding three (3) years beyond the Expiry Date.
2. AUTHORISED OFFICER
   1. The Authorised Officer who shall let and supervise the Agreement on behalf of the Council shall be the Director of Corporate Services, Warrington Borough Council, (who may act through designated representatives).
3. DESIGNATED MANAGER
   1. The Provider shall appoint a Designated Manager who shall carry overall responsibility for day to day contract performance on behalf of the Provider and shall hold a position of sufficient seniority to be able to make policy level decisions on behalf of the Provider.
   2. The Provider shall confirm in writing to the Council, the identity, address and telephone numbers of the person appointed as Designated Manager and of any subsequent appointment and of any authorised deputy.
   3. Any notice, information, instruction or other communication given or made to the Designated Manager shall be deemed to have been made to the Provider.
4. CONTRACT STANDARD
   1. The Provider shall at all times comply with all relevant statutory obligations.
   2. The Provider shall operate the Service in a manner, which is consistent with the policies of the Council and shall consult the Council’s Authorised Officer or his representative as to the application of these policies.
   3. The “Contract Standard” means such standard as complies in each and every respect with all relevant provisions of the Agreement and where and to the extent that no criteria are stated in the Agreement the standard is to be to the reasonable satisfaction of the Authorised Officer.
5. MONITORING, ACCESS AND INFORMATION
   1. The Provider shall allow the Authorised Officer reasonable access to any premises under the Provider's control on which the Service is provided for the purposes of monitoring the Contract Standard, including the carrying out of spot checks.
   2. The Provider shall institute, maintain and demonstrate a properly documented system of quality assurance to ensure that the Contract Standard is maintained at all times. This system shall be open to inspection by the Authorised Officer.
   3. The Provider shall co-operate with the Authorised Officer and shall comply with all reasonable requests from the Authorised Officer in monitoring and evaluating the quality value for money and the effectiveness of the Provider's provision of the Service.
   4. The Authorised Officer may from time to time examine the Provider’s financial position in order to assure himself of the ability of the Provider to continue to provide the Service. Such information shall only be used by the Council and its Officers for the purposes set out in this Clause 6 and shall not be used for any purpose relating to the determination of prices for the Service under this Agreement or any other like contract.
   5. This Agreement shall be reviewed by both the Provider and the Council annually or at any other time as agreed between the Parties.
   6. In the event of the Provider being unable to provide the Service or any part of it the Provider shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration of such inability. Nothing in this Clause shall alter the Provider’s obligation to provide the Service.
6. DATA PROTECTION
   1. For the purposes of this Clause 7, Data, Personal Data and Processing shall mean Data, Personal Data and Process/Processing as defined in Section 1 of the Data Protection Act 1998 ("the Act").
   2. The Provider hereby acknowledges that in the performance of its obligations under this Agreement it shall Process Personal Data.
   3. The Provider shall comply with its obligations under the Act and all statutory re-enactments or modifications thereof, any rules, regulations, orders and any codes of practice or any guidelines issued by the Information Commissioner.
   4. All information and Data including Personal Data obtained and used in connection with the Service shall remain the property of the Council and shall be processed for the sole purpose of undertaking the Provider’s obligations under this Agreement and for no other purpose.
   5. The Provider shall on expiration or early determination of this Agreement return all information and Data including Personal Data to the Council within seven days of such expiry or determination.
   6. The Provider shall not copy and/or retain Personal Data in any form upon expiration or early termination of this Agreement except as required by law or under this Agreement.
   7. The Provider shall ensure the secure keeping of all confidential information and Data including Personal Data.
   8. The Provider shall implement and maintain appropriate technical and organisational measures so as to prevent the destruction, damage, loss or alteration of any Data or the unauthorised or unlawful Processing, disclosure and access of any Data as agreed with the Authorised Officer and shall provide to the Authorised Officer such information as the Authorised Officer may require to satisfy himself that the Provider is complying with such obligations including but not limited to a copy of its registration under the Act.
   9. For the avoidance of doubt and without prejudice to the generality of this Clause, where the Provider is a Data Processor as defined by the Act it shall comply with the seventh Data Protection Principle as if it were the Data Controller in respect of the Data concerned and shall only act in relation to such data in accordance with this Agreement or with instructions given by the Council under this Agreement.
   10. If any Data is lost or destroyed, damaged or altered without the consent of the Council other than as a result of the negligence or default of the Council, the Provider shall forthwith at its own expense restore such Data and shall fully and completely indemnify the Council against all losses, costs and expense whatsoever and howsoever arising as a result of such loss, damage, destruction or alteration.
   11. The Provider shall not at any time disclose or part with possession of any information expressed as being confidential, other than in performance of this Agreement, except with the prior written consent of the Council to each specified use.
7. **Intellectual Property Rights**
   1. Save as granted under this Agreement, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights (IPR) of the other Party.
   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 8.1, 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).
   3. Neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.
   4. The Provider shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
   5. The Provider shall at all times during and after the Contract Period, on written demand indemnify the Council against all losses incurred by, or awarded against the Council (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR claim.
   6. If an IPR claim is made, or the Provider anticipates that an IPR claim might be made, the Provider may, at its own expense and sole option, either:
      1. procure for the Council the right to continue using the relevant item which is subject to the IPR claim; or
      2. replace or modify the relevant item with non-infringing substitutes provided that:
         1. the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
         2. the replaced or modified item does not have an adverse effect on any other Service;
         3. there is no additional cost to the Council; and
         4. the terms and conditions of this Agreement shall apply to the replaced or modified Service.
   7. If the Provider elects to procure a licence in accordance with Clause 8.6.2(a) or to modify or replace an item pursuant to Clause 8.6.2(b), but this has not avoided or resolved the IPR claim, then
      1. the Council may terminate this Agreement by written notice with immediate effect; and
      2. without prejudice to the indemnity set out in Clause 8.5 the Provider 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.
8. HEALTH AND SAFETY
   1. The Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974, The Management of Health & Safety at Work Regulations:1999 and of any other Acts, Regulations or Orders or rules of law pertaining to health and safety**.**
   2. The Provider shall comply with its general statement of safety policy, which must include all services. The Provider shall forthwith nominate a person to be responsible for health and safety matters.
   3. The Provider shall ensure that its employees comply with the Council’s general statement of safety policy (which shall be supplied by the Authorised Officer on request) and with the lawful requirements of the Council’s Health & Safety Officer.
9. HUMAN RIGHTS
   1. The Provider acknowledges that in performing its obligations under this Agreement it may be a public authority for the purposes of the Human Rights Act 1998, and that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.
   2. In providing the Service the Provider shall throughout the Contract Period and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Council.
   3. The Provider shall undertake or refrain from undertaking such actions as the Council may request so as to enable the Council to discharge its duty under the Human Rights Act 1998.
10. STAFF RECRUITMENT, TRAINING & SUPERVISION
    1. The Provider shall be responsible for ensuring an appropriate infrastructure to deliver the Service. It shall be responsible for the staffing, management and co-ordination of the Service provided by the Provider, including the recruitment, supervision and training of Staff and volunteers.
    2. Staff recruitment and screening shall be in accordance with UK Government requirements for pre-employment checks as defined at <http://www.cpni.gov.uk/advice/Personnel-security1/Screening/>.
    3. Information on convictions shall be required by way of an application form. The Provider shall not employ any person who discloses any convictions without first obtaining written approval from the Authorised Officer or his/her representative.
11. Employees
    1. The Provider shall employ sufficient persons to ensure that the Service is provided at all times and in all respects to the Contract Standard.
    2. The Provider shall ensure that every person employed in the provision of the Service is at all times properly and sufficiently qualified, competent, skilled, experienced, instructed and supervised as the case may be with regard to the Service; and in particular with regard to the tasks such person has to perform, the Provider shall comply with all relevant provisions of the Agreement, all relevant policies, rules, procedures, standards and statutory requirements.
    3. Should the Provider become aware of any incident, offence, alleged offence or conviction which calls into question an employee’s suitability to perform their duties, then the Provider shall not continue to employ the individual within the Service.
12. SUB-CONTRACTING AND ASSIGNMENT OF THE SERVICE
    1. The Council shall be entitled to assign the benefit of this Agreement to any of its statutory successors and shall give written notice of any assignment to the Provider.
    2. The Provider shall not assign this Agreement or any part of it except with the express written permission of the Council (such permission shall not be unreasonably withheld or delayed) and the reasons for any refusal shall be supplied to the Provider in writing at the time of notification of any refusal.
    3. The Provider shall not sub-contract the Service or any part of it except with the express written permission of the Council (such permission not to be unreasonably withheld or delayed).
    4. The parties agree that upon any assignment there shall occur a reciprocal release of each party’s rights and obligations to the other under this Agreement save for liability in respect of any antecedent breaches.
13. PREVENTION OF BRIBERY
    1. The Provider:
       1. shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
       2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
    2. The Provider shall:
       1. if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
       2. within seven Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this Clause 14 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
    3. The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
    4. If any breach of Clause 14.1 is suspected or known, the Provider must notify the Council immediately.
    5. If the Provider notifies the Council that it suspects or knows that there may be a breach of Clause 14.1, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for five years following the expiry or termination of this Agreement.
    6. The Council may terminate this Agreement by written notice with immediate effect if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches Clause 14.1. In determining whether to exercise the right of termination under this Clause 14.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:
       1. with the authority; or,
       2. with the actual knowledge;
       3. of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or
       4. in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.
    7. Any notice of termination under Clause 14.6 must specify:
       1. the nature of the Prohibited Act;
       2. the identity of the party whom the Council believes has committed the Prohibited Act; and
       3. the date on which this Agreement will terminate.
    8. Despite Clause 20 (Dispute Resolution), any dispute relating to:
       1. the interpretation of Clause 14; or
       2. the amount or value of any gift, consideration or commission,
       3. shall be determined by the Council and its decision shall be final and conclusive.
    9. Any termination under Clause 14.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.
14. INSURANCE
    1. The Provider shall maintain insurance necessary to cover any liability arising under the Agreement as follows:
       1. Employers Liability Insurance - £10,000,000
       2. Public Liability Insurance - £5,000,000
       3. Product Liability Insurance - £1,000,000
       4. Professional Indemnity Insurance - £1,000,000
    2. The limits referred to in Clause 15.1 shall be in respect of any one occurrence of employers liability, any one claim for public liability and any one period of insurance for products liability. The Provider shall similarly cause any sub-contractor to take out and maintain such insurance and shall remain responsible for ensuring that any sub-contractor is fully insured in accordance with these insurance provisions for the duration of the Agreement.
    3. The Provider shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
    4. If the Provider does not maintain the necessary insurances under the Agreement the Council may insure against any risk in respect of the default and may charge the Provider the cost of such insurance together with a reasonable administration charge.
    5. As a minimum the insurances specified in Clause 15.1 shall be maintained for the duration of this Agreement and for so long as any liability may continue after the expiration or earlier termination of the Agreement.
15. PRICING
    1. The Charges payable by the Council for the Service are set out in Schedule 3 (Pricing). The Charges shall be fixed, unless varied in accordance with this Clause 16, and be exclusive of VAT and all other taxes.
    2. In consideration of the Provider carrying out its obligations, including the provision of the Service under this Agreement, the Council shall pay the Charges to the Provider in accordance with the Schedule 3 and the invoicing procedure in Clause 17. For the avoidance of doubt, unless expressly stated otherwise in this Agreement, the Charges set out in Schedule 3 (Pricing) represent the Council’s complete consideration for provision of the Service under this Agreement.
    3. The Council reserves the right to review the Pricing with the Provider a minimum of 12 months after the commencement of this Agreement with a view to reducing the Council’s costs (including the Charges). The review of Pricing shall take into account:
       1. market prices that show a downward trend;
       2. the purchasing power of the Council;
       3. agreed changes in the Service Specification;
       4. significant changes in the pattern of service delivery; and
       5. improvements in Service delivery.
    4. The Provider shall be advised within one month of the Review Date if the Council is to exercise its discretion to review the Pricing.
    5. If on the Review Date the cost of any item to the Provider is varied (by reason of any variation in the cost of labour, materials, fuel, transport or in the rate of any relevant tax or otherwise) the price for such an item payable to the Provider for its supply under this Agreement shall be varied by the same amount as the cost to the Provider has varied, provided that:
       1. any claim by the Provider for a variation in price shall be proved to the satisfaction of the Council by the production of such evidence as the Council shall reasonably require.
       2. any agreement for a variation in price shall be recorded in writing and signed on behalf of the Council, and shall take effect on the date agreed.
       3. a variation in price shall only apply to orders placed after it has taken effect, unless otherwise agreed by the Council.
       4. until a variation in place has been agreed the Provider shall ensure continuity of supply of the Service under this Agreement and shall not delay its delivery.
    6. The Provider shall ensure that the information that provides to the Council in accordance with Clause 16 shall be sufficient for the Council to decide whether the Agreement Pricing or any Charges shall be varied.
16. PAYMENT
    1. Payment of the Charges shall be made by the Council to the Provider 30 days in arrears upon receipt of an invoice from the Provider.
    2. Where the Provider submits an invoice to the Council in accordance with Clause 17.1, the Council will consider and verify that invoice in a timely fashion.
    3. The Council shall pay the Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
    4. Where the Council fails to comply with Clause 17.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 17.2 after a reasonable time has passed.
    5. Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
       1. Provisions having the same effect as Clauses 17.1 to 17.4 of this Agreement; and
       2. a provision requiring the counterparty to that Sub-Contract to include in any Sub- Contract which it awards provisions having the same effect as Clauses 17.1 to 17.4 of this Agreement.
17. VARIATION
    1. These Contract Conditions and the Service specification may not be varied unless a variation, expressed to be such in accordance with this Clause 18, is agreed in writing and signed by both the parties.
18. CORRECTIVE ACTION
    1. If the Provider fails to provide the Service in a manner that complies with the provisions of this Agreement (but not so as to entitle the Council to proceed for termination pursuant to Clause 20) or where the Council fails to comply with the provisions of this Agreement the party not in default will serve upon the party alleged to be in default a notice in writing stating:
       1. the precise manner in which the party is in default;
       2. the action which (in the opinion of the party not in default) the party in default must take to remedy the default; and
       3. a reasonable period (bearing in mind the nature of the default) in which the party in default should take the action referred to in Sub-Clause 19.1.2.
    2. If following the expiry of the time referred to in a notice served pursuant to Clause 19.1 the Provider remains in default in the manner so specified the Council may proceed to terminate the Agreement or in the case of the Council being in default the Provider may terminate the Service.
    3. If in the opinion of the Council the Provider fails satisfactorily to provide the Service to the Contract Standard, then without prejudice to any other right or remedy the Council may have and, at the Authorised Officer’s election, with or without terminating this Agreement the Council may:
       1. itself provide or procure the provision of the relevant part of the Service from a third party until in the Council’s reasonable view the Provider has remedied the breach; and/or
       2. deduct from any sums due or otherwise charge to the Provider the reasonable cost of any Service so provided together with relevant administrative costs; and/or
       3. suspend the allocation of new work to the Provider.
    4. Where the Council remains in default under the terms of this Agreement the Provider shall be entitled to payment from the Council.
19. TERMINATION
    1. The Council may terminate this Agreement for convenience by giving not less than three months’ notice in writing to the Provider.
    2. Subject to any obligation to provide the Service in accordance with the Exit Plan, the Provider's obligation to provide the Service shall end on the date set out in the Council’s termination notice.
    3. The Council may terminate this Agreement forthwith by notice in writing to the Provider if the Provider fails to correct any item on a notice issued in accordance with Clause 19 or fails to correct all items on such list on two or more occasions.
    4. The Council may terminate this Agreement by notice in writing to the Provider without following the procedure set out in Clause 19 if the Provider is in material breach of contract which in the reasonable opinion of the Council has seriously prejudiced the interests of the Council.
    5. The Provider may terminate this Agreement immediately by written notice to the Council if the Council commits a breach of any of its obligations under this Agreement provided that where the breach is capable of remedy written notice has been served on the Council specifying the breach and requiring it to be remedied within a reasonable period and the breach remains un-remedied at the end of such period.
    6. The Council may terminate this Agreement immediately by written notice to the Provider if the Provider shall become bankrupt or have a receiver or liquidator appointed or shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction) or a Court shall make an order to that effect or if the Provider shall enter into any composition or arrangement with its creditors or shall become insolvent.
    7. The Council may terminate this Agreement where the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015.
    8. The Council may terminate this Agreement where:
       1. the Provider had, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure; or
       2. the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
    9. Any termination of this Agreement howsoever caused shall not affect or prejudice any accrued rights or liabilities of either party arising under this Agreement.
20. DISPUTE RESOLUTION
    1. If there is a dispute between the Provider and the Council concerning the interpretation or operation of this Agreement, then either Party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Designated Manager to resolve, negotiating on the basis of good faith.
    2. If after fourteen [14] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 21.1 (above), the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of the relevant Executive Director of the Council, (or a person appointed by him to act on her behalf) and a Senior Manager of the Provider, to resolve, negotiating on the basis of good faith.
    3. If after twenty-one [21] Days (or such longer period as both Parties may agree) of the date of the notice referred to in Clause 21.2 (above), the dispute has not been resolved then the Parties agree to enter into Early Neutral Evaluation in accordance with the guidance issued by the Centre for Effective Dispute Resolution (‘**CEDR**’).
    4. The Parties accept that Early Neutral Evaluation will (unless the Parties agree otherwise) produce a non-binding result that aims to provide an objective and independent assessment of the merits of a matter in dispute.
    5. The Parties agree to pay the fee for Early Neutral Evaluation in equal shares.
    6. At any time before the issue of the Evaluator’s Recommendation the Parties may agree to refer the Dispute to mediation. In that case each of the Parties notifies the Evaluator and CEDR, and the Early Neutral Evaluation is suspended. If the Dispute is settled by mediation, the Early Neutral Evaluation comes to an end and the Parties settle the fees and expenses of the Evaluator and of CEDR. If the Dispute is not settled by mediation, the Early Neutral Evaluation resumes.
    7. If matters are referred to Mediation the Parties will act, in accordance with the CEDR Model Mediation Procedure 2001 (the ‘**Model Procedure’**) or such later edition as may be in force from time to time.
    8. The Council and the Provider shall seek to agree the identity of a Mediator with an appropriate professional background and or expertise. If the Council and the Provider do not agree on the identity of the Mediator then either Party may request CEDR to appoint one.
    9. The Parties shall seek to agree the specific matters in dispute and prepare an agreed document for the Mediator of the matters in dispute.
    10. The procedure in the Model Procedure will be amended to take account of:
        1. any relevant provisions in this Agreement; or
        2. any other agreement which the Council and the Provider may enter into in relation to the conduct of the mediation ("**Mediation Agreement**").
    11. Both Parties must:
        1. use their best endeavours to ensure that the mediation starts within twenty [20] Working Days of service of the notice referred to in Clause 21.3 (above); and
        2. pay the Mediator’s fee in equal shares (unless the Provider can show to the Councils satisfaction that this would cause it serious financial difficulty in which case the Council shall consider whether it should pay the Mediator’s fee in full).
    12. At the conclusion of the Mediation if the Parties have reached an agreement the Mediator will facilitate the drawing up of a settlement agreement which shall be binding on the Parties, but if the dispute has not been settled by Mediation within ten [10] Working Days of the Mediation starting then either Party may commence litigation proceedings (but not before then).
    13. Neither Party shall be precluded by Clause 21.7 (above), from taking such steps in relation to Court proceedings as the Council or the Provider (as the case may be) may deem necessary or desirable to protect their respective positions. This shall include:
        1. issuing or otherwise pursuing proceedings to prevent limitation periods from expiring; and
        2. applying for interim relief.
    14. The use of the dispute resolution procedures set out in this Clause 21, (Dispute Resolution)shall not delay or take precedence over the provisions for termination set out in Clause 19 (Corrective Action) and Clause 20 (Termination).
21. COMPLAINTS
    1. The Provider shall have and implement a written policy and procedural guidance on representations and complaints in accordance with legal requirements.
22. **Indemnity and Liability**
    1. The Provider shall be solely liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever or howsoever arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of, carrying out the Service unless due to any act or neglect of the Council for which it is legally liable for or of any person for whom the Council is responsible.
    2. The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of providing the Service(s) and to the extent that the same is due to any negligence, omission or default of the Provider, or of any person for whom the Provider is responsible.
    3. The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever arising in respect of fraud or fraudulent misrepresentation and or any other liability which cannot be excluded or limited by law.
    4. The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever arising in respect of any breach of Clause 7 (Data Protection) and all defaults resulting in direct loss, unauthorised disclosure, destruction, corruption, degradation or damage to Council Data, or Council Personal Data or any such Council Data, caused by any negligent act, error, breach of contract or omission howsoever arising.
    5. The Provider shall be liable for and shall indemnify the Council against any expense, liability, loss, claim or proceedings whatsoever arising in respect of any negligent act, error, breach of contract or omission howsoever arising out of providing the Service.
    6. Without prejudice to his obligations to indemnify the Council, the Provider shall take out and maintain insurance with a reputable insurance company in respect of claims arising out of his liability referred to in this clause as set out in Clause 15.1.
    7. Except as where by law it cannot be excluded or limited, the Provider’s liability as set out in Clauses 23.1 to 23.6 inclusive shall not exceed the amount that has either been received by the Provider pursuant to the insurance policies required to be effected and maintained, as set out in Clause 15.1, or which would have been received but for the failure of the Provider to maintain such policies in accordance with this Agreement or to make a claim under such policies.
23. FREEDOM OF INFORMATION ACT 2000
    1. The Provider shall provide all reasonable assistance to enable the Council to comply with any request received under the Freedom of Information Act 2000 (“the FOI Act”), including when it becomes applicable to Police Authorities, and the guidance contained in the code of Practice issued under Section 45 of the FOI Act.
    2. In the event that any request made under the FOI Act relates to the Provider, the services, the contract price or any other matter which falls under the auspices of this agreement, the Council shall consult with the Provider prior to disclosure.
    3. The guiding principle of the Council will be that all information should be disclosed except where it can demonstrate good reason not to disclose. If the Provider wishes to reserve any information from disclosure under the FOI Act it must put forward any information or classes of information which it is wished to have (reserved information) reserved and the grounds of the exemption which relate to the information which may be one or more of the following:
       1. the information constitutes a trade secret and is eligible for exemption under section 43(1) of the FOI Act;
       2. the disclosure of the information would prejudice the commercial interest of any person under section 43(2) of the FOI Act;
       3. the information will be disclosed by the Provider to the Council **and** that the nature of the information, or the circumstances in which it is imparted or the circumstances are otherwise such as to justify the acceptance by the authority of an obligation of confidence in respect of it section 41(1) of the FOI Act;
       4. the information is personal data or otherwise relates to the private life of an individual which is appropriate for protection under section 40 of the FOI Act;
       5. any other specific exemption under the FOI Act.
    4. In relation to all other information the Council shall have an absolute discretion to determine the question of disclosure having consulted with the Provider in accordance with the Clause 24.3.
    5. The Provider shall indemnify the Council and hold it harmless from and against all liability, costs, claims, actions, losses, damages and expenses whatsoever arising directly or indirectly as a result of any decision by the Information Commissioner that information classed by the Provider as confidential should be disclosed under the FOI Act.
    6. The Council will not enter into contractual terms which purport to restrict the disclosure of information held by the Council and relating to the Agreement and will look to reject confidentiality clauses relating to the terms, value and performance wherever possible.
    7. Any request received by the Provider or third party for disclosure of information owned by the Council, such information may include matters relating to, or arising out of the performance of the Agreement, should, without delay, be forwarded to the Council to be dealt with in order to comply with its obligations and legal duties under the FOI Act, within the requisite period (20 working days), and the Provider or third party should assist the Council in responding to the access request.
24. BUSINESS CONTINUITY
    1. The Provider accepts that they have to assist the Council in meeting the Council’s obligations under the Civil Contingencies Act 2004. Under this Agreement the Provider agrees to assist the Council in meeting its obligations under this Act.
    2. The Provider shall:
       1. adopt a Business Continuity Plan, (taking into account the Civil Contingencies Act 2004); and
       2. provide the Council with a copy of any such plan at its request.
    3. Failure by the Provider to comply with its obligations under Clause 25.2 may be regarded as a fundamental breach of this Agreement.
    4. The Provider acknowledges and accepts that his obligations under this Clause 25 shall include the following, and for the avoidance of doubt this list is non-exhaustive:
       1. undertake regular risk assessments and business impact analysis in relation to this Agreement, not less than once every twelve months; and
       2. implement exercise plans, (business continuity plan tests) on a regular basis, but not less than once every two years; and
       3. provide the Council with a written report which summarises the results on the exercise plans in Clause 25.4.2. Such a report should highlight any actions or remedial measures necessary as a result of those exercises.
    5. The Provider shall notify the Council in advance of any Business Continuity Plan test and the Council reserves the right to attend any such test.
    6. The Council shall have the right to carry out an open audit of the Business Continuity Plan. The Council agrees to give the Provider at least twenty-four hours’ notice of any such audit. The Provider warrants that the Council shall have unfettered access to and the ability to reproduce and retain any pertinent documentation deemed appropriate by it during any such audit, subject to Clause 7 (Data Protection).
    7. The Council (at its sole discretion) may require the Provider to carry out additional Business Continuity Plan tests, where the Council deems it necessary. The Council agrees to meet the Provider’s costs in carrying out any such additional tests.
25. LOCAL GOVERNMENT OMBUDSMAN
    1. In the event of a complaint being made to the Local Government Ombudsman (“the Ombudsman”) concerning the Provider’s actions, omissions or defaults in carrying out the Service under this Agreement, the Provider should be aware that it may become subject to investigation by the Ombudsman. In such circumstances the Provider will be required to co-operate in any such investigation, and produce any information or explanation, either in writing or by the attendance for interview by the Ombudsman. Of any person within the Provider’s control or produce any document within its control as may reasonably be requested.
    2. Should a finding of maladministration and injustice, as a result of fault by the Provider be made by the Ombudsman, the Council shall be entitled to deduct from sums due to the Provider any payment made by the Council to a complainant arising from such findings. The Council shall also be entitled to deduct from sums due to the Provider any payment to a complainant under the terms of an early settlement of a complaint made to the Ombudsman without any formal investigation and report by him.
26. TUPE
    1. The Council and Provider recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of this Agreement, and should they so apply that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Provider on the commencement of full operations.
    2. During the period of six months preceding the expiry of this Agreement or after the Council has given notice to terminate this Agreement or the Provider stops trading, and within 20 working days of being so requested by the Council, the Provider shall fully and accurately disclose to the Council for the purposes of TUPE all information relating to its employees engaged in providing the Service under this Agreement, in particular, but not necessarily restricted to, the following :
       1. the total number of Staff whose employment with the Provider is liable to be terminated at the expiry of this Agreement but for any operation of law; and
       2. for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and
       3. full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
       4. details of pensions entitlements, if any; and
       5. job titles of the members of staff affected and the qualifications required for each position.
    3. The Provider shall permit the Council to use the information for the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Service by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.
    4. The Provider agrees to indemnify the Council fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under this Clause 27.
    5. The Provider agrees to indemnify the Council from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which this Agreement is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
    6. In the event that the information provided by the Provider inaccordance with this Clause 27 becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Council of the inaccuracies and provide the amended information.
    7. The provision of this Clause 27 shall apply during the continuance of this Agreement and after its termination howsoever arising.
27. WAIVER
    1. The failure by the Council to take any particular action against the Provider in relation to a breach of this Agreement by the Provider does not mean that it accepts or condones the breach and shall not limit its future action in reliance on that or any other breach.
28. NOTICES
    1. Any demand, notice, or other communication required under the terms of this Agreement shall be sufficiently served if:
       1. Served personally on the addressee or
       2. Sent by prepaid first class recorded delivery post, by telex, electronic mail or facsimile transmission to the registered office or last known address of the intended recipient, and, if so sent will, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting, or on successful transmission, as the case may be.
29. RIGHTS OF THIRD PARTIES
    1. Nothing in the Contracts (Rights of Third Parties) Act 1999 will operate to give any third party the right to enforce any term of this Agreement except where expressly provided for in this Agreement.
30. SEVERABILITY
    1. If any provision of this Agreement is or becomes illegal, void or invalid, that shall not affect the legality and validity of the other provisions.
31. FORCE MAJEURE
    1. The Council and the Provider shall be released from future performance of their obligations under this Agreement in the event of national emergency, war, prohibitive governmental regulations or of any other cause beyond the reasonable control of the Council or the Provider, or any of terms which renders the performance of this Agreement impossible, whereupon all money due under this Agreement shall be paid immediately.
32. THE GOVERNING LAW AND JURISDICTION
    1. This Agreement is governed by, and shall be construed in accordance with English Law and both parties shall submit to the jurisdiction of the English Courts prohibitive governmental regulations or of any other cause beyond the reasonable control of the Council or the Provider, or any of terms which renders the performance of this Agreement impossible, whereupon all money due under this Agreement shall be paid immediately.
33. HEADINGS
    1. The headings to any part of this Agreement do not affect its interpretation.
34. TRANSPARENCY CODE
    1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information.
    2. The Council shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the FOI Act.
    3. Notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Council to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Council decides.
35. BLACKLISTING
    1. The Service Provider must not commit 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 commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities.
    2. Breach of this clause is a material default which shall entitle the Council to terminate the Agreement with immediate effect.
36. WHISTLEBLOWING
    1. The Public Interest Disclosure Act 1998 (PIDA) provides workers in the UK with a safe alternative to silence. It enables workers to raise concerns about wrongdoing responsibly. PIDA protects them if they raise a concern about wrongdoing internally and, in most cases, with a regulator. It also protects workers who make wider disclosures where there is a valid reason to go wider, and the particular disclosure is reasonable.
    2. Nothing in this Agreement shall prejudice any rights that the Provider Employee(s) has or may have under PIDA and/or any obligations that the Employee has or may have to raise concerns about the safety and care with regulatory or other appropriate statutory bodies pursuant to his or her professional and ethical obligations including those obligations set out in guidance issued by regulatory or other appropriate statutory bodies from time to time.
37. EQUAL OPPORTUNITIES
    1. The Provider as employer shall comply with the requirements of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, and accordingly, shall not treat one group of people less favourably than others because of their colour, race, culture, religion, gender, nationality, age, marital status, sexual orientation, disability or ethnic origin in relation to decisions to recruit, train or promote employees or the provision of any services supplied by the Provider or in its obligations under this Agreement.
    2. If any Court or Tribunal, or the Commission for Racial Equality should make any finding that the Provider has unlawfully discriminated against any person then the Provider shall take all necessary steps to prevent the re occurrence of such unlawful discrimination and the Authorised Officer shall be entitled to require the Provider to provide it with full details of the steps taken.
    3. The Provider's equal opportunities policy shall be set out in any instructions and documentation circulated to those members of Staff concerned with recruitment, training, promotion and the provision of the Service.
    4. The Provider shall conform (in so far as is permitted by law and in so far as has been communicated) to the Equality of Opportunities Policy of the Council.
38. MODERN SLAVERY
    1. The Provider undertakes warrants and represents that:
       1. neither the Provider nor any of its officers, employees, agents or subcontractors has:
          1. committed an offence under the Modern Slavery Act 2015 (a "MSA Offence"); or
          2. been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
          3. is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
       2. it shall comply with the Modern Slavery Act 2015;
       3. information supplied to the Council prior to the award of the Agreement in relation to modern slavery and human trafficking are complete and accurate; and it shall notify the Authorised Officer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Provider’s obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations.
    2. Any breach of this Clause 39 by the Provider shall be deemed a material breach of the Agreement and shall entitle the Council to terminate the Agreement immediately.

**Framework Schedule 2: service REquirements**

1. **purpose**
   1. The purpose of this schedule is to set out the scope and specification of the Service that the Provider will be required to make available to the Council under this Agreement.
2. **Scope**
   1. The scope of services for this Agreement include:
      * 1. [ ];
        2. [ ];
        3. [ ]:
3. **Specification**
   1. The specification of the service that shall be made available to the Council is described in the Provider’s Tender response to the Council’s Specification of Requirements (Annex 1 (Tender) to this Schedule 2 (Service Requirements)).
   2. The Provider acknowledges that nothing prevents the Council from receiving goods and/or services that are the same as or similar to the Service from any third party.
4. **Licensed Software**
   1. Except for commercially available off the shelf software (COTS) Annex 2 (Standard Licence Terms) to this Schedule 2 sets out the Standard Licence Terms in respect of the Provider Software and Third Party Software used in the provision of the Service.
   2. The Council may assign, novate or otherwise dispose of its rights and obligations under the Standard Licence Terms granted to it pursuant this Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council.
   3. Any change in the legal status of the Council which means that it ceases shall not affect the validity of any licence granted under the Standard Licence Terms.
5. **Standards**
   1. The Provider shall at all times during the Contract Period comply with the Standards including but not limited to the following:
      * 1. **Service Management Standards**:
           1. ISO 9001 “Quality Management System” standard or equivalent;
           2. ITIL v3 2011 “IT Service Management”.
        2. **Environmental Standards**:
           1. Directive 2002/96/EC on Waste Electrical and Electronic Equipment (or equivalent) and Directive 2002/95/EC on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (or equivalent).
        3. **Information Security Management Standards**:
           1. ISO 27001 Information Security Management standard or equivalent.
        4. **Occupational Health and Safety Management System Standards**:
           1. OHSAS 18001 Occupational Health and Safety Management System or equivalent.
6. **Standard Service Levels**
   1. The Provider shall provide the Service to the Council in accordance with the Annex 3 (Standard Service Levels) to this Schedule 2.
   2. The Provider acknowledges that any Service Level Failure may have a material adverse impact on the business and operations of the Council (and/or Indirect Customer) and that it shall entitle the Council to the right to any Service Credits in accordance with Schedule 4 (Service Supply).
   3. The Provider acknowledges and agrees that any Service Credit is a price adjustment and not an estimate of the loss that may be suffered by the Council as a result of the Provider’s failure to meet any Service Level Target.
   4. A Service Credit shall be the Council’s exclusive financial remedy for a Service Level Failure except where:
      1. the Provider has over the previous (twelve) 12 Month period accrued Service Credits in excess of the Service Credit Cap;
      2. the Service Level Failure:
         1. exceeds the relevant Service Level Threshold;
         2. has arisen due to a Prohibited Act or wilful default by the Provider or any Provider Personnel; and
         3. results in the corruption or loss of any Council Data and/or the Council being required to make compensation payment to one or more third parties; and/or the Council is otherwise entitled to or does terminate this Agreement.

**Annex 1**

**Provider’s Tender**

**(Response to the Council’s Specification of Requirements)**

**DD MMM YYYY**

**ANNEX 2**

**STANDARD LICENCE TERMS**

**Annex 3**

**Standard Service Levels**

|  |
| --- |
| **Availability** |
| [99]%, 24/7, 365 days per year |
| Availability is calculated as a percentage of the total time in a Service Period that the Service shall be available in accordance with the following formula:  **Availability % = (MP – SD) x 100**  **MP**  MP = Total time within the Agreed Service Time, excluding Planned Downtime, within the relevant Service Period.  SD = Total Service Downtime within the Agreed Service Time within the relevant Service Period during which the Service and/or component of the Service are not available, excluding Planned Downtime.  Agreed Service Time = [00.00-24.00] hours, Monday to Sunday.  Service Period = [3] months.  Planned Downtime = pre-planned maintenance of the hardware and/or software that may require interruption of the Service. |

|  |  |
| --- | --- |
| **Option** | **Service Desk Hours** |
| A | [00.00 – 24.00] hours, Monday to Sunday |
| B | [08.00 – 18.00] hours on any working day excluding Saturday, Sundays and public holidays |
| C | [08:00 – 18:00] hours, Monday to Friday, plus [08:30 –13:00] hours on Saturdays, Sundays and public holidays. |

|  |  |
| --- | --- |
| **Service Desk Telephone Calls Response Rates** | |
| Calls Answered | [95%] of calls made to the Service Desk to be answered within 20 seconds.  Calls receiving an automated response or placed into a querying system shall be deemed not be answered. |
| Calls Abandoned | Less than [5%] calls abandoned. |

| **Call and Incident Management** | | | | |
| --- | --- | --- | --- | --- |
| **Categorisation** | | **Service Levels Targets** | | **Service Level Threshold** |
| **Severity** | **Definition** | **Response** | **Resolution** |
| 1  Critical | The Service is ‘down;’ and inaccessible.  All users and sites affected.  Critical impact on the activities of the Council (and/or Indirect Customer) and/or its ability to carry out its statutory obligations.  Causes major financial loss to the Council, and/or results in material loss or corruption of Council data. | [30] minutes | [2] working hours | at least [95%] shall be responded by the target response time  at least [95%] shall be resolved by the target resolution time |
| 2  Major | Operation of one or more of the Service components are severely disabled, or major components of the Service are not operational and work cannot reasonably continue.  A major (but not critical) adverse impact on the activities of the Council (and/or Indirect Customer); and/or causes some financial loss to the Council (and/or Indirect Customer). | [1] working hour | [4] working hours | at least [95%] shall be responded by the target response time  at least [95%] shall be resolved by the target resolution time |
| 3  Moderate | Certain non-essential features of the Service are impaired while major components of the Service remain functional. | [2] working hours | [2] working days | at least [95%] shall be responded by the target response time  at least [95%] shall be resolved by the target resolution time |
| 4  Minor | Errors that are non-disabling or cosmetic and clearly have little or no impact on the normal operation of the Service. | [12] working hours | [10] working days | at least [95%] shall be responded by the target response time  at least [95%] shall be resolved by the target resolution time |
| Requests | Low-value IMAC (installations, moves, additions and changes) items or requests for information. | [5] working days | [20] working days | at least [95%] shall be responded by the target response time  at least [80%] shall be resolved by the target resolution  time |

| **Information Security Incidents** | | | | |
| --- | --- | --- | --- | --- |
| **Categorisation** | | **Service Level Target** | | **Service Level Threshold** |
| **Severity** | **Definition** | **Response** | **Resolution** |
| 1 Emergency | An incident that the Council should be aware of, and may have a significant impact to the Service as:   * it has specific core or widespread use of the vulnerable technology; or * the vulnerable technology is security enforcing for part, or all of the system or supporting infrastructure and * the exploitation of the vulnerability may be possible either locally and/or remotely * the exploitation would likely lead to critical / very high impact to the solution, users, or Council infrastructure. | [30] minutes | [2] working hours | at least [95%] shall be responded by the target response time  at least [95%] shall be resolved by the target resolution time |
| 2 Major | An incident that the Council should be aware of, and may have a detrimental impact to the Service as:   * it has specific core or widespread use of the vulnerable technology, and * the exploitation of the vulnerability may be possible either locally and/or remotely * the exploitation would likely lead to a high impact to the solution, users, or Council infrastructure. | [1] working hours | [4] working hours | at least [90%] shall be responded by the target response time  at least [90%] shall be resolved by the target resolution time |
| 3 Warning | An incident that the Council should be aware of, and may have limited impact to the Service as:   * it has reasonable or widespread use of the vulnerable technology, and * the exploitation of the vulnerability may be simple to perform locally but not remotely * the exploitation would likely lead to medium impact to the solution, users, or Council infrastructure. | [12] working hours | [5] working days | at least [90%] shall be responded by the target response time  at least [90%] shall be resolved by the target resolution time |
| 4 Information | An incident that the Council should be aware of, but is likely to be of negligible risk to the Service as:   * the exploitation of the vulnerability is believed to be difficult locally and/or remotely * the exploitation would likely lead to a low / negligible impact to the Service, users, or Council infrastructure. | [10] working days | [30] working days | at least [90%] shall be responded by the target response time  at least [90%] shall be resolved by the target resolution time |

| **Problem Management** | | | |
| --- | --- | --- | --- |
| **Problem Severity** | **Definition** | **Service Level Target** | **Service Level Threshold** |
| **Resolution** |
| 1 | The problem poses significant risk to the Council’s (and/or Indirect Customer’s) business in that it may cause an incident or series of incidents which may result in disruption to the Service and Council operations.  No interim expedient measures have been identified to resolve. | [10] Working Days | at least [95%] shall be resolved by the target resolution  time |
| 2 | The problem poses no immediate risk to the Council’s (and/or Indirect Customer’s) business but may, if not resolved, may result in degradation in the performance of the Service. Interim expedient measures are available to resolve. | [1] Month | at least [90%] shall be resolved by the target resolution  time |
| 3 | The problem poses no risk to the Council’s (and/or Indirect Customer’s) business but may, in the long term, impact on the overall performance of the Service. | [3] Months | at least [85%] shall be resolved by the target resolution  time |

|  |  |
| --- | --- |
| **Service Credits** | |
| **Trigger** | **Credit Payable (%)** |
| 1 x Service Level Failure in any Service Period | [2%] of Annual Service Charges |
| 2 x Service Level Failure in any Service Period | [5%] of Annual Service Charges |
| 3 x Service Level Failure in any Service Period | [10%] of Annual Service Charges |
| Service Credits capped at [20%] of Annual Service Charges “Service Credit Cap” | |

| **Definitions** | |
| --- | --- |
| **Incident(s)** | An unplanned interruption to the Service or reduction in the quality of the Service. |
| **Problem** | A cause of one or more Incidents. |
| **Response** | The time taken to log and acknowledge the incident and conduct initial diagnosis of the incident to determine the cause or most likely cause of the incident. |
| **Resolution** | The maximum time to be taken to resolve the Incident (hardware/software fault or request) from the time:   1. an incident is logged with the Service Desk; or 2. the Provider becomes aware of the issue, whichever is the earlier. |
| **Service Failure** | The unplanned failure and interruption to the provision of the Service, reduction in the quality of the Service or an event, which could affect the provision of Service in the future, impacting on the availability and operation of the Service. |
| **Service Level Failure** | The failure to achieve a service level performance measure, including the failure to achieve Service Level Targets and Service Level Thresholds. |
| **Critical Service Failure** | 1. The loss of Service during core hours (any working day excluding Saturday, Sundays and public holidays) for more than [24] hours accumulated in any [3] months period or [48] hours in any rolling [12] month period. 2. [2] x Severity 1 Critical Incident Service Level Failures in any [3] months period or [3] x Severity 1 Critical Incident Service Level Failures in any [12] month period. 3. the performance of the support services by the Provider falling to, or below, any of the Service Level Thresholds in period of [12] months. |

**SCHEDULE 3: Pricing**

1. **Purpose of this Schedule**
   1. The purpose of this schedule (Pricing) is to set out the provisions relating to the Charges applicable to the Service.
2. **General Provisions**
   1. The Provider shall add VAT to the Charges at the prevailing rate as applicable.
   2. The Council shall pay the Provider in accordance with the Agreement, including but not limited to this Schedule 3 (Pricing) and as specified in the Payment Profile below.
   3. The Council shall not be obliged to pay for any Service, or any part of any Service, unless and until the relevant Milestones have been achieved, and an Acceptance Certificate has been signed by both Parties.
   4. The Provider shall ensure that each invoice contains all appropriate references; contains a detailed breakdown of the Service provided; and is supported by any other documentation reasonably required by the Council to substantiate the invoice (including associated Acceptance Certificates).
3. **Charges**
   1. The Charges which are applicable to this Agreement are set out in Annex 1 (Pricing Schedule) of this Schedule.
   2. The Provider acknowledges and agrees that the Charges cannot be increased for the Contract Period.
4. **Costs and Expenses**
   1. The Charges include all costs and expenses relating to the Service and/or the Provider’s performance of its obligations under this Agreement and no further amounts shall be payable by the Council to the Provider in respect of such performance, including in respect of matters such as:
      1. any incidental expenses that the Provider incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Provider Personnel, network or data interchange costs or other telecommunications charges.
      2. any amount for any services provided or costs incurred by the Provider prior to the Commencement Date.
   2. Work Day Rates shall be based upon a standard working day of eight [8] hours which shall be calculated exclusive of any breaks.
5. **Payment Profile**
   1. Payment of the Charges in respect of the Service shall be made by the Council to the Provider in advance on each anniversary of the implementation and installation of the service, payment of the Charges in respect of all other Service shall be thirty [30] days in arrears upon receipt of an invoice from the Provider.
   2. The Provider shall be entitled to submit invoices upon Achievement of each Milestone in accordance with the Payment Profile below:

| **Milestone Number** | **Milestone Description** | **Testable Milestone (YES/NO)** | **Milestone Date** | **Amount of Charge (£)** |
| --- | --- | --- | --- | --- |
| 1 | [Delivery of Software/Hardware] | YES |  |  |
| 2 | [Implementation and Installation] | YES |  |  |
| 3 | [Integration] | YES |  |  |
| 4 | [Training] | YES |  |  |

* 1. Time and quality are of the essence in relation to Milestones. The Provider acknowledges that a failure to complete a Milestone in accordance with the Agreement shall constitute a material breach of this Agreement entitling the Council to terminate in accordance with Schedule 1 Contract Conditions Clause 19 (Termination) and receive a refund of all pre-paid Payments under this Agreement.
  2. In respect of each Testable Milestone:
     1. the parties shall mutually agree in writing the Acceptance Criteria that will be used to determine whether the Milestone is Accepted or Rejected and in the absence of such agreement the Acceptance Criteria shall be such criteria determined by the Council that demonstrate that the Milestone complies with the Provider’s Specification or, if the Provider's Specification is silent in relation to the Milestone, the Council’s Specification;
     2. the Council shall undertake such tests as mutually agreed to determine whether the Milestone complies with the Acceptance Criteria, in accordance with the Implementation Plan timescales (or otherwise promptly, and in any event within such timescales that will not prejudice the delivery of other Milestones in accordance with this Agreement);
     3. a Milestone shall be Accepted only if: (a) the Council signs an acceptance certificate in respect of the Milestone in the form set out at Annex 2 (“Acceptance Certificate”); (b) a period of sixty (60) days elapses after the Council has put the Milestone into live use, during which period no testing or retesting is taking place.
  3. Notwithstanding the issuing of any Acceptance Certificate, the Provider shall remain solely responsible for ensuring that the Service is delivered in accordance with this Agreement.

**Annex 1 – Pricing Schedule**

**Annex 2 – Acceptance Certificate**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Acceptance Certificate** | | | | |
|  | **Contract:** |  | | |
| **Provider:** |  | | |
| **Statement of Work/Project Plan Reference:** |  | | |
| **Date:** |  | | |
| **Council Project Manager:** |  | | |
| **Provider Project Manager:** |  | | |
|  | | | |
| **Testable Milestone/DELIVERABLE** | | | **Acceptance** |
|  | | | 🞎 Accepted  🞎 Accepted subject to: |
|  | | | 🞎 Accepted  🞎 Accepted subject to: |
|  | | | 🞎 Accepted  🞎 Accepted subject to: |
|  | | | | |
| **Signature** | | | | |
| **The items above have been accepted for the purposes of the Contract.** | | | | |
| **Signed for and on behalf of the Council by:**  Signed...................................................................  Name....................................................................  Position..................................................................  Date...................................................................... | | | **Signed for and on behalf of the Provider by:**  Signed...................................................................  Name....................................................................  Position..................................................................  Date...................................................................... | |

**SCHEDULE 4: Service Supply**

1. **Purpose of this Schedule**
   1. The schedule sets out the Council’s requirements for ensuring the products and services delivered by the Provider are in accordance with the Council’s specification of requirements, standards and quality of service.
2. **Due Diligence**
   1. The Provider acknowledges that it:
      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 Council;
      2. has raised all relevant due diligence questions with the Council before the Commencement Date; and
      3. has entered into this Agreement in reliance on its own due diligence alone.
3. **Service Provision**
   1. The Provider acknowledges and agrees that the Council relies on the skill and judgment of the Provider in the provision of the Service and the performance of its obligations under this Agreement.
   2. The Provider shall provide the Service from the Commencement Date and shall ensure that the Service:
      1. comply in all respects with the Service Specification as set out in Schedule 2 (Service Specification);
      2. operates in accordance with the relevant technical specifications and correspond with all requirements set out in this Agreement;
      3. is supplied in accordance with the terms of this Agreement;
      4. complies with the Tender; and
      5. does not prejudice the Council’s compliance with, or cause the Council to breach, the Public Services Network (PSN) Code of Connection.
   3. The Provider shall perform its obligations under this Agreement including those in relation to the Service with all due care, skill and attention and in particular in accordance with:
      1. the Implementation Plan;
      2. Good Industry Practice;
      3. the Standards;
      4. Schedule 5 (Security and the Protection of Information);
      5. the Provider’s own established procedures and practices to the extent the same do not conflict with the requirements of Paragraph 3.2 and 3.3.
   4. The Provider shall:
      1. at all times allocate sufficient resources with the appropriate technical expertise to provide the Service in accordance with this Agreement;
      2. obtain, and maintain throughout the Contract Period, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Service;
      3. minimise any disruption to the Service, and/or the Council’s operations when providing the Service;
      4. ensure that any documentation and training provided by the Provider to the Council (and/or Indirect Customer) are comprehensive, accurate and prepared in accordance with Good Industry Practice and manufacturer specifications and instructions;
      5. provide the Council with such assistance as the Council may reasonably require for the Contract Period in respect of the supply of the Service;
      6. gather, collate and provide such information and co-operation as the Council may reasonably request for the purposes of ascertaining the Provider’s compliance with its obligations under this Agreement.
   5. In the event of the Provider’s failure to provide the Service or to comply with its obligations in accordance with this Agreement, the Council may, without prejudice to its other rights, require the Provider to re-perform the Service or to comply with its obligations as set out in Clause 19 (Corrective Action).
4. **Implementation Plan**
   1. The Provider shall deliver an updated Implementation Plan in the form of Appendix A to this Schedule 4 to the Council within an agreed time and prior to the commencement of implementation and installation services. The Implementation Plan should be consistent with the outline Implementation Plan submitted in the Tender and shall contain information at the level of detail necessary to manage the implementation stage effectively and as the Council may require. The Implementation Plan shall take account of all dependencies known to, or which should reasonably be known to, the Provider.
   2. Once the Implementation Plan is agreed with the Council (such agreement not to be unreasonably delayed or withheld), the Provider shall perform each of the Deliverables identified in the Implementation Plan by the applicable date assigned to that Deliverable in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
   3. In the event that not all of the Service is delivered by the relevant Milestone Dates specified in the Implementation Plan then the Council shall be entitled to withhold payment of the Charges for any Service that was not delivered in accordance with the corresponding Milestone Date until such time as the Service is delivered.
   4. The Provider shall monitor its performance against the Implementation Plan and Milestones and any other requirements of the Council as set out in this Agreement and report to the Council on such performance.
   5. The Provider shall keep the Implementation Plan under review in accordance with the Council’s instructions and ensure that it is maintained and updated on a regular basis as may be necessary to reflect the then current state of the provision of the implementation and installation services. The Council shall have the right to require the Provider to include any reasonable changes or provisions in each version of the Implementation Plan.
   6. Where so specified by the Council in the Implementation Plan or elsewhere in this Agreement, time in relation to compliance with a date, Milestone Date or period shall be of the essence and failure of the Provider to comply with such date, Milestone Date or period shall be a material breach unless the Parties expressly agree otherwise. The Provider shall not attempt to postpone any of the Milestones except in the event of a Council cause which affects the Provider's ability to achieve a Milestone by the relevant Milestone Date.
   7. If the Provider becomes aware that there is, or there is reasonably likely to be, a Delay under this Agreement, it shall:
      1. notify the Council as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay; and
      2. include in its notification an explanation of the actual or anticipated impact of the Delay; and
      3. comply with the Council’s instructions in order to address the impact of the Delay or anticipated Delay; and
      4. use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.
5. **Computing Environment**
   1. The Provider shall ensure that the Service is fully compatible with the Indirect Customer’s System and/or the Council’s ICT Technical Environment.
   2. The Provider acknowledges that it has inspected the Indirect Customer’s System the Council’s ICT Technical Environment and has advised the Council of any aspect of the Indirect Customer’s System and/or the Council’s ICT Technical Environment that is not suitable for the provision of the Service and that the specified actions to remedy the unsuitable aspects of the Indirect Customer’s System and the Council’s ICT Technical Environment, together with a timetable for and the costs of those actions, have been specified Schedule 2 (Service Specification) and Schedule 3 (Pricing).
   3. If the Provider has either failed to inspect the Indirect Customer’s System and the Council’s ICT Technical Environment or failed to notify the Council of any required remedial actions the Provider shall not be entitled to recover any additional costs or charges from the Council relating to any unsuitable aspects of the Indirect Customer’s System and the Council’s ICT Technical Environment.
   4. If required by the Council, the Provider shall provide to the Council’s other providers as are periodically notified to the Provider such reasonable co-operation, information (including any documentation), advice and assistance in connection with the Goods and/or Services so as to enable any such person to create and maintain technical or organisational interfaces with the Service, where applicable, and on the termination (howsoever arising) or expiry of the Agreement, to enable the timely transition of the the Services (or any of them) to any replacement provider and generally provide the Council with such assistance as the Council may reasonably require in respect of the supply of the Service.
6. **Licensed Software**
   1. Save as expressly granted elsewhere under the Agreement the Council shall not acquire any right, title or interest in the Provider Software and Third Party Software used in the provision of the Service.
   2. The Provider shall grant to the Council and any Indirect Customer a licence of the Provider Software used in the provision of the Service on the Standard Licence Terms (as per Annex 3 to Schedule 2 Service Specification).
   3. The Provider shall procure that the owners or the authorised licensors of any Third Party Software which is not commercial off-the-shelf software (COTS) grant a direct license to the Council and any Indirect Customer on terms at least equivalent to the Standard Licence Terms.
   4. Where Third Party Software is required for the Council and any Indirect Customer to benefit and make full use of the Service the Provider shall be responsible for obtaining the required licences from the third parties.
   5. The Provider shall deliver the Software in accordance with the Implementation Plan.
   6. The Provider shall ensure that:
      1. the release of any new Software or Upgrade to any Software complies with the interface requirements of the Council;
      2. the Council is notified three (3) Months before the release of any new Software or Upgrade (except in relation to new Software or Upgrades which are released to address security vulnerabilities Malicious Software);
      3. the release of any new Software or Upgrade is co-ordinated with the Council to ensure it minimises any disruption to the Service, the Council’s System or the Council’s operations;
      4. the Provider’s supporting documentation (including all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Software) are revised in a timely manner to be conversant with all Software Upgrades, Updates and New Releases;
      5. all Software including Upgrades, Updates and New Releases used by or on behalf of the Provider are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
      6. any products or services recommended or otherwise specified by the Provider for use by the Council in conjunction with the Service shall meet the requirements of the Council;
      7. the Service is fully compatible with such elements of the Council Software and Council System that are required for the delivery of the Service as described in the Schedule 2 (Service Specification) or otherwise used by the Provider in connection with this Agreement.
7. **Provision of Support and Maintenance ServiceS**
   1. The Provider shall supply support and maintenance services to the Council in accordance with Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification).
   2. The Provider shall:
      1. notify the Council of any support and maintenance services that will affect the availability of the Service and agree the scheduling of such support and maintenance;
      2. obtain Council written approval prior to making any configuration changes to the Service and/or installing any new software, Update, Upgrade or New Release to the Software installed on the Council System and/or Indirect Customer System;
      3. assist and cooperate with the Council to conduct security and vulnerability testing of new software, Update, Upgrade or New Release for the Services prior to installation of new software, Update, Upgrade or New Releases to the Software installed on the Council System and/or Indirect Customer System;
      4. inform the Council’s technical staff of any steps that they need to take pre and post Update, Upgrade or New Release for the Service, including release notes for users of Service about the changes in system administration, operation and functionality;
      5. supply to the Council all revisions to the supporting documentation of the Service which are necessary in order to reflect any Upgrade, Update and/or New Release of any component of the Service;
      6. ensure that the release of any new Software or Upgrade to any Software complies with the interface requirements of the Council and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Council in a timely manner before the release of any new Software or Upgrade;
      7. ensure that all Software including Upgrades, Updates and New Releases for the Service are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
      8. ensure that any products or services recommended or otherwise specified by the Provider for use by the Council (and/or Indirect Customer) in conjunction with the Service shall meet the requirements of the Council as specified by the Council at the time of placing an Purchase Order and subject to any subsequent variation.
   3. The following testing processes shall be undertaken in accordance with an agreed testing plan with the Council prior to any configuration changes to the Service and/or installing any new Software, Update, Upgrade or New Releases to the Service on the the Council System and/or Indirect Customer System;
      1. the Provider shall perform testing of all configuration changes made to the Service;
      2. the Provider shall perform system integration testing prior to Council user acceptance testing;
      3. the Council shall perform user acceptance testing.
8. **WARRANTIES AND REPRESENTATIONS**
   1. The Provider warrants and represents that:
      1. it has full capacity and authority and all necessary consents, licences and permissions (statutory, regulatory, contractual or otherwise) (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement;
      2. this Agreement shall be performed in compliance with all Laws (as amended from time to time) and all applicable standards;
      3. it shall perform its obligations hereunder (including the provision of the Services) by using appropriately experienced, qualified and trained Provider Personnel;
      4. in performing its obligations under this Agreement, all Provider Equipment used by or on behalf of the Provider will be currently supported versions and perform in all material respects in accordance with its specification;
      5. it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
      6. for the duration of the Agreement, all Provider Personnel used to provide the Services will be vetted in accordance with Good Industry Practice;
      7. it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Agreement and the use of the Services by the Council;
      8. it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the:
         1. introduction, creation or propagation of any disruptive element (including any Malicious Software); and
         2. unauthorised use of and modification or access to (or into) systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Council
      9. it shall take all measures to avoid any and all data loss and data corruption during the provision of the Services in accordance with Good Industry Practice;
      10. it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Services;
      11. the Service is and will continue to be for the duration of the Agreement:
          1. of satisfactory quality;
          2. in conformance with the relevant specifications set out in this Agreement, and (if applicable) the manufacturer’s specifications and documentation; that any Provider Equipment supplied or used in the performance of the Service is free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period; consistent with any requirements set out or referred to in this Agreement relating to quality and security and the Provider shall ensure that all aspects of the Service is the subject of quality management systems and risk mitigation measures.
   2. The Provider acknowledges that any breach of the warranties and representations in Paragraph 8.1 of this Schedule 4 shall be remedied as a matter of urgency at no cost to the Council. Subject to compliance with Clause 19 (Corrective Action), failure to remedy (if capable of remedy) any breach of Paragraph 8.1 shall constitute a breach of this Agreement entitling the Council to terminate in accordance with Clause 20 (Termination).
   3. The Council warrants and represents that:
      1. it has full capacity and authority and all necessary consents, licences and permissions (statutory, regulatory, contractual or otherwise) to enter into and to perform this Agreement;
      2. The Council shall in accordance with this Paragraph 8.3 of this Schedule 4 provide all reasonable assistance to the Provider in delivering the Service and shall:
         1. ensure that the Authorised Officer has the power to make binding decisions for the Council relating to this Agreement, including, but not limited to any change to the Service;
         2. review all documents within 30 (thirty) Working Days that are provided by the Provider for review so that corrections or changes may be made by the Provider; and
         3. promptly provide the Provider with all information about the Council required by the Provider under this Agreement.
      3. Where participation of, or access by the Provider to, the Employees is necessary in relation to this Agreement, the Council confirms that the required Employees shall be made available to meet the overall requirements of this Agreement. Where such Employees participate in providing the Service, the Council warrants that they possess the appropriate skills and experience for the tasks assigned to them.
      4. The Council further agrees:
         1. to provide such office accommodation, telecommunication facilities and access to the Council premises at such times as may be reasonably necessary to provide the Service. The Provider shall take reasonable care to ensure that in the execution of the Service it does not unreasonably interfere with the operations of the Council; and
         2. to execute promptly any licences or documents which may be required pursuant to this Agreement.
9. **Performance monitoring and performance review**
   1. The Provider shall, at all times, provide the Service in such a manner that any levels of service as specified in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification) for the Service supplied under this Agreement is achieved.
   2. The Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Provider’s performance of the Services against the applicable agreed levels of service in sufficient detail to verify compliance with the Standard Service Levels.
   3. The Provider shall provide the Council with quarterly performance monitoring reports (“**Performance Monitoring Reports**”) in which shall contain, as a minimum, the following information with respect to the provision of Service for the previous three months:
      1. actual performance achieved in respect to the levels of service as specified in the Standard Service Levels;
      2. a summary of all failures to achieve the levels of service in the reporting period;
      3. such other details as the Council may reasonably require from time to time.
   4. The Parties shall attend meetings to discuss Performance Monitoring Reports (which may also be referred to as "**Performance Review Meetings**") on a quarterly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Provider and the Council of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
      1. take place within one (1) week of the Performance Monitoring Reports being issued by the Provider;
      2. take place at such location and time (within normal business hours on Working Days) as the Council shall reasonably require unless otherwise agreed in advance;
      3. be attended by the Provider's representative and the Council's representative;
      4. be fully minuted by the Provider. The prepared minutes will be circulated by the Provider to all attendees at the relevant meeting and also to the Council's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed off by both the Provider's representative and the Council's representative at each meeting.
   5. The Provider shall provide to the Council such supporting documentation as the Council may reasonably require in order to verify the level of the performance by the Provider.
   6. The Council shall be entitled to raise any additional questions and/or request any further information from the Provider regarding the failure to achieve agreed levels of service.
10. **Management Information**
    1. The Agreement shall be monitored using the following performance indicators:
       1. Response time to initial enquiry: the Provider shall ensure that the response time is no longer than five [5] working days from the initial enquiry 98% of the time.
       2. Ability to work to timescales and meet deadlines: the Provider shall ensure that timescales are met on 98% of orders placed.
       3. Quality of service and work undertaken: the Provider shall ensure that the Council is satisfied with its service on 100% of the orders placed.
       4. Cost effectiveness to the Council: the Provider shall ensure that it has provided the Council with the best price and/or added value for each order 100% of the time.
       5. Rejections: the Provider shall ensure that no more than one assignment is rejected due to quality issues by the Council.
11. **SERVICE IMPROVEMENT**
    1. Subject to Paragraph 11.3 of this Schedule 4 (Service Supply), the Provider shall be committed to the process of continuous improvement and improved efficiency of the Service. Throughout the duration of the Agreement, the Provider shall take the initiative in identifying and evaluating improvements for application to the Service to the Council and responding to any Council requests for information in respect of potential improvements to the Service that the Council has identified. As part of this obligation, the Provider shall identify and report to the Council on:
       1. (subject to any obligation of confidentiality to third parties) the emergence of new and evolving relevant technologies which could improve the Service and those technological advances potentially available to the Provider and the Council which the Parties may wish to adopt;
       2. potential improvements to the Service;
       3. potential improvements to interfaces or integration of the Service 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
       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 Council.
    2. The Provider 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 Provider shall provide any further information that the Council reasonably requests.
    3. Notwithstanding anything to the contrary in this Agreement, the Provider may not change or improve, or propose any change or improvement, to the Service which affects or may affect the Council’s Public Services Network (PSN) Code of Connection compliance.
12. **USER SATISFACTION SURVEYS**
    1. In order to assess the level of performance of the Provider, the Council may undertake user satisfaction surveys in respect of the Provider's provision of the Services to Indirect Customers.
    2. The Council shall be entitled to notify the Provider of any aspects of their performance of the provision of the Service which the responses to the user satisfaction surveys reasonably suggest are not in accordance with this Agreement.
    3. All other suggestions for improvements to the provision of the Service shall be dealt with in accordance with Paragraph 11 (Service Improvement) above.
13. **SERVICE CREDITS**
    1. Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification) sets out the formula used to calculate a Service Credit payable to the Council as a result of a Service Level Failure in a given Service Period.
    2. The Council shall use the Performance Monitoring Reports supplied by the Provider to verify the calculation and accuracy of the Service Credits, if any, applicable to each relevant Service Period.
    3. Service Credits are a reduction of the amounts payable in respect of the Good and/or Services and do not include VAT. The Provider shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification).
    4. The Provider confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Charges. Both Parties agree that the Service Credits are a reasonable method of price adjustment to reflect poor performance.
14. **RECORDS AND MANAGEMENT INFORMATION**
    1. The Provider shall keep appropriate documents and records (e.g. Help Desk records, service failure log, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Service being delivered and the other requirements to be satisfied pursuant to this Agreement. Without prejudice to the generality of the foregoing, the Provider shall maintain accurate records of call histories in relation to the monitoring of the Service for a minimum of twenty-four (24) months and provide prompt access to such records to the Council upon the Council's request.
    2. The records and documents of the Provider shall be available for inspection by the Council and/or its nominee at any time and the Council and/or its nominee may make copies of any such records and documents.
    3. The Provider shall ensure any reports and summaries produced in accordance with this Schedule 4 (Service Supply) and any other document or record reasonably required by the Council are available to the Council on-line and capable of being printed.
15. **Council Responsibilities**
    1. The Council shall be responsible for providing all agreed information and data to enable the Provider to perform its obligations under this Agreement.
    2. The Council shall respond and/or provide such documentation, data and/or other information that is within its immediate control that the Provider reasonably requests that is necessary for the Provider’s performance of its obligations under this Agreement.
    3. The Council shall provide the Provider with reasonable access to appropriate members of the Council’s staff, as may reasonably be required, after reasonable notice having been given by the Provider, so that the Provider can discharge its obligations under this Agreement.
    4. The Council shall provide suitably qualified staff to fulfil the Council’s roles and duties under this Agreement.
    5. The Council shall provide to the Provider timely notification of Council policy and/or regulation changes which impact on the provision of the Services.
    6. The Council shall make best endeavours to perform its obligations specified in any agreed implementation and project plans.
    7. The Council shall ensure that all staff using the Services are given appropriate training.
16. **ASSISTANCE ON EXPIRY OR TERMINATION**
    1. The Provider shall, within twenty (20) Working Days on request by the Council, deliver a plan (the “**Exit Plan**”) which sets out the Provider’s proposed methodology for achieving orderly transition of the Service from the Provider to the Council and/or the replacement provider on the expiry or termination of this Agreement. Within ten (10) Working Days after submission of the draft Exit Plan (or any revised Exit Plan) the Parties will use their reasonable endeavours to agree its content.
    2. In the event that this Agreement expires or is terminated the Provider shall, where so requested by the Council, provide assistance to the Council to migrate the provision of the Service either to the Council or to a replacement provider including as set out in the Exit Plan.

**Appendix A: Implementation Plan**

**Appendix B: Council’s ICT Technical Environment**

The references to technology, standards, guidance and policies set out in the Council’s ICT Technical Environment in this schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such technology, standards, guidance and policies, as notified to the Provider from time to time. In the event of any inconsistency in the provision of the Service and the technology, standards, guidance and policies set out in the Council’s ICT Technical Environment, the Provider should notify the Council of such inconsistency immediately upon becoming aware of the same, and the Council shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.

**SCHEDULE 5: SEcurity and the Protection of Information**

1. **Purpose of this Schedule**
   1. The schedule covers:
      1. principles of protective security to be applied in delivering the Service;
      2. wider aspects of security relating to the Service;
      3. audit and testing of compliance with any further security requirements set out in Schedule 2 (Service Specification) and Schedule 4 (Service Supply); and
      4. obligations in the event of actual, potential or attempted breaches of security.
2. **PRINCIPLES OF SECURITY**
   1. The Provider acknowledges that the Council places great emphasis on the confidentiality, integrity and availability of information.
   2. The Provider shall at all times provide a level of security which:
      1. is in accordance with Good Industry Practice, Law and this Agreement;
      2. complies with Appendix A (ICT Third Party Information Security Policy);
      3. complies with at least the minimum set of security measures and standards as determined by Cabinet Office/PSN;
      4. is in accordance with the Standards including the Security Standards; and
      5. complies with any security requirements as set out in Schedule 2 (Service Specification) and Schedule 4 (Service Supply).
   3. Without limiting Paragraph 2.2 above of this Schedule 5, the Provider shall at all times ensure that the level of security employed in the provision of the Service is appropriate to maintain the following at acceptable risk levels (to be defined by the Council from time to time):
      1. disruption to the Service as a result of any virus, denial of service, hacking attempt or other malicious action or unauthorised access by any third party;
      2. loss of integrity and confidentiality of Council (and/or Indirect Customer) Confidential Information;
      3. unauthorised access to, use or disclosure of, or interference with Council (and/or Indirect Customer) Confidential Information by any person or organisation;
      4. unauthorised access to network elements, buildings, and tools (including equipment) used by the Provider and any Sub-contractors in the provision of the Service;
      5. use of the Provider’s hardware, computer and telecoms equipment or the Goods and/or Services (including the Provider Equipment) by any third party in order to gain unauthorised access to any computer resource or Council Data; and
      6. loss of availability of Council (and/or Indirect Customer) Confidential Information due to any failure or compromise of the Service.
   4. The references to standards, guidance and policies set out in Paragraph 2.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Provider from time to time.
   5. In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Provider should notify the Council of such inconsistency immediately upon becoming aware of the same, and the Council shall, as soon as practicable, advise the Provider which provision the Provider shall be required to comply with.
3. **COMPLIANCE WITH ISO27001**
   1. The Provider and/or [its third party hosting provider concerned with the hosting of customer software and data] shall maintain ISO27001 certification for the duration of the Agreement.
   2. The Provider shall be required to provide evidence of ISO27001 certification upon request.
   3. If, as a result of any such independent audit the Provider is found to be non-compliant with Paragraph 3.1 and 3.2 then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance.
4. **COMPLIANCE WITH the ICT Third Party Information Security Policy**
   1. The Provider shall maintain compliance for the duration of the Contract Period with the Council’s Security Policy (Appendix A (ICT Third Party Information Security Policy) to this Schedule 5).
   2. The Council shall be entitled to carry out such regular information security risk assessments and audits as may be required in order to ensure that the Provider maintains compliance with the Security Policy.
   3. If, as a result of any such information security risk assessment and audit the Provider is found to be non-compliant with the Security Policy then the Provider shall, at its own expense, undertake those actions required in order to achieve the necessary compliance.
5. **PROTECTION OF DATA**
   1. The Provider shall not delete or remove any proprietary notices contained within or relating to Council Data (including Indirect Customer Data).
   2. The Provider shall not disclose or use Council Data except as necessary for the performance by the Provider of its obligations under this Agreement or as otherwise approved by the Council.
   3. The Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data whilst performing its obligations under this Agreement.
   4. The Provider shall ensure that any ICT infrastructure and system on which the Provider stores and holds any Council Data, including backup data, is a secure system that complies with the Security Policy.
   5. If at any time the Provider suspects or has reason to believe that Council Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Council immediately.
   6. If Council Data is altered, corrupted, lost or degraded as a result of negligence or default of the Provider, the Council may:
      1. require the Provider (at the Provider's expense) to restore or procure the restoration of Council Data; and/or
      2. itself restore or procure the restoration of Council Data, and shall be repaid by the Provider for cost and expenses incurred.
6. **remediating SECURITY vulnerabilities**
   1. Where security vulnerabilities are identified in the Service (including Provider Equipment and Software) the Provider shall work with the Council to remediate the issue(s) in accordance with the Annex 3 (Standard Service Levels) to Schedule 2 (Service Specification) for information security incidents.
   2. The Provider shall be responsible for remediating security vulnerabilities identified in the Service, including supporting infrastructure and third party software, in a timely manner and commensurate with the threat as directed by the Council.
   3. Systems, software and utilities supplied to the Council by the Provider, including the use of other third party software, shall be the latest supported versions and be able to be upgraded and patched to address security vulnerabilities and weaknesses identified either in security testing undertaken by the Council or in accordance with manufacturer recommendations.
   4. The Provider shall be responsible to ensure that all components, including other third party components, used or required in the operation of the Service are fully supported versions without any detriment to performance or user operation, unless approved by the Council in writing. This includes upgrading and patching the Service in order to operate on supported versioned components.
7. **BREACH OF SECURITY**
   1. Either Party shall notify the other upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
   2. Upon becoming aware of any Breach of Security or any potential or attempted Breach of Security the Provider shall:
      1. immediately take all reasonable steps necessary to:
         1. remedy such breach or protect the integrity of the delivery of Service against any such potential or attempted breach or threat; and
         2. prevent an equivalent breach in the future.
      2. such steps shall include any action or changes reasonably required by the Council.
      3. as soon as reasonably practicable provide to the Council full details of the Breach of Security or the potential or attempted Breach of Security.

**Appendix A**

**ICT Third Party Information Security Policy**