

## Provision of Digital Service Transmission / Unified Communications

### PART 1 - CONTRACT PARTICULARS

<b>Contract Title</b>	<b>Provision of Digital Service Transmission / Unified Communications</b>	
<b>Council</b>	<b>Rossendale Borough Council</b>	
<b>Contractor</b>		
<b>Commencement Date</b>		
<b>Contract Period (including option to extend)</b>	<b>2 years with an option to extend for a further 1-year periods.</b>	
<b>Services/Goods/Works</b>		
<b>Specification/Description</b>	<b>See specification in attached schedule</b>	
<b>Address for Notice</b>		
<b>Price</b>	<b>See attached Pricing Schedule</b>	
<b>Council Authorised Officers</b>		
<b>Name</b>	<b>Position</b>	<b>Contact Details</b>

**Contractor Manager**

Name	Contact Details

**Contractor Key Personnel**

Name	Position	Contact Details

<b>Insurance</b>	
<b>Insurance type:</b>	<b>Minimum level</b>
<b>Employer's Liability Insurance</b>	<b>£10 million</b>
<b>Public Liability Insurance</b>	<b>£10 million</b>
<b>Professional Indemnity Insurance</b>	<b>£10 million</b>

**PART 2 - STANDARD TERMS AND CONDITIONS SERVICES**

**ROSSENDALE BOROUGH COUNCIL**

**STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE PURCHASE OF SERVICES**

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## PART A - OPERATIVE PROVISIONS

### A1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.
“Assigned Employees”	In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	the commencement date stated in the Contract Particulars.
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data

and sensitive personal data (within the meaning of the DPA) / GDPR).

“Contract”

the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:

1. the Contract Particulars;
2. the Special Terms and Conditions;
3. the Standard Terms and Conditions;
4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.

“Contractor”

the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.

“Contract Manager”

the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.

“Contract Particulars”

the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key

Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document.

“Contract Period”	the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
“Council”	the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“Data Processor”	Please refer to Data Processor Supplemental Agreement.
“Delivery Instructions”	the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.
“Employee”	any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services..

“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“General Data Protection Regulation”	General Data Protection Regulation (GDPR) EU 2016/679
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.
“HRA”	The Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender”

the Council’s invitation to tender for the Contract.

“Key Personnel”

those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.

“Law”

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

“Liabilities”

all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

“Order”

an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.

“Price”

the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.

“Pricing Schedule”

the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.

“Replacement Contractor”	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract
“Services”	the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.
“Specification”	the specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Services.
“Standard Terms and Conditions”	the terms and conditions set out in this document.
“Tender”	the Contractor's tender for the Services in response to the Council's Invitation to Tender.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
A1.1	Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
A1.2	A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2. **HEADINGS**

A2.1 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

A3. **NOTICES**

A3.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

A3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A4. **ENTIRE AGREEMENT**

A4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

## **PART B - PROVISION OF SERVICES**

### **CONTRACT PERIOD**

- B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

### **B2. PERFORMANCE**

- B2.1 The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
- B2.2 The time of the delivery of the Services is of essence to the Contract.
- B2.3 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.
- B2.4 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
- B2.5 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- B2.6 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- B2.7 The Council retains the Contractor for the performance of the Services on a non-exclusive basis.

**B3. CONTRACT MANAGER**

B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.

B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

**B4. ORDERING PROCESS**

B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.

B4.2 Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.

B4.3 The Orders shall state the type of or part of the Services required including the Council's requirements with regard to timescale for delivery of those Services.

**B5. RISK IN AND TITLE TO GOODS**

B5.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.

B5.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

**B6. WARRANTY**

B6.1 The Contractor warrants to the Council that the Services will be provided:

B6.1.1 in a proper, skilful and workmanlike manner;

B6.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

B6.1.3 in accordance with the Contract and any descriptions provided by the Contractor;

B6.1.4 to the reasonable satisfaction of the Authorised Officer;

- B6.1.5 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and
- B6.1.6 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.
- B6.2 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- B6.2.1 be free from defects in design, material and workmanship; and
- B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- B6.3 Without prejudice to the Council's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:
- B6.3.1 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
- B6.3.2 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.
- B7. CONTRACTOR'S EMPLOYEES**
- B7.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:
- B7.1.1 any member of the Contractor's Employees; and/or
- B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

- B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.
- B7.3 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- B7.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
- B7.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- B7.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

- C1.1 The Council shall pay the Price for the Services to the Contractor.
- C1.2 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
- C1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.

- C1.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.
- C1.5 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
- C1.6 The council reserves the right to retain any monies for the non-performance of specific service levels.
- C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

- D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
  - D1.1.2 the Contractor is convicted of a criminal offence relating to the conduct of his business or profession; or
  - D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or
  - D1.1.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or
  - D1.1.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
  - D1.1.6 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such

other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

- D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
- D1.1.8 the Contractor commits persistent minor breaches of this Contract whether remedied or not.

D1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.

D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.

## D2. **CONSEQUENCES OF TERMINATION**

D2.1 If this Contract is terminated in whole or in part the Council shall:

D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

D2.1.2 be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

D2.1.3 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

**D3. DISPUTE RESOLUTION PROCEDURE**

- D3.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

**D4. SURVIVAL**

- D4.1 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

**PART E - INSURANCE AND LIABILITIES**

**E1. INSURANCE**

- E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
- E1.2 The Contractor 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.
- E1.3 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

**E2. INDEMNITY AND LIABILITY**

E2.1 Neither party seeks to exclude or limit its liability for:

E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);

E2.1.2 fraudulent misrepresentation; or

E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

E2.3 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

**PART F - PROTECTION OF INFORMATION**

**F1. INTELLECTUAL PROPERTY**

F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;

F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.

F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-

license, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.

F1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

## F2. **CONFIDENTIALITY AND PUBLICITY**

F2.1 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.

F2.2 All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.

F2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

F2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

## F3. **DATA PROTECTION**

F3.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Processor Supplemental Agreement, Data Protection Act 2018, General Data Protection Regulation EU 2016/679.

**F4. FREEDOM OF INFORMATION**

- F4.1 The Council is subject to the FOIA and the EIR (“the Acts”). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
- F4.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

**F5. RECORD KEEPING AND MONITORING**

- F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
- F5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

**PART G - STATUTORY OBLIGATIONS**

**G1. HEALTH AND SAFETY**

- G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

**G2. CORPORATE REQUIREMENTS**

- G2.1 The Contractor shall comply with all obligations under the HRA.
- G2.2 The Contractor shall comply with all Council policies and rules, such as, but not limited to:
- G2.2.1 equality and diversity policies;
  - G2.2.2 sustainability;
  - G2.2.3 information security rules;

- G2.2.4 whistleblowing and/or confidential reporting policies; and
- G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.
- G2.3 The Contractor shall not unlawfully, discriminate either directly or indirectly on such grounds as race, colour or national origin, disability, sex or sexual orientation, religion or belief or age.
- G2.4 The Contractor shall take all reasonable steps to secure the observance of clause G2.3 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed by it in the execution of this contract.
- G2.5 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.
- G2.6 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
- G2.6.1 details of the finding; and
- G2.6.2 the steps the Contractor has taken to remedy the situation.
- G3. LAW AND CHANGE IN LAW**
- G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.
- G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.
- G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

## **PART H - GENERAL PROVISIONS**

### **H1. CONTRACT VARIATION**

H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.

H1.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

### **H2. THIRD PARTY RIGHTS**

H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

### **H3. NO WAIVER**

H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

### **H4. SEVERANCE**

H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

### **H5. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

- H5.2 The Council shall be entitled to:
- H5.2.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or
  - H5.2.2 transfer, assign or novate its rights and obligations where required by Law.
- H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.
- H6. **FORCE MAJEURE**
- H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event.
- H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.
- H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.
- H6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
- H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

**H7. INDUCEMENTS**

H7.1 For the purpose of this clause H7 “the Corruption Acts” shall mean the Prevention of Corruption Acts 1889 to 1916, the Bribery Act 2010 together with any subordinate legislation or guidance issued under those acts and any subsequent amendments or replacements to those acts.

H7.2 The Contractor shall not:

H7.2.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract; nor

H7.2.2 commit any other criminal offence under the Corruption Acts; nor

H7.2.3 do anything to procure or induce an employee, agent, servant or representative of the Council to commit an offence under the Corruption Acts

H7.3 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor’s behalf.

H7.4 The Contractor shall:

H7.4.1 immediately inform the Council if it becomes aware of any breach of clause H7.2 or H7.3 and shall fully co-operate with any subsequent investigation including but not limited to access to all relevant documentation;

H7.4.2 provide the Council with all reasonable assistance required by the Council in order to comply with the Corruption Acts;

H7.4.3 if requested by the Council, provide the Council with evidence of its compliance with the Corruption Acts, including but not limited to producing to the Council a copy of its anti-bribery policy

H7.5 Where the Contractor engages in conduct prohibited by clauses H7.2, H7.3 and H7.4 in relation to this or any other contract with the Council, the Council has the right to:

H7.5.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

H7.5.2 recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.

**H8. COSTS AND EXPENSES**

H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

**H9. NO AGENCY OR PARTNERSHIP**

H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

**H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

**H11. INSPECTION OF CONTRACTOR'S PREMISES**

H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

**H12. LAW AND JURISDICTION**

H12.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

**PART 3 - SPECIAL TERMS AND CONDITIONS GENERAL**

**Rossendale Borough Council**

**Northgate Revenues and Benefits SAAS**

**Northgate Citizens Access**

**SPECIAL TERMS AND CONDITIONS – GENERAL**

**PRICE AND PAYMENT (ADDITIONAL PROVISIONS)**

- 1.1. If the Contractor proposes to vary the Price, it must give the Council not less than 3 months written notice in advance of such proposed variation effective at the end of the initial period of 5 years or annually and thereafter providing that:
  - 1.1.1. such variation shall not exceed the annual CPI Price Index and should not preclude the possibility of any reductions in charges; and
  - 1.1.2. any notice of variation under this clause 1 will be limited to one request in any twelve (12) month period.
- 1.2. Changes to the Price will only become effective when agreed and accepted in writing by the Council's Authorised Officer.

**2. MEETINGS AND PROGRESS REPORTS**

- 2.1. The Contractor Manager shall attend any meetings, including site meetings, as may reasonably be requested by the Council. The Contractor shall make all arrangements for sub-contractors and suppliers to be present as required by the Council.
- 2.2. The Contractor shall submit written reports to the Council in connection with any material changes to the Tender submitted by the Contractor.

**3. ASSIGNMENT AND SUB-CONTRACTING (ADDITIONAL PROVISIONS)**

- 3.1. The Contractor shall identify each part of the Services that it intends to sub-contract and the proposed sub-contractor for each item identified prior to seeking the Council's consent to such sub-contracting.
- 3.2. The Council shall be entitled to impose conditions in relation to any consent to sub-contracting given including a requirement that a guarantee or other security be provided.

- 3.3. The Council requires as a condition precedent of consent the Contractor to obtain collateral warranties from any sub-contractor or other member if part of a consortium arrangement in a form prescribed by the Council and duly executed in the presence of the Council.

Northgate Revenues and Benefits SAAS and  
Northgate Citizen Access

**PART 4 – IT SPECIAL CONDITIONS**

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## 1 DEFINITIONS

**'Acceptance Date'** shall be the date certified by the Supervising Officer as the date when the Software passed the Acceptance Tests in accordance with the Contract.

**'Acceptance Certificate'** has the meaning given to it in Clause 9.1.

**'Acceptance Tests'** to be agreed by the Parties within 30 days of the date of this Agreement as are designed to ensure that the System complies with the System Specification.

**'Hardware'** shall mean all hardware supplied by the Contractor for inclusion with the Services.

**'Installation Date'** shall mean the date included in the Contract or where not so specified the date included in the Programme of Services as the date upon which the System is to be ready for Acceptance Tests.

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

**'Location'** shall mean the places where the System or part thereof is to be provided to the Council.

**'Project Manager'** shall mean the person appointed by the Contractor and referred to in Clause 2.2 below.

**'Programme of Services'** shall mean the timing and sequence of events agreed between the Council and the Contractor for the performance of the Contract as proposed and set out in Schedule 7.

**'Services'** shall mean and include the supply of training and consultancy services, installation, configuration, test and acceptance of the System and any other work required under this Contract to be performed in accordance with the System Specification.

**'Service Level Agreement'** shall mean the agreement set out at Schedule 2 hereof specifying the support and maintenance services for the System.

**'Software'** shall mean the software specified at Schedule 2 supplied by the Contractor under this Contract in a hosted environment.

**'Supervising Officer'** shall mean the person described in Clause 2.2 as the Council nominates for that purpose and notifies to the Contractor in writing.

**'System'** means the Software and the Hardware, if any, supplied hereunder but does not include any existing software or hardware under the control of the Council.

**'System Specification'** shall mean the specification set out in detail in the Contractor's tender response for the System appended to Schedule 2.

**'Warranty Period'** shall mean a period of **24 months** after Acceptance of the System or the relevant part thereof.

Words and phrases defined in the Standard Conditions shall have the same meaning in these Special Conditions unless the context otherwise requires.

In the event of a conflict between the Standard Conditions and these Special Conditions, these Special Conditions shall prevail.

## **2 CONTRACTOR TO INFORM HIMSELF FULLY AND APPOINT PROJECT MANAGER**

- 2.1 The Contractor shall appoint a Project Manager and the Council shall appoint a Supervising Officer within 30 days of the date of this Contract and such appointment shall be subject to the prior approval of the Council (such approval not to be unreasonably withheld or delayed). Provided further that the Supervising Officer shall have at any time the right to insist on the removal or the replacement of the Project Manager but shall not exercise such right unreasonably.
- 2.2 The Project Manager shall be responsible for liaison with the Supervising Officer and any other parties involved in the installation of the System. The Supervising Officer shall have overall responsibility for the Council's responsibilities including authorising any material changes to the Contract. The Supervising Officer or his/her deputy shall be available to the Project Manager for consultation at all reasonable times.
- 2.3 The Project Manager shall be available for consultation when reasonably required by the Supervising Officers until the Acceptance Certificate is issued.
- 2.4 The Project Manager and Supervising Officer shall attend regular meetings that may be called by either party on reasonable notice to discuss issues raised from time to time by the Programme of Services. The functions of the Project Manager and Supervising Officer may be performed by a deputy when the Project Manager and Supervising Officer (as the case may be) is absent.

## **3 STANDARD OF THE SERVICES**

- 3.1 The Contractor acknowledges that it:
- 3.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council;
- 3.1.2 has raised all relevant due diligence questions with the Council before the effective date of the Contract;
- 3.1.3 has entered into the Contract in reliance on its own due diligence alone.

- 3.2 The Services shall be performed in accordance with the Contract. To the extent that the standard of the Services has not been specified in the Contract the Contractor shall use good quality materials, techniques and standards and execute the Contract with due care, skill and diligence and in accordance with best professional software industry standards.
- 3.3 Without prejudice to the generality of Clause 3.1. The Contractor warrants that:-
- 3.3.1 the System shall be fit for the purpose of providing the service requested by the Council and set out in the technical System Specification at Schedule 2;
- 3.3.2 the System is free from defects at the time of completion save for minor faults as referred to in Clause 8.4;
- 3.3.3 the System shall be capable of being expanded in accordance with the System Specification;
- 3.3.4 it owns, has obtained or will obtain valid licences of all Intellectual Property Rights which are necessary to the performance of its obligations under this Contract;
- 3.3.5 it has the full capacity and authority to grant, or to procure the grant of, all software licences pursuant to this Contract;
- 3.3.6 Software used by the Contractor in the System will be currently supported versions of that Software and perform in all material respects in accordance with its specification.
- 3.4 In the event that through the act, neglect or default of the Contractor its servants, agents or sub-contractors, Council data transmitted over the network is lost or unusable, the Contractor shall be liable for the cost of reconstitution of such data.

#### **4 MISTAKES IN INFORMATION**

- 4.1 The Contractor shall be responsible for and shall pay extra costs occasioned by any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by him, whether they have been approved by the Council or not.
- 4.2 In addition, the Council shall be entitled to recover all reasonable costs directly occasioned by the Council carrying out repetitive or additional work as a result of the Contractor failing to provide accurate drawings documentation or other written information upon which the Council has relied.

#### **5 PROGRAMME OF SERVICES**

- 5.1 The Contractor and the Council shall each carry out the Services in accordance with the Programme of Services as proposed by the Contractor and agreed by the Council and annexed hereto at Schedule 7 or any variation thereto agreed

by the Council in writing. This shall cover individual activities, which will be scheduled into the Programme of Services, highlighting the person responsible for each task and a timetable of delivery, installation, testing, training and transfer over from the existing systems. The Programme of Services shall identify the timescales for each activity.

- 5.2 The payment processes and the Contractor's project management responsibilities are respectively set out in this Contract and the Programme of Services. In the event that the Price does not specify when payment is due for a particular service it shall be monthly in arrears immediately following satisfactory delivery of the service.

## **6 DELIVERY AND INSTALLATION OF SYSTEM**

- 6.1 The Contractor shall by the Installation Date supply, deliver to the Location and complete the installation of the System in readiness for the Acceptance Tests.
- 6.2 If the Contractor fails to meet a key milestone identified in the Programme of Services the Council shall have the right to deduct from the Price, liquidated damages equal to that identified in the Tender response, or require the contractor to deliver the additional consultancy services required to resolve the delay to the same value as and in lieu of the liquidated damages.
- 6.3 If the Contractor is delayed in or prevented from delivering or installing part or all of the System on or by a date specified in the Programme of Services due to any delay or default on the part of the Council, the Contractor shall notify the Council in writing as soon as practicable of the effect on the Programme of Services of such delay or default and the Contractor and the Council shall agree an adjustment to the Completion date that is reasonable in the circumstances.

## **7 ACCEPTANCE TESTS**

- 7.1 The Contractor shall give to the Council in writing seven days prior notice or such shorter notice as may be agreed of the date when the System or a part of it is ready for the Acceptance Tests. Unless otherwise agreed the Acceptance Tests shall be at the expiry of that notice period and in any event shall be no later than the Installation Date.
- 7.2 If the System or any portion thereof fails to pass the initial Acceptance Tests, repeat tests shall be carried out within a reasonable time upon the same terms and conditions but at the sole expense of the Contractor. In the event that the repeat tests (not being fewer than two if required) show that the System is not in accordance with the Contract, the Contractor shall provide free of charge such additional or replacement hardware, software and services as may be

necessary to enable the System to pass the Acceptance Tests. If after the further repeat tests (not being fewer than two if required) the System is incapable of passing the Acceptance Tests, the Council may elect either:-

7.2.1 to accept and retain such of the System as he may consider expedient at such reduced price as may be agreed between the Council and the Contractor; or

7.2.2 to either reject the entire System or the relevant part of the System which has failed the Acceptance Tests and on such election applicable monies paid by the Council to the Contractor shall be returned (for the avoidance of doubt in the event of the whole system being rejected all monies shall be returned);

7.2.3 in either of the above cases without prejudice to any other remedy available to the Council in respect of any loss of expense to the Council arising in consequence.

7.3 The Contractor acknowledges that, for any failed part of the System the Council may require the Contractor to retest both the failed part and any other part of the System that is dependent on the failed part, regardless of whether an Acceptance Certificate has already been issued by the Council in respect of the dependent part.

7.4 Acceptance of the System shall not be prevented by minor defects (meaning defects that do not materially affect functionality of the System) but the Contractor shall notify the Council of such minor defects and remedy the same within a reasonable time.

7.5 In the event that the Council exercises its option to reject the System or any part thereof pursuant to clause 8.2.2, the risk in the System or any rejected part thereof shall pass back from the Council to the Contractor at the time of such rejection.

## **8 ACCEPTANCE CERTIFICATE**

8.1 As soon as the Services have been completed in accordance with the System Specification and have passed the Acceptance Tests, the Supervising Officer shall issue an Acceptance Certificate which will state the Acceptance Date and any outstanding defects in the Services, such issue not to be unreasonably withheld or delayed.

8.2 If by agreement between the Council and the Contractor any part of the Services shall be satisfactorily completed in advance of the remainder the Supervising Officer may issue a partial Acceptance Certificate in respect of that part.

## 9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Council acknowledges that all Intellectual Property Rights in the System and any updates provided thereof vest and shall continue to vest in the Contractor or its relevant licensors, and the Council shall have no rights in or to the System other than the right to use it in accordance with the terms of the Contract.
- 9.2 The Contractor acknowledges that the Intellectual Property Rights in any permitted modifications of the System carried out by the Council or any other software developed by the Council prior to, during and after the period of the Contract, or any outputs from the System shall vest and remain vested in the Council.
- 9.3 The Contractor shall fully indemnify the Council for any direct or indirect loss resulting from all actions, claims, demands, proceedings, damages, costs, charges and expenses (including legal expenses on an indemnity basis) and any consequential loss (which shall include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) arising from or incurred by any breach or infringement or alleged breach or infringement of Intellectual Property Rights of any third party by the use or possession of the System supplied by the Contractor under the Contract, subject to the following:-
- 9.3.1 the Council shall promptly notify the Contractor in writing of any alleged breach or infringement of which they have notice;
- 9.3.2 the Council **must** make no admissions without the Contractor's written consent;
- 9.3.3 the Council, at the Contractor's request and expense, shall allow the Contractor to conduct and/or settle all negotiations and litigation and give the Contractor all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for the Contractor's account; and
- 9.3.4 this indemnity will not apply to any infringement arising from use of the System in combination with any equipment and/or software not supplied or recommended for use by the Contractor.
- 9.4 The indemnity in Clause 10.3 does not apply to infringements occasioned by the Council's use of the System in conjunction with other apparatus or software not supplied by the Contractors; nor to infringements occasioned by designs or specifications made by the Council in each case acting independently of the Contractor.
- 9.5 If at any time an allegation of infringement of letters patent, design or copyright is made, the Contractor may at its own expense modify the System so as to avoid the infringement or may replace the System with non-infringing goods

provided that any such modification or replacement does not affect the performance of the System.

## 10 STANDARD OF PERFORMANCE

- 10.1 The Contractor shall ensure that the System maintains the standard of performance specified in the System Specification and demonstrated in the Acceptance Tests for the period of the Contract and Warranty Period and throughout any further period of the Service Level Agreement at Schedule 2.
- 10.2 If the Council can demonstrate that the standard of performance specified in the Contract has not been maintained during the term of the Contract or warranty period or period covered by the Service Level Agreement due to a material defect with the Software supplied by the Contractor, then notwithstanding prior acceptance of the Software in accordance with Clause 8, the Contractor shall forthwith at its own expense provide to the Council such replacement Software to achieve the standard of performance specified in this Contract.

## 11 INDEMNITY AND INSURANCE

- 11.1 The Contractor shall indemnify and keep indemnified the Council for any direct or indirect loss resulting from injury (including death) to any persons or loss of or damage to any property including the System which may arise out of the act, default or negligence of the Contractor, his sub-contractor, their employees or agents in consequence of the Contractor's obligations under the Contract and against all claims, demands, proceedings, damages, costs, charges and expenses (including legal expenses on an indemnity basis) and any consequential loss (which shall include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) whatsoever in respect thereof or in relation thereto provided that the Contractor shall not be liable for nor be required to indemnify the Council against any compensation or damages for or with respect to injuries or damages to persons or property to the extent that such injuries or damages result from any negligent act or default on the part of the Council, his employees or contractors (not being the Contractor or employed by the Contractor).
- 11.2 The Council shall indemnify and keep indemnified the Contractor for the duration of the Contract against injury (including death) which may arise out of the act, default or negligence of the Council or any contractor employed by the Council (other than the Contractor) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof.
- 11.3 The Contractor shall insure (and maintain such insurance throughout the Contract period) with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in

consequence of the Contractor's obligations under the Contract and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exception in Clause 12.5.

- 11.4 The Contractor shall, if required by the Council, provide written advice explaining the scope of the Contractor's insurance cover.
- 11.5 Except in respect of injury (including death) to any person or loss of or damage to any property not belonging to the Council and the Intellectual Property Indemnity provided under Clause 10.1 (in respect of which no limit shall apply), the liability of the Contractor in respect of any one act or default or series of connected acts or defaults shall not exceed £10,000,000.
- 11.6 In any event of any claim being made against the Council arising out of the matters referred to in Clauses 12.1 and 12.2, the Contractor shall be promptly notified thereof, and may at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Council shall not, unless and until the Contractor shall have failed to take over the conduct of the negotiations or litigation, make any admission, which might be prejudicial thereto. The Council shall at the request and at the expense of the Contractor afford all reasonable assistance for any such purposes.

## 12 MAINTENANCE

- 12.1 The Contractor shall provide maintenance and support of the Software under the Service Level Agreement at Schedule 3 and perform such service with competent and suitably skilled personnel.

## 13 SOFTWARE

- 13.1 The Contractor licences the Council to use the Software for the duration of the Contract for any purpose, at any location and on any equipment that is consistent with the requirements of the Council set out in the Specification and the Invitation to Tender.
- 13.2 The Council will sign any agreement reasonably required by the owners of Intellectual Property Rights in all Software supplied to the Council under the relevant Contract/s for the protection of that Software.
- 13.3 The copyright in all documents, drawings and information supplied to the Council in connection with this Contract shall remain vested in the Contractor or its licensors. Such documents, drawings and information shall not be copied, disclosed or used (except for the purpose for which they were supplied) without the prior written consent of the Contractor.

- 13.4 The Contractor shall provide Software maintenance services as agreed and included in the Service Level Agreement which will be entered into by the Contractor and the Council.
- 13.5 If in meeting his contract obligations and during the warranty period the Contractor for his own purposes modifies any of the System supplied under the Contract and such modification adversely affects the level of performance of the System, then the Contractor shall at his own expense, provide such items of Hardware as may be necessary to return to level of performance of the System to that specified in the Contract.

#### 14 **DOCUMENTATION**

- 14.1 The Contractor shall provide to the Council all documentation reasonably necessary to enable the Council's Staff to fully operate the Software (meaning to enable it to efficiently perform all of the functions in the System Specification and train its users. The Contractor shall update and replace where appropriate all such documentation for the duration of the Contract.

#### 15 **SOFTWARE UPDATES**

- 15.1 If at any time modification or updates are required to the Software to enable it to perform without error or to improve its reliability and/or performance and functionality by the Software manufacturer or the Contractor, such updates or modifications shall be provided in accordance with terms of the Contract (including but not limited to the Specification and Pricing Schedule).
- 15.2 Any updates or modifications of the System shall be implemented at a time to be agreed by the parties. In the event that an update or modification requires the System (or part of the System) to cease functioning, the Contractor shall advise the Council in writing of the extent of such cessation of service. The Contractor shall provide the service where practicable by alternative means.

#### 16 **WARRANTY**

- 16.1 If during the Warranty Period, the Contractor is notified of a fault in the System or System which is due to faulty design, manufacture or materials, or the negligence of the Contractor, the Contractor will replace or (at its option) repair the faulty part free of charge provided that:-
- 16.1.1 the System has been properly kept, used and maintained in accordance with the manufacturer's or the Contractor's instruction, if any, and has not been modified except with the Contractor's consent;
- 16.1.2 the fault is not due to accidental or wilful damage (including lightning and electrical damage); interference with or maintenance of the System by persons

other than the Contractor where the Contractor is obliged under a Service Level Agreement to carry out maintenance work.

- 16.2 The Contractor may make a reasonable charge in respect of any visit at the Council's request to repair the System where either no fault is found to exist, or the fault is not covered by this warranty.

## 17 **COMPUTER VIRUS AND SECURITY**

- 17.1 The Contractor shall take all reasonable steps in accordance with good IT industry practice to prevent any virus (including but not limited to any Trojan Horse or Worm as those terms are commonly understood in the industry) being transferred to the Council's System including but not limited to using a reputable anti-virus software program or programs and updating such program in accordance with the manufacturers recommendations. The Contractor shall regularly review its anti-virus checking software and systems
- 17.2 The Contractor shall indemnify the Council against all loss, direct and consequential damages, actions, claims, demands, proceedings, costs, charges, and expenses whatsoever in respect of a breach of Clause **18.1**.
- 17.3 The Contractor shall apply current IT industry best practice to avoid unauthorised access to the System (or the Contractor's system if it will be connected to the Council's System). For the avoidance of doubt IT industry best practice will include using encryption where the Council's operational data is to be transferred between remote sites and restricting access to the Council's System or the Contractor's system only to those persons given a unique identification and password and further ensuring any unauthorised access to the Contractor's system is detected and the other party informed immediately.
- 17.4 The Contractor shall ensure that all computer hardware utilised in the performance of the services under the Contract and Service Level Agreement are kept in a physically secure environment utilising industry standard monitoring and an intrusion detection service to monitor activity behind the firewall. All back up data storage devices should also be adequately protected against unauthorised access as set out herein.
- 17.5 The Contractor is expected to familiarise itself with the provisions of British Institutes Standard BS ISO/IEC (27001) code of practice concerning IT system security and to implement good IT industry practice to prevent unauthorised access to the Contractor's system and Council's System where the contractor is non-compliant with the provisions of the standard it shall inform the Supervising Officer forthwith in writing.

**18 PROFESSIONAL SERVICES**

- 18.1 The Contractor shall provide consultancy and training as so specified in the System Specification.
- 18.2 The professional services shall be performed at the Council's Location unless agreed otherwise.
- 18.3 Changes to the description of work contained in the Programme of Services shall be effective only if set out in writing and agreed by both parties.

**19 ACCESSIBILITY AND REASONABLE ADJUSTMENTS**

- 19.1 The Council requires all of its suppliers of IT hardware, software and services to reasonably assist it to in comply with the requirements in the Equality Act 2010 for access to services dependent on the operation of the Software and/or Hardware.
- 19.2 Provision of the System must include provision for alternative and adaptive ICT System as required, directly or through third parties, as well as the use of accessibility options built into operating systems and standard applications. Alternative and adaptive technology will be used to offer alternatives to users with painful or limiting conditions as well as those with disabilities included within the strict definition of "disability" in the Act.

**20 EXPORT**

- 20.1 Without prejudice to any other restrictions in this Contract in respect of non-disclosure the Council will not export, directly or indirectly, the System, and the documentation accompanying the System (as applicable) or any direct product thereof or any technical data relating to the Programs from the United Kingdom without complying with all regulations relating to such export issued by the United States and United Kingdom governments.

**IN WITNESS** whereof the Contract has been **EXECUTED AS A DEED** on the date and year stated at the beginning of this deed.

Executed as a deed by

ROSSENDALE   BOROUGH   )  
COUNCIL                    )  
                                  )

[Authorised] Signatory

Executed as a deed by            )  
[CONTRACTOR] LIMITED            )  
  )

Director(s)/Company Secretary/Witness