

**DATED**

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**SOFTWARE LICENCE AND MAINTENANCE AND SUPPORT AGREEMENT FOR THE TOTAL TRANSPORT  
PILOT SCHEDULING SOFTWARE SYSTEM**

between

**PARTY 1**

and

**CAMBRIDGESHIRE COUNTY COUNCIL**

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## PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS](**Supplier**).
- (2) CAMBRIDGESHIRE COUNTY COUNCIL whose principle place of business is at Shire Hall, Castle Hill, Cambridge CB3 0AP (**Authority**).

## BACKGROUND

- A. The Authority sought proposals for the provision of certain software products listed in Schedule 1 by means of a public tender exercise. The Authority advertised using an RFQ through Contracts Finder for the provision of the Services.
- B. The Authority has, through a competitive process, selected the Supplier to provide the software and associated maintenance services.
- C. The Supplier is the entire legal and beneficial owner and supplier of the software products and is willing to license the Authority to use these products.
- D. The Supplier has further agreed to provide support and maintenance for such software products on the terms set out in this agreement.

## AGREED TERMS

### 1. Interpretation

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

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

**Authorised Agent:** each and any agent, employee, contractor or subcontractor of the Authority, or any Affiliate who is engaged or employed by the Authority or any Affiliate to provide Relevant Services.

**Bribery Act:** the 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:** the charges payable for the Maintenance Services under this agreement, being (where the context so requires) each or any of the following:

- (a) the charges for the Standard Support Service set out in Part 2 of Schedule 4 (which charges also include the Updating Service);
- (b) any charges agreed for New Versions; and

in each case as the same may be amended from time to time in accordance with clause 10.5.

**Commencement Date:** the date of this agreement.

**Commercially Sensitive Information:** the information notified by the Supplier to the Authority in writing as comprising information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Confidential information:** has the meaning given in clause 14.

**Contract Manager:** means Martin Magnago.

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

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

**Deliverables:** any Modification, Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Maintenance Services.

**Director of the Service Level:** is Bob Menzies.

**Documentation:** the documents provided by the Supplier for the Software, in either printed text or machine readable form, including the technical documentation, program specification and operations manual.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Escrow:** the deposit with, and retention by the Escrow Agent of, the Source Code Materials.

**Escrow Agent:** NCC Group Escrow Limited.

**Escrow Agreement:** an escrow agreement in the form attached to this agreement in Schedule 3 which is to be entered into by the parties and the Escrow Agent in accordance with clause 4.

**Extension Period:** has the meaning given in clause 3.6.

**Fee:** the licence fee payable by the Authority to the Supplier under clause 3.1.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Holding company:** and **subsidiary** have the meaning as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in

connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

**Initial Licence Period:** an initial term of three years from the Commencement Date up to and including the day before the fifth anniversary of the Commencement Date.

**Information:** has the meaning given under section 84 of FOIA.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**Licence:** the licence granted under clause 3.

**Licence Period:** means the Initial Licence Period as may be varied by any Extension Period agreed in accordance with clause 3.6 or the earlier termination of this agreement in accordance with its terms.

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

**Maintenance Services:** includes (as appropriate) the Standard Support Service, and the Updating Service.

**Manager:** the person appointed by the Authority from time to time in order to fulfil the role described in clause 11.2.

**Modification:** any Maintenance Release or New Version.

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

**Passenger Data:** means the personal data relating to the passengers using the bus service in the Pilot Area for whom the Software will retain information.

**Pilot Area:** means the area centred on Ely and covering the East Cambridgeshire district north of Burwell.

**Prohibited Act:** the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity;  
or

(ii) reward that person for improper performance of a relevant function or activity;

(b) 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;

(c) committing any offence:

(i) under the Bribery Act;

(ii) under legislation or common law concerning fraudulent acts;

(iii) defrauding, attempting to defraud or conspiring to defraud the Authority.

(d) any activity, practice or conduct which would constitute one of the offences listed under clause (c), if such activity, practice or conduct had been carried out in the UK.

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

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Security Breach Notification Procedures:** the Authority's (as the context requires) specific written procedures to follow in the event of a data security breach.

**Services:** means the provision of the Software to the Authority under this agreement for the scheduling of the bus services in the Pilot Area.

**Service Levels:** those standards of performance to be achieved by the Supplier in performing the Standard Support Service as set out in Schedule 10.

**Sites:** means the list of sites set out in Schedule 6 or as otherwise notified to the Supplier in accordance with clause 9.1.

**SLAs:** means the Service Levels set out in Schedule 10.

**Software:** means the software solution including computer programs listed in Schedule 1 which shall meet the requirements of the Specification and all user documentation in respect of such programs and any Modification which is acquired

by the Authority during the Licence Period for usage throughout the county of Cambridgeshire.

**Source Code Materials:** the source code of the Software and all technical information and documents required to enable the Authority to modify and operate the Software.

**Specification:** the document detailing the specification of the Software which forms Schedule 2.

**Standard Support Service:** the support service (which shall be available between 7.00am and 7.00pm) more particularly described in the Specification which is to be provided by the Supplier to the Authority under clause 7.1 and clause 7.2 and which shall include the provision of such training for the Authority's staff as may be reasonably required in accordance with the Specification

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

**Support Manager:** the person appointed by the Supplier from time to time in order to fulfil the role described in clause **Error! Reference source not found..**

**Support Staff:** those officers, employees, agents or subcontractors of the Supplier connected with this agreement, including those individuals who perform the Supplier's obligations under this agreement and (where the context permits) the Support Manager.

**Supported Software:** has the meaning set out in clause 6.1.

**Trigger Event:** an event the occurrence of which shall entitle the Authority to apply to the Escrow Agent for release of the Source Code Materials from Escrow in accordance with the provisions of the Escrow Agreement.

**Updating Service:** the service to be supplied by the Supplier to the Authority under clause 7.1 and clause 7.3.

**User Acceptance Testing:** means the testing as set out in Schedule 9.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales

- 1.2 The headings in this agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.
- 1.3 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 Unless the context otherwise requires:



- (a) references to the Supplier and the Authority include their permitted successors and assigns;
  - (b) references to statutory provisions include those statutory provisions as amended, extended or re-enacted from time to time;
  - (c) references to one gender includes a reference to the other genders; and
- 1.6 If any conflict arises between the terms and conditions of this agreement and any provision of any schedule, the terms and conditions of this agreement shall prevail.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

## **SOFTWARE LICENCE**

### **2. Delivery, acceptance and installation**

- 2.1 The Supplier shall deliver and install on the Authority's equipment one copy of the Software electronically or in a hard copy to the Authority at the address for the Authority (as stated above) or shall ensure that the Software is accessible remotely by the Authority within 5 Working Days of the date of this agreement. The Supplier shall also ensure that the Authorised Agent has equal access as the Authority to the Software.
- 2.2 Time shall be of the essence regarding the delivery dates specified in clause 2.1
- 2.3 For a period of 21 days commencing on installation of the Software, the Authority may discontinue this licence of the Software if it does not perform to the Authority's satisfaction. If the Authority does so, the Supplier shall immediately refund all monies paid by the Authority under this licence and, on receipt of that refund, this licence shall terminate.
- 2.4 The Authority may reject any Modification delivered by the Supplier, by written notice, within three months of delivery, if tests carried out by the Authority establish on reasonable grounds that its use would result in any diminution of the performance or functionality of the Software.
- 2.5 Upon such rejection:
- (a) the Supplier shall either correct the Modification and re-issue it or withdraw it;

- (b) in the case of a Maintenance Release, the Authority may within a reasonable time require the Supplier to supply, free of charge, such additional services as are required to rectify any defect in the Software which the Maintenance Release was intended to rectify; or
- (c) in the case of a New Version, the Authority may reject the New Version and recover any sums which it may have paid to the Supplier in respect thereof.

2.6 Risk and title in the media on which the Software or Modification is delivered shall not pass to the Authority until, respectively, the period specified in clause 2.3 or clause 2.4 has expired (unless, respectively, the Authority has discontinued this licence beforehand or the Authority has rejected the Modification beforehand and, in either of these circumstances, risk shall not pass).

### 3. Licence and duration

3.1 The licence fee shall be £[AMOUNT], payable in instalments as follows:

- (a) 30% one month into this agreement;
- (b) 60% three months into this agreement;
- (c) 10% six months into this agreement.

3.2 The capital milestones as set out in clause 3.1 are subject to the successful implementation of the Software.

3.3 All sums payable under this licence are exclusive of VAT or any relevant local sales taxes, which shall be charged on the amount which would be payable after applying the highest of the discounts referred to in clause **Error! Reference source not found.** in accordance with the relevant local regulations in force at the time of making the relevant taxable supply and shall only be payable by the Authority after receipt of a valid VAT or local sales tax invoice.

3.4 The Supplier warrants that the terms (including pricing) of this licence are comparable to, or better than, the terms (including pricing) offered by the Supplier to any of its similarly situated public sector or commercial customers of equal or lesser size for comparable products or services. If the Supplier offers more favourable terms (including pricing) to such public sector or commercial customers during the term of this licence, such terms shall also be made available to the Authority within 30 days from the signature of any such agreement.

3.5 In consideration of the Authority's obligation to pay the Fee under clause 3.1, receipt of [the first instalment of] which the Supplier hereby acknowledges, the Supplier grants to the Authority and its Affiliates a non-exclusive licence for the Initial Licence Period:

- (a) to use the Software;
- (b) to develop, modify and maintain the Software (but only after the occurrence of a Trigger Event);

- (c) subject to clause 3.7(b), to grant to any Authorised Agent a sub-licence to use, and, after the occurrence of a Trigger Event, to develop, modify and maintain, the Software.

3.6 The Authority may extend this licence beyond the Initial Licence Period by two further periods of up to 12 months each (Extension Period) up to a maximum of two years. If the Authority wishes to extend this licence, it shall give the Supplier at least two months' written notice of such intention before the expiry of the Initial Licence Period or Extension Period. If the Authority gives such notice then the licence shall be extended by the period set out in the notice on the terms and conditions set out in this agreement.

3.7 In relation to scope of use:

- (a) for the purposes of clause 3.5(a), clause 3.5(b) and clause 3.5(c) above, "use" of the Software shall be restricted to use of the Software in object code form (and, after the occurrence of a Trigger Event, in source code form) for the normal business purposes of the Authority or any Affiliate but shall include any act which is reasonably incidental to such use, including the creation of as many copies of the Software as may be necessary to enable use of the Software in accordance with this clause 3.7(a) and the maintenance of a reasonable number of back-up or test copies of the Software.
- (b) any sub-licence granted to an Authorised Agent under clause 3.5(c) shall limit the Authorised Agent's right to use (or, where permitted by clause 3.5(c), to develop, modify and maintain) the Software to such right as is necessary for the purpose of carrying out the Relevant Services only.
- (c) the Authority shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:
  - (i) as provided in this clause 3;
  - (ii) as permitted by law; or
  - (iii) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Authority or Affiliate.

3.8 In relation to assignment and sub-licensing:

- (a) the Authority shall not grant sub-licences except as expressly permitted under clause **Error! Reference source not found.** or clause 3.5(c).
- (b) the Authority shall be permitted to assign or novate the benefit and burden of this licence as a whole to any company which at the time in question is an Affiliate of the Authority or to any entity which succeeds to all or substantially all of the Authority's assets and business, or any statutory successor of the Authority, subject to that assignee or new company first undertaking in writing to the Supplier that it will henceforth perform all the obligations of the Authority under this licence. All references in this licence

to the Authority shall be construed as including any such company or statutory successor. The Supplier shall continue to comply with the provisions of this licence after any such assignment or novation.

(c) Subject to clause 3.8(b), the Authority shall not:

- (i) sub-license, assign or novate the benefit or burden of this licence in whole or in part;
- (ii) allow the Software to become the subject of any charge, lien or encumbrance; and
- (iii) deal in any other manner with any or all of its rights and obligations under this agreement,

without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.

3.9 The Supplier may at any time assign, novate, charge or deal in any other manner with any or all of its rights and obligations under this licence, provided it gives written notice to the Authority.

3.10 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.11 Notwithstanding clause 14, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 3.11 shall be made until notice of the identity of the proposed assignee has been given to the other party.

#### 4. Escrow

4.1 The Supplier and the Authority mutually undertake to sign the Escrow Agreement promptly following signature of this licence.

4.2 The Supplier and the Authority mutually undertake to abide by the terms of the Escrow Agreement and acknowledge that for the purposes of the Escrow Agreement:

- (a) the Source Code Materials shall constitute the **Material**;
- (b) this licence shall constitute the **Licence Agreement**; and
- (c) the Software shall constitute the **Package**.

#### 5. New Versions and Maintenance Releases

5.1 Without prejudice to clause 6.3, the Supplier shall promptly inform the Authority of any New Versions and shall offer to sell such New Versions to the Authority on the

terms on which they are generally made available to the Supplier's public sector customers by the Supplier.

- 5.2 The Supplier shall in accordance with this clause 5.2 and clauses 6.2 provide the Authority with all Maintenance Releases generally made available to its customers. The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software.

## **SOFTWARE MAINTENANCE**

### **6. Supported Software**

- 6.1 The Supported Software is:

- (a) the Software;
- (b) any Modification which is acquired by the Authority (whether under this agreement or any other agreement between the Supplier and the Authority) during the course of the Licence Period and which accordingly becomes part of the software defined as the Software under this agreement; and
- (c) any other software which the Supplier and Authority agree should be Supported Software for the purposes of this agreement including the software listed in Schedule 1.

- 6.2 In relation to Maintenance Releases as part of the Updating Service, the Supplier will from time to time make Maintenance Releases available to the Authority without charge.

- 6.3 Without prejudice to clause 5.1, in relation to New Versions:

- (a) for the duration of this agreement the Supplier shall:
  - (i) keep the Authority informed of any planned or actual technical or business developments, whether of the Supplier or of any relevant third party that may, in the reasonable opinion of the Supplier, be likely to affect the Software;
  - (ii) promptly inform the Authority of any planned or completed New Version;
  - (iii) offer to the Authority the opportunity to examine any New Version and any tests or results of tests of such New Version that the Supplier may carry out, or may have carried out; and
  - (iv) at the Authority's request, install and integrate such a New Version into the Software (or, if appropriate, substitute such New Version for the Software) at a charge to be determined under the provisions of Schedule 4;
- (b) if the Supplier releases a New Version and the Authority decides not to acquire and install such New Version, then such decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse

effect on the Maintenance Services or the performance of the Supplier's obligations under this agreement.

## **7. The Maintenance Services**

7.1 The Supplier shall supply to the Authority the following Maintenance Services:

- (a) the Standard Support Service; and
- (b) the Updating Service.

7.2 In relation to the Standard Support Service:

- (a) the Standard Support Service shall be provided during the Standard Support Hours and shall comprise:
  - (i) a telephone & email help desk to provide first-line technical support to users of the Supported Software;
  - (ii) remote diagnosis and, where possible, correction of faults using the software management software;
  - (iii) of second-line on-site technical support where applicable as set out in the SLAs,

all as more particularly defined in Part 2 of Schedule 2.

- (b) if additional on-site support is required in any month it will be provided by the Supplier at the rates set out in Schedule 2 (as varied from time to time in accordance with this agreement).
- (c) any training provided on the Software to the Authority's staff as part of the Standard Support Services shall be provided in accordance with the requirements of the Specification
- (d) the Standard Support Service shall meet the Service Levels set out in Schedule 4.

7.3 In relation to the Updating Service:

- (a) the Supplier shall issue Modifications of the Software as and when required in the reasonable opinion of the Supplier;
- (b) before issuing any Modification, the Supplier shall test the same in order to ensure that it performs fully in accordance with its specification and the Documentation (which, in the case of a New Version, shall be the specification and Documentation relevant to that New Version), and shall:
  - (i) inform the Authority of successful completion of the testing; and
  - (ii) at the request of the Authority, supply the Authority with the test results;
- (c) at the Authority's direction and at a time to be agreed between the Manager and the Support Manager, the Supplier shall install, integrate and test any Modification which the Authority wishes to acquire on the Software as set

out in Schedule 9 (or, as the case may be, may replace the Software or any part of it with the Modification), and shall, if so required by the Authority, assist the Authority in testing the same. If the Modification fails to achieve acceptance by the Authority, the Supplier shall co-operate with the Authority in decommissioning the Modification and returning the Software to its state before the acceptance tests, so that the Authority can continue to operate the Software until a time for repeat installation, integration and testing;

- (d) the processes set out in clause 7.3(b) and clause 7.3(c) shall be repeated until either such Modification is accepted by the Authority or, in the sole opinion of the Manager, such Modification cannot achieve acceptance within a reasonable period, in which case:
  - (i) in the case of a Maintenance Release, the Authority may, within a reasonable time, require the Supplier to supply, free of charge, such additional services as are required to rectify any defect in the Supported Software which the Maintenance Release was intended to rectify; or
  - (ii) in the case of a New Version, the Authority may reject the New Version and recover any sums which it may have paid to the Supplier in respect of it;
- (e) the Updating Service shall include the supply to the Authority of all revisions to the Documentation which are necessary in order to reflect any Modification; and
- (f) for the avoidance of doubt, the cost of the Updating Service (except for any sum payable in respect of the licence of a New Version under clause 6.3(a)(iv)) is included in the Charges payable for the Standard Support Service.

7.4 Time shall be of the essence regarding any delivery date agreed between the Manager and Support Manager or as specified in this agreement for delivery of any Modification by the Supplier.

## **8. Duration of Maintenance Services**

8.1 The Supplier shall supply the Maintenance Services to the Authority for the Licence Period.

## **9. Further terms relating to the Maintenance Services**

9.1 The Supplier's obligation to provide on-site services shall extend to all the Sites of the Authority situated within the UK. The Authority may change the Sites from time to time by written notice to the Supplier provided that, without the prior consent of the Supplier (not to be unreasonably withheld or delayed), the Supplier shall not be required to provide on-site services at any site which lies outside of 20 miles from the administrative boundary of Cambridgeshire.

- 9.2 *Except where expressly agreed in writing to the contrary, the Supplier shall, at its own cost:*
- (a) provide all materials, parts, components and replacements; and
  - (b) write, purchase or otherwise procure all computer programs required for the purpose of providing the Maintenance Services.
- 9.3 In accordance with the provisions of clause 7.3(c) the Supplier shall, without additional charge, co-operate with the Authority in the Authority's application of acceptance tests to any Modification.
- 9.4 The Supplier shall ensure that, the Support Manager, the Support Staff and all other persons for the purpose of, or in connection with, this agreement or the provision of the Maintenance Services adhere to the Authority's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Authority may remove or refuse admission to any person who is, or has been, in breach of such procedures and regulations.
- 9.5 The Authority may restrict access to certain areas of its premises or systems on security grounds.

## **10. Charges and Service Levels**

- 10.1 In consideration of the Maintenance Services, the Authority shall pay the Charges set out in Schedule 4. These Charges shall be paid as agreed by the parties by the Authority to the Supplier within 30 days of receipt of the Supplier's invoice. Charges shall be inclusive of all expenses and the Supplier shall be responsible for all costs and expenses incurred in providing the Maintenance Services.
- 10.2 Charges for any New Version supplied by the Supplier to the Authority shall be determined in accordance with clause 6.3(a)(iv) and agreed in writing before performance or supply by the Supplier, and shall be charged and invoiced to the Authority by the Supplier (and paid by the Authority) following acceptance by the Authority of such New Version.
- 10.3 In relation to Maintenance Service credits:
- (a) the Supplier shall, in accordance with clause 7, perform the Maintenance Services in accordance with the Service Levels contained in Schedule 10; and
  - (b) at the end of each month, the Supplier shall provide the Authority with a report setting out the Supplier's performance against the Service Levels in the immediately preceding month (**Preceding Month**) and, where the Supplier has failed to attain any Service Level, the Supplier shall credit the Authority with a percentage of the Charges levied in respect of the Preceding Month, such percentage to be calculated in the manner set out in Schedule 4. The Authority's right to such credits shall be in addition to, and



not in substitution for, any other rights arising from the Supplier's failure to provide the Maintenance Services in accordance with the terms of this agreement.

- 10.4 All amounts payable under this agreement shall be exclusive of VAT or relevant local sales tax (if any), which shall be paid at the rate and in the manner for the time being prescribed by law.
- 10.5 The Supplier may increase the Charges as from each anniversary of the Commencement Date after the [second] such anniversary. Any such increase shall be agreed between the parties at least [three months] before such anniversary. Any such percentage increase shall not exceed that of the Retail Price Index (Jevons) published by the Office for National Statistics or its successor from time to time for the Contract Year (or the nearest publication dates to the commencement and expiry dates of the relevant Contract Year, spanning a 12 month period) and each subsequent Contract Year.
- 10.6 For the duration of this agreement, and for a period of seven years from termination or expiry of this agreement, the Supplier shall maintain full and accurate records of:
- (a) all Charges, prices, costs and expenses associated with and invoiced in respect of the Maintenance Services or any New Version; and
  - (b) its performance against Service Levels as referred to in clause 10.3, and
- ensure that monthly management accounts are produced in addition to its annual audited accounts and shall, if requested, promptly provide to the Authority copies of such records and accounts and any other financial information reasonably requested by the Authority.
- 10.7 At the Authority's request and its expense, the Supplier shall grant access to the Authority or its auditors to the premises, records and accounts of the Supplier and its subcontractors, including its and their data processing facilities, and to such of its and their supporting documentation and explanations from Support Staff as is reasonable to ascertain compliance with this agreement and the adequacy of the Supplier's financial standing.
- 10.8 Such access shall be granted during normal business hours and subject to reasonable prior notice from the Supplier, except to the extent that such access is required by the Authority's regulators outside of these parameters.
- 10.9 If, on such examination, the Authority determines that any Charges, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the Authority, the Supplier shall promptly refund to the Authority the amount of such over-charges.
- 10.10 The Authority may withhold payment against any invoice not submitted in accordance with this agreement and will immediately notify the Supplier in writing of its reason for so doing. If the invoice is disputed in part only, the Supplier shall issue

a credit note in respect of the original invoice and issue an invoice for the part not in dispute. On receipt of such an invoice the Authority shall pay that part of the original invoice which it accepts, whilst any query concerning a disputed sum is resolved.

- 10.11 The Supplier warrants that the terms (including pricing) of this agreement are comparable to or better than the terms (including pricing) offered by the Supplier to any of its public sector or commercial customers of equal or lesser size for comparable services. If the Supplier offers more favourable terms (including pricing) to such public sector or commercial customers during the term of this agreement (or accepts such terms), such terms shall also be made available to the Authority within 30 days from the signature of any such agreement.

## **11. The Authority's responsibilities**

- 11.1 Without prejudice to clause 9.4, the Authority shall and shall use its reasonable endeavours to procure that, subject to the Supplier's compliance with the Authority's normal security requirements as specified in Schedule 6, provide the Supplier, the Support Manager, the Support Staff and all other persons duly authorised by the Supplier with such access to the Authority's, systems and facilities as may reasonably be required for the purpose of performing the Maintenance Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours, provided that system access shall be direct or remote, at the Authority's option, and that, in the latter case, such access will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier.
- 11.2 The Authority shall nominate a Manager to be available to liaise with, and respond to queries from, the Support Manager (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).

## **GENERAL PROVISIONS**

### **12. Meetings**

- 12.1 For the duration of this agreement, the Manager, the Support Manager and such Support as may from time to time be considered appropriate, shall (subject to clause 14.2) meet once a month for the first two months after installation and then as requested by either party at an Authority office location and at a time to be agreed between the Manager and the Support Manager, for the purpose of discussing the performance of the Software, the provision of the Maintenance Services and achievement of the Service Levels and any other appropriate matters.
- 12.2 The Authority may (acting reasonably) at any time during the Team call an extraordinary meeting between the Manager, Support Manager and such Support Staff as the Authority may reasonably require to discuss any exceptional circumstances arising in relation to the Software or the Services which the Authority reasonably considers is likely to have an adverse impact on the operation of the Software or the

delivery of the Services. The Authority shall give at least 3 Working Day's notice to the Supplier in the event that any such meeting is required.

- 12.3 The Supplier shall monitor the performance of the Software by providing the Authority with monthly reports.

### 13. **Non-solicitation**

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

### 14. **Confidentiality and publicity**

- 14.1 Each party shall, during the term of this agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this agreement) nor without the prior written consent of the other, disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates (**Confidential Information**), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such Confidential Information.
- 14.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Maintenance Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 14.3 The provisions of this clause 14 shall remain in full force and effect notwithstanding any termination of this agreement.
- 14.4 The Supplier may not refer to the Authority or this agreement in any publicity or advertising material without first obtaining the Authority's written consent.

### 15. **Data protection, security and integrity**

- 15.1 The following definitions apply:

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

15.2 The Supplier shall:

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

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

- (a) Clause 15.2 shall not apply;
- (b) the parties' joint responsibility for compliance with the data protection principles shall, for the purposes of this agreement, be allocated in accordance with Schedule 7;
- (c) each party shall nevertheless remain in all circumstances liable under applicable Data Protection Law to comply with all of the data protection principles; and
- (d) it shall comply with such further obligations as the Authority reasonably requires.

15.4 For the purpose of this agreement, the Supplier shall be deemed to be a co-controller (with the Authority) of the Authority Personal Data if so determined by a court or a data protection supervisory authority asserting jurisdiction, in either case, or a qualified counsel appointed by the Authority.

15.5 The Supplier shall:

- (a) not subcontract any processing of the Authority Personal Data without the prior written authorisation of the Authority;
- (b) ensure that access to the Authority Personal Data is limited to those employees or authorised subcontractors who need access to the Authority Personal Data to meet the Supplier's obligations under this agreement and

that all employees and authorised subcontractors are informed of the confidential nature of the Authority Personal Data;

- (c) comply with its obligations under any applicable Data Protection Law, and shall not, by act or omission, put the Authority in breach of, or jeopardise any registration under, any such Data Protection Law;
- (d) promptly and fully notify the Authority in writing of any notices in connection with the processing of any Authority Personal Data, including subject access requests, and provide such information and assistance as the Authority may reasonably require;
- (e) promptly and fully notify the Authority in writing if any Authority Personal Data has been disclosed in breach of clause 15 and take every step to enable the Authority to comply with the Security Breach Notification Procedures.
- (f) indemnify the Authority against any loss or damage suffered by the Authority in relation to any breach by the Supplier of its obligations under this clause 15 howsoever arising; and
- (g) if requested, submit to a data security audit in accordance with clause 10.7 before any Maintenance Services commence, once during any Contract Year and if any regulator of the Authority requests or requires an audit of the Authority and/or any of its service providers.

15.6 The Supplier shall ensure that:

- (a) any hosted solution must be based within the UK or EEA; and
- (b) Data must be encrypted to [ ] standard where it is processed and must conform to the standards as set out in the Specification.

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

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

15.8 The Supplier shall:

- (a) take reasonable precautions to preserve the integrity of any data which it processes and to prevent any corruption or loss of such data;
- (b) make a backup copy of such data every week (or at such other interval as the Authority may reasonably request in writing from time to time) and

record the copy on media from which the data can be reloaded if there is any corruption or loss of the data; and

- (c) in such event and if attributable to any default by the Supplier, promptly restore the data at its own expense or, at the Authority's option, promptly reimburse the Authority for any reasonable expenses it incurs in having the data restored by a third party.

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

15.10 Passenger Data shall be protected through the Software's rights and permissions security system as detailed in the Specification.

## **16. Freedom of Information**

16.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

16.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## 17. **Export**

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

17.2 Each party undertakes:

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

## 18. **The Supplier's warranties, indemnities and undertakings**

18.1 The Supplier acknowledges that the Authority has entered into this agreement in reliance on the Supplier's expertise in selecting and supplying Software and Maintenance Services fit to meet the Authority's business requirements.

18.2 The Supplier represents and warrants that:

- (a) it has the right to enter into this licence and to grant to the Authority a licence or sub-licence to use the Software as contemplated by this agreement;
- (b) the Software will conform in all material respects to the Specification and be free from defects for a period of 12 months from delivery of the Software (**Warranty Period**);
- (c) the Software and the media on which the Software is delivered are free from viruses and other malicious code;
- (d) the media on which the Software is delivered under this licence will be free from defects;
- (e) it has not included or used any Open-Source Software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar in, or in the development of, the Software, nor does the Software operate in such a way that it is compiled with or linked to any of the foregoing.

18.3 If, within the Warranty Period or as soon as reasonably practicable thereafter, the Authority notifies the Supplier of any defect or fault in the Software in consequence

of which it fails to conform to any of the warranties in clause 18.2, the Supplier shall, at the Supplier's option, promptly repair or replace the Software.

- 18.4 After receipt of any such notice the Supplier shall respond and resolve the relevant defect or fault within the timescales specified in, and devoting such resources as are required by the Maintenance Services as provided for in this agreement in accordance with the relevant priority classification, as if such defect or fault were within the scope of the obligations concerning the Maintenance Services.
- 18.5 The warranties in clause 18.2 shall apply to any Modification that is acquired by the Authority during the course of this licence as though the references to the date of this licence were references to the date on which such Modification was acquired.
- 18.6 The Supplier represents and warrants to the Authority that:
- (a) the Maintenance Services will be performed:
    - (i) in such a way as not to cause any fault or malfunction in the Supported Software (or any related software or system of the Authority);
    - (ii) in such a way as not to cause any interruption to the business processes of the Authority (other than any agreed and unavoidable interruption which is required in order to perform the Maintenance Services in a proper and efficient manner);
    - (iii) in accordance with all applicable laws and regulations; and
    - (iv) with all reasonable skill and care and in accordance with the highest professional standards attained by companies offering software support of the type offered by the Supplier;
  - (b) for the avoidance of doubt, it shall provide any installation services or training on the Software as may be required by the Specification with reasonable skill, care and diligence in accordance with accepted industry practice.
  - (c) the possession or use of the Deliverables will not infringe the Intellectual Property Rights of any third party;
  - (d) it shall not introduce any viruses onto the Authority's systems while performing the Maintenance Services;
  - (e) any Modification provided under this agreement will be of satisfactory quality and conform substantially to specification;
  - (f) at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Maintenance Services; and
  - (g) the Supplier has adequate resources to meet its obligations under this agreement in a timely and reliable manner.



- 18.7 If the Supplier receives written notice from the Authority of any breach by the Supplier of the representation and warranties contained in clause 18.2, the Supplier shall, at its own expense, remedy that breach within 30 days following receipt of such notice, failing which the Authority may pursue such rights and remedies as are available to it.
- 18.8 For any Deliverables (not being the Software) provided by the Supplier, the Supplier warrants that it owns or possesses (or at the time of performance will own or possess) all necessary licences or rights required by the Supplier in order to perform its obligations under this agreement and that such licences and rights will extend to all enhancements, improvements or upgrades to such programs or data. The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim that it does not own or possess such licences and rights.
- 18.9 The Supplier shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with the Supplier's breach of this agreement howsoever arising or any wilful or negligent act or omission of the Supplier, its officers, employees, contractors or agents, including all such liabilities, costs, expenses, damages and losses arising out of or in connection with any of the causes or types of breach referred to in clause 20.5.

## **19. Intellectual Property Rights indemnity**

- 19.1 All Intellectual Property Rights in the Software and any Modification belong, and shall belong, to the Supplier.
- 19.2 Any modification or enhancement of the Software developed by or with the Authority shall belong to the Authority.
- 19.3 Any works produced through the Software by the Authority, any Nominated User and any Authorised Agent shall remain the intellectual property of the Authority.
- 19.4 The Supplier undertakes to defend the Authority from and against any claim or action that the possession, use, development, modification or maintenance of the Software, Deliverables or Modification (or any part thereof) infringes the Intellectual Property Rights of a third party (**Claim**) and shall fully indemnify and hold harmless the Authority from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Authority as a result of, or in connection with, any such Claim.

- 19.5 If any third party makes a Claim, or notifies an intention to make a Claim against the Authority, the Authority shall:
- (a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
  - (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
  - (c) give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Authority, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
  - (d) subject to the Supplier providing security to the Authority to the Authority's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 19.6 Without prejudice to clause 19.2, if any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Authority, the Supplier may, at its sole option and expense:
- (a) procure for the Authority the right to continue using, developing, modifying or maintaining the Software or Deliverables (or any part thereof) in accordance with the terms of this agreement;
  - (b) modify the Software, Modification or Deliverables so that it ceases to be infringing;
  - (c) replace the Software or Modification with non-infringing software; or
  - (d) repay to the Authority all sums which the Authority has paid to the Supplier under this licence,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 18.2 and the Authority shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made.

## **20. Limitation of liability**

- 20.1 Subject to clause 20.2 and 20.5, neither party shall in any circumstances have any liability for any losses or damages which may be suffered by the other or any Affiliate of the other (or any person claiming under or through the same), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within any of the following categories:

- (a) special damage even though that party was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity and management time;
- (e) loss of goodwill,

provided that this clause 20.1 shall not prevent claims for direct financial loss that are not excluded by any of categories (a) to (e) inclusive of this clause 20.1.

20.2 It is agreed that for the purpose of clause 20.1, claims for direct financial loss that are not so excluded include claims for:

- (a) the costs and expenses in connection with the migration from the Software to substitute software;
- (b) the cost of all external consultancy, internal or external computer time, acceptance testing and internal personnel support together with all profit and related costs incurred to remedy the defects in the Software;
- (c) the cost and expenses in purchasing substitute maintenance services;
- (d) the cost of purchasing services to correct defects in the Software;
- (e) the cost of preparing for the installation, testing and implementation of the Software, to the extent that such cost is wasted;
- (f) expenditure (including promotional expenditure) rendered necessary as a result of defects in the Software;
- (g) savings which the Authority or any of its Affiliates would otherwise have made as a result of implementation of the Software;
- (h) costs and expenses (including legal costs and disbursements on a solicitor and client basis) of the Authority or any of its Affiliates incurred as a result of dealing with, and any fine imposed by, any regulatory authority in connection with any breach by the Authority or any of its Affiliates of its regulatory requirements resulting from any breach by the Supplier of its obligations under this licence.

20.3 Subject to clause 20.5 and except for any liability arising under clause 14, clause 15, clause 16 or clause 19 (any such liability being unlimited), the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise, and whether in connection with this licence or any collateral contract, shall in no circumstances exceed a sum equal to 100 per cent of the contract value provided that where insurances have been obtained by the Supplier in accordance with clause 21, the Supplier's liability shall be limited to the highest level of such insurance cover relevant to the claim

20.4 Subject to clause 20.5, the total liability of the Authority, whether in contract, tort (including negligence) or otherwise and whether in connection with this licence or

any collateral contract, shall in no circumstances exceed a sum equal to [AMOUNT].

- 20.5 The exclusions in clause 20.1 shall apply to the fullest extent permissible at law but neither party excludes any liability for death or personal injury caused by its negligence, or the negligence of its employees or agents, or for fraud or fraudulent misrepresentation or the deliberate default or wilful misconduct of that party, its employees or agents or subcontractors.

## **21. Insurance**

- 21.1 The Supplier shall, during the term of this Agreement and for seven years thereafter and at its own cost:

- (a) effect and maintain in force with reputable the following insurance policies for the payment of a sum up to the amount stated for any claim and in accordance with good industry practice:
  - (i) public liability insurance policy: £5,000,000 (five million pounds);
  - (ii) employers liability insurance policy £5,000,000 (five million pounds);
  - (iii) professional indemnity insurance: £2,000,000 (two million pounds);
- (b) provide evidence of such insurance to the Authority on request;
- (c) administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for the Authority and its Affiliates set out in this agreement;
- (d) do nothing to invalidate any such insurance policy or to prejudice the entitlement of the Authority or any of its Affiliates under this agreement;
- (e) procure that the terms of such policy shall not be altered in such a way as to diminish the benefit to the Authority or any of its Affiliates of the policies as provided at the date of this agreement.

- 21.2 Any insurance policy effected and maintained under clause 21.1 shall:

- (a) name the Authority and its Affiliates as additional insured;
- (b) waive any right of subrogation of the insurers against the Authority or any of its Affiliates and their respective agents, officers and employees;
- (c) be primary and without right of contribution from other insurance which may be available to the Authority or any of its Affiliates; and
- (d) prohibit the lapse of or any cancellation or non-renewal of such insurance, without the prior consent in writing of the Authority.

## **22. Assignment and subcontracting**

- 22.1 The Supplier shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the

prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

- 22.2 The Authority may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Supplier.
- 22.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 22.4 Notwithstanding clause 14, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 22.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

## **23. Termination**

- 23.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Maintenance Services with immediate effect by giving written notice to the other party if:
  - (a) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
  - (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other

party with one or more other companies or the solvent reconstruction of that other party;

- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 23.1(c) to clause 23.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) any warranty given in clause 18 is found to be untrue or misleading.

23.2 The Authority may, without prejudice to its other rights or remedies, terminate this agreement immediately by written notice to the Supplier if the Supplier:

- (a) undergoes a change of Control [which does not result in Control passing to a company that, immediately before the change in question, was an Affiliate of the Supplier]; or
- (b) sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity.

23.3 The Authority may terminate this agreement at any time by giving two months written notice to the Supplier.

23.4 The parties acknowledge that this agreement may be terminated in accordance with the provisions of clauses 33 and 34.

23.5 This agreement shall automatically terminate on termination or expiry of the Licence but expiry or any termination of this agreement (however caused) shall have no effect on the licences granted under the Licence.

23.6 The Supplier acknowledges that termination of this agreement by the Authority under clause 23.1 or clause 23.2 shall comprise a Trigger Event.

## **24. Effect of termination**

## Termination of the agreement as a whole

- 24.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 24.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 14 to clause 16, clause 20, clause 21, clause 23 and clause 24 shall remain in full force and effect.
- 24.3 Termination of this agreement as a whole, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 24.4 Notwithstanding its obligations in this clause 24, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 24.5 On termination of this agreement as a whole for any reason, each party shall as soon as reasonably practicable:
  - (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by a senior manager) no later than 10 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 14).
  - (b) return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, [the party in possession] shall be solely responsible for their safe-keeping.
- 24.6 On termination of this agreement for any reason, the Supplier shall:
  - (a) promptly refund such portion of the Charges as relates to the period after expiry or termination on a pro rata basis;
  - (b) assist the Authority and its Affiliates and/or the replacement supplier to the extent reasonably required to facilitate the smooth migration of the services to the Authority or the replacement supplier. If termination is by the Authority in accordance with clause 23.1 or clause 23.2, such co-operation and assistance shall be provided at no cost to the Authority. In all other

cases, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance;

- (c) during Normal Working Hours, provide access to the Authority and its Affiliates and any replacement supplier for up to six months after termination of this agreement to such information relating to this agreement that remains in the possession or control of the Supplier.

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

**Termination of the Maintenance Service only**

24.8 Where the Maintenance Services are terminated in accordance with clause 23 but the Licence remains in full force:

- (a) Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement under clauses 6 to 11 after the termination of the Maintenance Services. All other clauses of this agreement shall remain in full force and effect until such time as the Licence is terminated or expires in accordance with this agreement.
- (b) Any provision of this agreement which expressly or by implication is intended to come into or continue in force in relation to the Maintenance Services on or after termination of the Maintenance Clause, including clause 1, clause 14 to clause 16, clause 20, clause 21, clause 23 and clause 24 (so far as they relate to the Maintenance Services) shall remain in full force and effect.
- (c) termination of the Maintenance Services, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement in relation to the Maintenance Services which existed at or before the date of such termination.
- (d) Notwithstanding its obligations in this clause 24, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- (e) The provisions of clause 24.5(a) and 24.5(b) shall apply provided that in relation to clause 24.5(a) the Authority may retain copies of any Supplier Confidential Information incorporated into the Software or to the extent necessary to allow it to make full use of the Software or to receive maintenance or support services from a replacement supplier.
- (f) The provisions of clause 24.6 shall apply.



**25. Waiver**

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

**26. Remedies**

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

**27. Entire agreement**

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

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

27.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract [as expressly provided in this agreement].

**28. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**29. Severance**

29.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

29.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so

that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**30. Counterparts**

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

**31. Third-party rights**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**32. No partnership or agency**

32.1 Except as expressly provided for in this agreement, nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

32.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**33. Force majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for six weeks, the party not affected may terminate this agreement by giving 10 days' written notice to the affected party.

**34. Prevention of Bribery**

34.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

34.2 The Supplier shall not during the term of this agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

34.3 *The Supplier shall during the term of this agreement:*

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 34.3(a)) and make such records available to the Authority on request.

34.4 *The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 34.1 and/or clause 34.2, or has reason to believe that it has or any of the Supplier's Personnel have:*

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

34.5 If the Supplier makes a notification to the Authority pursuant to clause 34.4 the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

34.6 If the Supplier is in Default under clause 34.1 and/or clause 34.2, the Authority may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this agreement.

- 34.7 Any notice served by the Authority under clause 34.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

## **35. Notices**

- 35.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to its main email address.
- 35.2 Any notice or communication shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service.
  - (c) if sent by email, at 9.00 am on the next Business Day after transmission.
- 35.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include fax.

## **36. Dispute resolution**

- 36.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 36 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 36.2 If any disagreement or difference of opinion arises out of this agreement, the Manager and the Support Manager shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting, then the matter shall promptly be referred by either party to the Contract Manager of the Authority and the [INDIVIDUAL'S POSITION] of the Supplier for immediate resolution.
- 36.3 If, within 14 days of the matter first having been referred to the Director of the Service Area, no agreement has been reached as to the matter in dispute, the

dispute resolution process set out in this clause 36 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.

- 36.4 For the avoidance of doubt, this clause 36 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

**37. Expert determination**

- 37.1 Any technical dispute, including any dispute relating to the functions or capabilities of the Software, shall be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either party's written request to the other, as determined, at the written request of either party, by the President of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the parties.
- 37.2 The parties are entitled to make submissions to the expert including oral submissions and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision.
- 37.3 Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct.

**38. Governing law**

Subject to clause 37, this agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**39. Jurisdiction**

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

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

Executed as a deed by affixing the common seal of Cambridgeshire County Council in the presence of:

COMMON SEAL

.....

Authorised Signatory  
Director

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

.....

[SIGNATURE OF  
DIRECTOR]  
Director

**Schedule 1.      Software**

**Software**

[list software solution/programs to be provided]

**Supported Software**

list software solution/programs to be provided]

**Schedule 2.      Specification**

**Part 1.      Specification**



**Schedule 3. Escrow Agreement**

**Schedule 4. Standard Support Service**

**Part 2. Description**

The Standard Support Services shall be as set out in the Specification.

**Charges**

**Charges for New Versions**

## **Schedule 5.        Sites**

1.        Shire Hall, Castle Hill, Cambridge, CB3 0AP
2.        The Booking and Information Centre (to be confirmed on award)

**Schedule 6. Authority's Security Requirements**

## **Schedule 7. Allocation of data protection responsibilities**

## **Schedule 9.**

## **User Acceptance Testing**

**Schedule 10. Service Levels**