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ISLE OF ANGLESEY COUNTY COUNCIL

[SUPPLIER]

SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT



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THIS AGREEMENT IS DATED [DATE]

PARTIES

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Supplier**); and

(2) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni, Anglesey LL77 7TW (the **Council**).

BACKGROUND

(A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a software-as-a-service basis for the purpose of providing the Case Management System.

(B) The Council wishes to use the Supplier's Case Management System in connection with the operations of its public protection, licensing, housing and related regulatory services.

(C) The Supplier has been selected through a competitive procurement process advertised on Sell2Wales with tender notice [insert reference] published on [insert date of publication] and has agreed to provide, and the Council has agreed to receive and pay for, the Supplier's Case Management System and related services subject to the terms and conditions of this Agreement.

AGREED TERMS

1. **INTERPRETATION**

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

Additional User Subscription Fees	means the fees payable by the Council to the Supplier for additional User Subscriptions;
Affiliate	means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
Agreed AI Purpose	means the Supplier's use of the AI Features solely for the purposes of delivering the Services to the Council in accordance with this Agreement as agreed with the Council in writing in advance;
AI Feature	means any feature, functionality, workflow, component or process of the Services or the Supplier's systems that incorporates, uses, depends on or employs AI Technology;
AI Input	means any information, data, materials, text, prompts, descriptions or other content that is inputted, submitted, transferred, transmitted or otherwise provided or made available by or on behalf of the Council to the Supplier for processing by or via an AI Feature, and/or collected, generated, retrieved or otherwise processed by or via an AI Feature by the Supplier on behalf of the Council;
AI Output	means any information, data, materials, text, classification, recommendation, analysis, report or other output generated or otherwise produced by or through an AI Feature in response to AI Input or in connection with the Supplier's use of an AI Feature;
AI Platform	means any third-party artificial intelligence platform, service or technology used by or on behalf of the Supplier to host, support or provide the AI Features;

AI Technology	means machine learning, deep learning and other artificial intelligence technologies, including statistical learning algorithms, models, large language models, neural networks, generative AI tools, natural language processing tools, classification tools, retrieval augmented generation tools, embeddings, vector stores and other artificial intelligence tools or methodologies, together with all software implementations of the foregoing;
Authorised Users	means those employees, agents and independent contractors of the Council, its subsidiaries and affiliates, who are authorised by the Council to use the Services and the Documentation;
Business Day	means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Case Management System	means the Supplier's case management software system, which is capable of being configured and applied to the Council's public protection, licensing, housing and related regulatory functions, as more particularly described in the System Specification;
Conflict of Interest	means a direct or indirect conflict between the financial, professional or personal interests of the Supplier or the Supplier Personnel and the duties owned to the Council under the Agreement, in the reasonable opinion of the Council;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **controls**, **controlled** and the expression **change of control** shall be interpreted accordingly;

Confidential Information	means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in accordance with clause 14.1;
Council Data	means the data inputted by the Council, Authorised Users, or the Supplier on the Council's behalf, for the purpose of using the Services or facilitating the Council's use of the Services and any data generated by, or derived from, the Council's use of the Services, whether hosted or stored within the Services or elsewhere, and includes all records, documents, reports and other information held within or produced by the Case Management System;
Cyber Security Incident	means any actual, suspected or attempted unauthorised access, interference, misuse, loss, corruption, compromise, vulnerability, security breach, malware infection, denial of service, ransomware event, data exfiltration, service disruption or other event affecting, or reasonably likely to affect, the confidentiality, integrity, availability, resilience or security of the Services, Council Data, Supplier Personnel, Service Users or any systems, networks, assets or facilities used in connection with the Services;
Cybersecurity Requirements	means all Laws, regulations, codes, regulatory guidance, standards, industry schemes and Council policies relating to cyber security, information security, network and information systems, supply chain security, incident reporting, vulnerability management, business continuity, operational resilience and data security, including (as applicable) the Network and Information Systems Regulations 2018 and any legislation which amends, supplements or replaces them;
Default	means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or statement:

(a) in the case of the Council, of its employees, servants, agents; or

(b) in the case of the Supplier, of its Sub-contractors, or any Supplier Personnel,

in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other;

Deliverable(s) means any document, dataset, configured component, migrated data, converted template, training material, report, plan or other identifiable output to be provided by the Supplier as part of the Services, including but not limited to such deliverables identified in the System Specification and/or the Technical Requirements;

Documentation means the document(s) and other materials made available to the Council by the Supplier online or in such other form as may be agreed, which sets out a description of the Services and the user instructions for the Services, including user manuals and technical documentation;

Dispute Resolution Procedure means the procedure set out in clause 27;

Effective Date means the date of this Agreement;

End-User Interfaces means all user-facing interfaces of the Case Management System which are used by or made available for access or use by:

(a) members of the public;

(b) any member of the Council's staff but not including in their capacity to carry out work on such interfaces;

(c) any other person accessing or using the Case Management System otherwise than in a professional capacity; or

(d) any person who, under applicable law or the Welsh Language Standards imposed on the Council, is entitled to receive information presented or communicated through those interfaces in Welsh or bilingually in Welsh and English;

but excludes any underlying technical component or element accessed or used separately from, and not as part of, the end-product user-facing interface of the Case Management System, including source code access or used in that manner;

Excess Storage Fees means the fees for excess storage as detailed in Schedule 1;

Fees means all fees payable by the Council to the Supplier under or in connection with this Agreement, and a reference to "**Fees**" includes a reference to any one or more of those fees or charges, as the context requires;

Financial Distress Event shall mean either:

(e) the Supplier failing to meet any of the Financial Standing Criteria defined in Schedule 9;

(f) the Supplier issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

(g) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Supplier;

(h) the Supplier committing a material breach of covenant to its lenders;

(i) any of the following:

(i) commencement of any litigation against the Supplier with respect to financial indebtedness greater than £1m or obligations under a service contract with a total contract value greater than £1m or such other figure agreed between the Parties;

(ii) nonpayment by the Supplier of any financial indebtedness;

(iii) the cancellation or suspension of any financial indebtedness;

(iv) any financial indebtedness of the Supplier becoming due as a result of an event of default;

(v) the cancellation or suspension of any financial indebtedness in respect of the Supplier; or

(vi) the external auditor of the Supplier expressing a qualified opinion on, or including an emphasis of matter in, its opinion, on the statutory accounts of that entity;

Go-Live Date means the date on which the Council confirms in writing that the Services may be used for live operational purposes

Good Industry Practice means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

Implementation Services means the services detailed in clause 5.1;

Incident	means any Vulnerability, Virus or security incident which: (a) may affect the Software or the Services; (b) may affect the Supplier's network and information systems, such that it could potentially affect the Council or the Software or the Services; or (c) is reported to the Supplier by the Council;
Initial Subscription Term	means the initial term of five years subject to earlier termination in accordance with the terms of this Agreement;
Intellectual Property Rights	means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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;
Known Vulnerability	means any Vulnerability that has either: (a) been assigned a Common Vulnerabilities and Exposures (CVE) number; (b) been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or

(c) been disclosed on the internet, or any public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice;

Law	means any applicable law, statute, subordinate legislation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply or other legally binding requirement of any competent authority including but not limited to any applicable sanctions, export control, anti-slavery, human trafficking, anti-tax evasion, anti-money laundering and supply chain transparency laws;
Latent Vulnerability	means any instances of typical classes of Vulnerability, including without limitation buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection;
Mandatory Policies	means the policies listed in Schedule 2;
Migration Services	means the services detailed in clauses 5.2 and 5.3;
Mitigate	means the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety) provided these are approved by the Council in writing in advance, and the terms **Mitigated** and **Mitigation** shall be construed accordingly;
Procurement Act	means the Procurement Act 2023, the Procurement (Wales) Regulations 2024 and any applicable statutory

guidance, regulations, notices or other instruments made or issued under or in connection with them.

Prohibited Act means:

(a) any offer, promise, giving, demanding, receipt or acceptance of any financial or other advantage that would constitute an offence under the Bribery Act 2010 or any other applicable anti-bribery or anti-corruption Law;

(b) to directly or indirectly offer, promise or give any person working for or engaged by the Council 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;

(c) 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 Contract;

(d) committing an offence contrary to section 117 of the Local Government Act 1972;

(e) committing any fraud, or any offence under the Fraud Act 2006, the Theft Act 1968, the Theft Act 1978 or any other applicable Law relating to fraud or dishonesty, in each case in connection with this Agreement;

(f) defrauding or attempting to defraud, or conspiring to defraud, the Council; or

(g) any other breach of, or failure to comply with, any of the Relevant Requirements;

Normal Business Hours means 8.30 am to 4.30 pm local UK time, each Business Day;

Reimbursable Expenses means reasonable out-of-pocket travel and subsistence expenses properly and necessarily incurred in the performance of the Services, with mileage reimbursed at the rate set out below and accommodation and subsistence reimbursed at actual cost up to the applicable limits set out below:

(a) Mileage: 55p per mile;

(b) Accommodation: up to £93.45 per person per night;

(c) Individual meal limits, per person per meal:

(i) Breakfast: up to £5.77;

(ii) Lunch: up to £8.67;

(iii) Tea: up to £4.04;

(iv) Evening meal: up to £11.54;

(d) 24-hour subsistence: up to £25.98 per person for each 24-hour period, excluding accommodation, instead of and not in addition to the individual meal limits for that period.

The Council may amend the mileage rate and reimbursement limits by written notice to the Supplier. Any amendment shall apply only to expenses incurred on or after the effective date specified in that notice. For the avoidance of doubt, Reimbursable Expenses shall not include:

(a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Council otherwise agrees in advance in writing; and

(b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;

Relevant Requirements means the Bribery Act 2010, the Fraud Act 2006, and any other applicable Law relating to anti-bribery, anti-corruption, fraud or dishonesty, together with any guidance or codes of practice issued in connection with such legislation;

Renewal Period means the period described in clause 23.1;

Service Continuity Plan means any plan prepared by the Supplier in accordance with paragraph 2 of Schedule 3 as may be amended and/or updated from time to time provided that such amendments and/or updates are in accordance with Good Industry Practice or do not materially detriment the interests of the Council, such plan to identify as a minimum:

(a) the recovery time objective and recovery point objective for the Services;

(b) the maximum tolerable period of disruption;

(c) cyber incident recovery arrangements;

(d) backup frequency, back up segregation and restore testing;

(e) dependencies on Sub-contractors, cloud providers, data centres and third-party systems;

(f) communication and escalation arrangements; and

(g) the process for providing the Council with evidence of annual testing and remediation of any test failures;

Services means the subscription services provided by the Supplier to the Council under this Agreement, comprising the Case Management System and all associated functionality as described in the System Specification and the Documentation, delivered via the Supplier's hosted platform or such other web address notified to the Council by the Supplier from time to time including, as applicable, the Support Services;

System Specification means the system specification document set out or referenced in Schedule 5, which details the functional and operational requirements for the Case Management System;

Software means the online software applications provided by the Supplier as part of the Services, including the Case Management System;

Sub-contract means any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

Sub-contractor means any third party with whom:

(a) the Supplier enters into a Sub-contract; or

(b) a third party under (a) above enters into a Sub-contract,

	or the servants or agents of that third party;
Subscription Fee	means the subscription fees payable by the Council to the Supplier for the User Subscriptions, as set out in Schedule 1;
Subscription Term	means the Initial Subscription Term together with any subsequent Renewal Period(s);
Supporting Documentation	means sufficient information in writing to enable the Council to assess whether the Fees, Reimbursable Expenses and other sums due from the Council in the information are properly payable, including copies of any applicable receipts;
Supplier Personnel	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
Support Fee	means the annual support fee set out in Schedule 1 to be paid by the Council to the Supplier for the provision of the Support Services;
Support Services	means the Supplier's provision of support in relation to the Services, a copy of which shall be made available to the Council on request, which shall at all times comply with, and provide a level of support no less favourable to the Council than, the minimum support requirements set out in Schedule 10;
Supplier Termination Event	means: (a) the Supplier being in material Default or in persistent Default (whether of the same or a number of different or repeated Defaults, together which can be considered to be a material Default)

and such Default is not remedied within twenty-eight (28) days;

(b) the Supplier's level of performance constituting a Critical Performance Failure;

(c) a situation where the Supplier should not have been awarded the Agreement due to a serious infringement of its obligations under the relevant law;

(d) committing an offence under the Employment Relations Act 1999 (Blacklists) Regulations 2010;

(e) the Supplier committing a material Default which is irremediable;

(f) as a result of the Supplier's Default, the Council incurring Losses in any Contract Year which exceed eighty percent (80%) of the value of the liability cap set out in clause 21.2.5;

(g) where a right of termination is expressly reserved in this Agreement, including (but not limited) pursuant to:

(i) Clause 19 (IPR Indemnity);

(ii) Clause 37.5.2 (Prevention of Fraud and Bribery);

(iii) Paragraph 3 (Termination Rights) of Schedule 9 (Financial Distress);

(h) an Insolvency Event occurring in respect of the Supplier;

(i) a change of Control of the Supplier unless:

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

(ii) the Council has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Council was given notice of the Change of Control;

(j) the Council has become aware that the Supplier should have been excluded or is excludable under Section 57(1) or (2) of the Procurement Act from the procurement procedure leading to the award of this Agreement; or

(k) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law and the Mandatory Policies;

(l) a failure by the Supplier to notify the Council of an actual, perceived or potential Conflict of Interest;

(m) In the circumstances where a Conflict of Interest cannot be resolved or Mitigated, where such a Conflict of Interest was within the reasonable control of the Supplier.

Technical Requirements means the minimum technical requirements set out or referenced in Schedule 6, which details the information governance, security, hosting, cyber security, system compatibility, interface and accessibility requirements for the Services;

Tender Pricing Schedule means the pricing schedule forming part of the Supplier's tender documents submitted in response to the Council's invitation to tender, identified as [document title, reference and date];

User Subscriptions	means the user subscriptions purchased by the Council pursuant to clause 11.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement;
Virus	means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and
Vulnerability	means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability of a system or service, and the term Vulnerabilities shall be construed accordingly.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular includes the plural and in the plural includes the singular.

1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to a statute or statutory provision includes all subordinate legislation made from time to time under that statute or statutory provision.

1.9 A reference to writing or written includes email.

1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. USER SUBSCRIPTIONS

2.1 The Supplier hereby grants to the Council a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Council's internal business operations.

2.2 In relation to the Authorised Users, the Council undertakes that:

2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

2.2.3 it shall, no more frequently than once per year, permit the Supplier or the Supplier's designated auditor to audit the Services, or use the Supplier's requested software reporting, to verify that the Council's use of the Services does not exceed the number of User Subscriptions purchased by the Council;

2.2.4 if any of the audits referred to in clause 2.2.3 reveal that the Council has underpaid Subscription Fee to the Supplier, then without prejudice to the Supplier's other rights, the Council shall pay the Supplier an amount equal to such underpayment calculated by reference to the prices set out in paragraph 1 of Schedule 1, and payable in accordance with clause 11.

2.3 The Council shall not knowingly:

2.3.1 distribute or transmit to the Supplier, via the Services, any Viruses, Known Vulnerabilities or Latent Vulnerabilities;

2.3.2 store, access, publish, disseminate, distribute or transmit via the Services any material which:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images;

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

(f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, on no less than thirty (30) days' prior written notice to the Council, such notice specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable the Council's access to the Services for the duration of time that the breach remains unremedied.

2.4 The Council shall not:

2.4.1 except as may be allowed by any Law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any

portion of the Software, the Services and/or Documentation (as applicable) in any form or media or by any means; or

(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services;

2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation;

2.4.3 use the Services and/or Documentation to provide services to third parties;

2.4.4 subject to clause 33, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.

2.5 The Council shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, if there is any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Council and any Affiliate of the Council.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to clause 3.2 and clause 3.3, the Council may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 1 of Schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

3.2 If the Council wishes to purchase additional User Subscriptions, the Council shall notify the Supplier in writing, and the Supplier shall activate the additional User Subscriptions as soon as reasonably practicable but no later than 5 Business Days after the Council submits its request.

3.3 The Council shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the Additional User Subscription Fees and, if such additional User Subscriptions are purchased by the Council part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the later of the date of activation by the Supplier or the date of availability to the Council, for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. **SERVICES**

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Council on and subject to the terms of this Agreement, and shall provide the Hosting Services in accordance with Schedule 4.

4.2 The Supplier shall use commercially reasonable efforts to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance carried out outside Normal Business Hours; and

4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Council at least twenty-four (24) hours' notice in advance.

4.3 If the Services availability drops below 99.5% in any calendar month (a **Service Level Failure**), the Supplier shall be liable to credit the Council in accordance with the service credit rates set out in paragraph 5 of Schedule 1 (**Service Credits**). Service Credits shall be calculated and applied as follows:

4.3.1 The Supplier shall measure the availability of the Services against the 99.5% threshold for each calendar month and shall provide the Council with a written report of the actual availability achieved within five (5) Business Days after the end of each calendar month (**Monthly Availability Report**);

4.3.2 Within ten (10) Business Days after the end of each calendar quarter, the Supplier shall provide the Council with a written statement (**Quarterly Service Credit Statement**) setting out:

(a) the availability achieved in each calendar month of that quarter;

(b) the Service Credits accrued (if any) in respect of each Service Level Failure during that quarter, calculated in accordance with paragraph 5 of Schedule 1; and

(c) the cumulative balance of Service Credits accrued but not yet applied or paid (the **Service Credit Balance**);

4.3.3 The Service Credit Balance shall be maintained as a credit against the Council's account and may be applied by the Council by way of deduction from the next annual Subscription Fee invoice falling due under clause 10;

4.3.4 If a Service Level Failure occurs in three (3) consecutive calendar months, the Council may, without prejudice to its rights under this clause 4.2 or any other provision of this Agreement, terminate this Agreement on written notice to the Supplier.

4.4 Subject to the Council paying the Support Fee, the Supplier will provide the Council with the Support Services in all circumstances, no less favourably than the minimum support requirements set out in Schedule 10. If the Supplier fails to meet a Response Time or Resolution Time target set out in Schedule 10 (a **Support Level Failure**), the Supplier shall be liable to credit the Council in accordance with the service credit rates set out in paragraph 5 of Schedule 1, and Support Level Failures shall be aggregated with Service Level Failures for the purposes of calculating the Service Credit Balance under clause 4.3. The Supplier may amend the overall Support Services on no less than ninety (90) days' notice in writing to the Council, provided that no amendment may reduce the level of support below the minimum support requirements set out in Schedule 10 without the Council's prior written consent. If the Council does not consent to a proposed amendment that would reduce support below those minimum requirements, the amendment shall not take effect and the Support Services then in force shall continue to apply.

4.5 The Supplier acknowledges that the Council is a public body and is subject to legislative requirements by the UK and Welsh Governments from time to time. Where a legislative requirement or guidance would affect the Services, the Council shall forthwith notify the Supplier in writing of (i) the nature of the legislative requirement (ii) how it impacts the Services and (iii) the deadline for implementation. The Supplier shall provide the necessary changes to the Software to allow for the Services to be compliant with such requirements. This shall be reflected as an additional charge for the reasonable costs. Where the Supplier fails to implement the changes by the

deadline referred to in (iii), the Council reserves the right to deduct a reasonable amount from the charge to reflect the delay.

4.6 The Supplier shall indemnify the Council on any loss or damages suffered by the Council in relation to any breach by the Supplier of its obligations under clause 4.5 of this Agreement, which causes the Council to be in breach of any legislative requirements.

5. IMPLEMENTATION, DATA MIGRATION AND TRAINING

5.1 The Supplier shall provide the implementation services necessary to configure, test and deploy the Services so as to meet the System Specification and the Technical Requirements, in accordance with an implementation plan to be agreed between the parties within twenty (20) Business Days of the Effective Date (the **Implementation Plan**), which shall include, as a minimum, key milestones, the data migration approach, the template migration approach, the training plan and the proposed Go-Live Date.

5.2 The Supplier shall migrate historic data from the Council's existing system in accordance with the scope and methodology set out in the System Specification and as otherwise agreed in the Implementation Plan, and shall ensure that migrated data is complete, accurate and usable in the Services prior to the Go-Live Date.

5.3 The Supplier shall migrate or convert the Council's existing templates into a format compatible with the Services in accordance with the System Specification, and where any template cannot practicably be migrated or converted, the Supplier shall notify the Council promptly and propose alternative solutions until the parties find and agree upon a satisfactory solution.

5.4 The Supplier shall provide administrator training and general user training sufficient to enable the Council's staff to carry out their roles using the Services prior to the Go-Live Date, in accordance with the System Specification and the Implementation Plan.

5.5 Prior to the Go-Live Date, the Council shall be entitled to carry out acceptance testing of the Services against the acceptance criteria set out in the Implementation Plan (the **Acceptance Tests**). If the Services fail any Acceptance Test, the Supplier shall remedy the failure at its own cost within a reasonable time and the Council may retest the Services before agreeing to the Go-Live Date. The Services shall not go live until the Council has confirmed in writing that the Acceptance Tests have been passed.

6. **DATA PROTECTION**

The parties shall comply with the data processing requirements as set out in Schedule 7.

7. **WARRANTIES**

7.1 The Council represents and warrants that:

7.1.1 it has full capacity and authority to enter into and to perform this Agreement; and

7.1.2 this Agreement is executed by its duly authorised representative.

7.2 The Supplier warrants and represents that:

7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

7.2.2 it has full capacity and authority to enter into and to perform this Agreement;

7.2.3 this Agreement is executed by its duly authorised representative;

7.2.4 it has all necessary consents and regulatory approvals to enter into this Agreement;

7.2.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

7.2.6 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;

7.2.7 its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with the terms of this Agreement subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

7.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and any relevant invitation to tender documentation (or equivalent) and any other documents submitted are at the date of this Agreement and shall continue during the Subscription Term to remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Council in writing prior to the date of this Agreement;

7.2.9 it has all necessary rights in and to the Software and any other materials made available by the Supplier (and/or any Sub-contractor) to the Council which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Council;

7.2.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

7.2.11 it does and shall hold and maintain throughout the Subscription Term the certifications, accreditations and assurance standards specified in the Technical Requirements and/or System Specification. Where no specific certification is specified, the Supplier shall maintain policies, procedures and controls which are appropriate to the nature, scale and risk profile of the Services and consistent with Good Industry Practice;

7.2.12 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;

7.2.13 within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist; and

7.2.14 it has not made, and shall not make, any statement or representation to the Council in connection with this Agreement, which is materially inaccurate or misleading, including in relation to its cyber security, financial standing, exclusion status, subcontracting arrangements, data protection compliance, service capability or ability to comply with the Technical Requirements and the System Specification.

8. SUPPLIER'S OBLIGATIONS

8.1 The Supplier shall perform the Services in accordance with the Documentation and with reasonable skill and care in accordance with Good Industry Practice.

8.2 The Supplier's obligations at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents (save where such was in accordance with the Specification and/or Documentation). If the Services do not conform with the terms of clause 8.1, Supplier will, at its expense, and without prejudice to customer's other rights or remedies, correct any such non-conformance promptly.

8.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement. For the avoidance of doubt, this clause shall not operate to compromise the Supplier's obligations to the Council regarding confidentiality, the security and protection of Council Data, and the Services.

8.4 The Supplier warrants and undertakes that:

8.4.1 it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement;

8.4.2 it will comply with all Laws and regulations with respect to its obligations under this Agreement including the Mandatory Policies and the Cybersecurity Requirements;

8.4.3 it will co-operate with the Council in all matters relating to the Services and comply with the Council's instructions;

8.4.4 it will not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and

8.4.5 it will notify the Council in writing immediately upon the occurrence of a change of control of the Supplier.

8.5 The Supplier:

8.5.1 warrants that the Services are accredited under at least one of the following: ISO/IEC 27001:2019, NCSC Cyber Essentials Plus, or IASME Governance Audited (or equivalent);

8.5.2 in relation to the Software and the Services shall maintain such accreditation(s) and certifications throughout the term of this Agreement;

8.5.3 shall provide to the Council with a complete copy of the summary of each audit or other report received by the Supplier in connection with such accreditation(s) and certification(s) within 10 Business Days after the Supplier's receipt of such report; and

8.5.4 shall not introduce any Viruses, Known Vulnerabilities or Latent Vulnerabilities into the Council's network and information systems via the Services or Software or otherwise, and shall ensure that all Council Data is encrypted at rest to current NCSC standards and that all external data connections are secured at no lower standard than via TLS 1.2.

8.6 The Supplier shall, in providing the Services, comply with the Council's information security, confidentiality and data protection policies relating to the privacy and security of the Council Data as notified to the Supplier by the Council from time to time, as such policies may be amended from time to time by the Council in its reasonable discretion.

8.7 The Supplier shall ensure that the Services comply with the Technical Requirements throughout the Subscription Term.

8.8 The Supplier shall ensure that all data storage and processing locations used in the provision of the Services are at secure sites within the United Kingdom or the European Economic Area.

8.9 The Supplier shall ensure that any subcontractors or data sub-processors whose services are included in the provision of the Services either hold at least one of the certifications referred to in clause 8.5.1 or that the Supplier assumes full contractual responsibility for their compliance with information governance and security standards equivalent to those certifications. The Supplier shall require any subcontractor to comply with any relevant provisions in relation to Community Benefits and to provide such information to the Council as the Council may require in order to comply with its reporting and publication obligations.

8.10 In addition to and without limiting the Supplier's obligations under clause 17, the Supplier shall ensure that all End-User Interfaces are fully bilingual in Welsh and English in accordance with the requirements set out in the System Specification and the Technical Requirements.

8.11 The Supplier shall ensure that all web interfaces forming part of the Services comply with the Web Content Accessibility Guidelines (WCAG) 2.2 AA standard or equivalent.

8.12 Where the Services include any AI-assisted components, the Supplier shall comply with the requirements set out in the System Specification and the Technical Requirements, and the provisions of clause 9.

8.13 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Council and must take all reasonable endeavours to ensure that Supplier Personnel do not either.

9. ARTIFICIAL INTELLIGENCE AND AUTOMATED PROCESSING

9.1 This clause applies where the Services include any AI Feature. The Supplier shall not introduce any AI Feature into the Services and shall not use Council Data for any purpose other than the Agreed AI Purpose without the prior written consent of the Council.

Use of AI Features

9.2 The Supplier shall only use AI Features to process Council Data for the Agreed AI Purposes.

9.3 To the extent that the Council Data processed by an AI Feature includes Personal Data, such processing shall be carried out in accordance with the data processing provisions set out in Schedule 7 and all applicable data protection legislation.

Restrictions on model training and Council Data use

9.4 The Supplier shall not use, or permit any person to use, Council Data, Personal Data or Confidential Information:

9.4.1 to train, retrain, modify, update or otherwise improve any public, shared, third-party or generally available AI Technology, product or service;

9.4.2 as prompts, inputs or training data for any public, consumer or unmanaged AI tool;

9.4.3 for model training, product improvement, service improvement or analytics by any third-party provider, model provider or the Supplier;

9.4.4 to develop or improve products or services unrelated to the Services;

9.4.5 to profile any service users, employees, contractors or other individuals; or

9.4.6 for marketing, advertising, sale of data or any purpose unrelated to the Agreed AI Purposes.

9.5 For the avoidance of doubt, the Supplier shall not use Council Data to ground, validate, test, calibrate, tune, monitor or improve any AI agent, model or system for any purpose other than the Agreed AI Purposes, and Council Data shall not be made available to other customers of the Supplier and shall remain subject to the confidentiality, security and data protection obligations in this Agreement.

9.6 The Supplier may use publicly available data, the Supplier's own data, licensed third-party data and technical reference materials (but not Council Data) to configure or improve AI Features for the Agreed AI Purposes.

Data minimisation

9.7 The Supplier shall use reasonable and proportionate measures to minimise the Personal Data processed by AI Features, including by removing unnecessary Personal Data where reasonably practicable.

Human review and automated decisions

9.8 The Supplier shall implement and maintain appropriate human oversight and governance measures in relation to the use of AI Features, having regard to the nature of the relevant AI Output and the risks associated with its use.

9.9 AI Output shall be subject to review, escalation and human intervention where appropriate, including where the output could reasonably be expected to materially affect the accuracy of operational, reporting, commercial or customer-facing activities of the Council.

9.10 The Supplier shall not use AI Features to make decisions based solely on automated processing that produce legal effects or similarly significant effects for any individual.

Security and third-party AI providers

9.11 The Supplier shall ensure that all Council Data processed by or through the AI Features is processed within the Supplier's controlled and approved environment and within the United Kingdom or the European Economic Area, and no person outside the Council (including the Supplier's other clients) shall have access to any Council Data processed or generated by any AI Feature.

9.12 The Supplier shall implement and maintain appropriate technical and organisational measures to protect Council Data processed by or through the AI Features, including access controls, encryption, logging, auditing and retention controls.

9.13 The Supplier shall not use any third-party AI Platform in connection with the AI Features without the Council's prior written consent and shall ensure that any such third-party AI Platform complies with the security, confidentiality and data protection obligations set out in this Agreement.

Accuracy, monitoring and reliability

9.14 The Supplier shall implement and maintain reasonable measures to monitor the accuracy, reliability and performance of the AI Features and shall report to the Council on request with details of the performance of such measures.

9.15 The Supplier shall promptly notify the Council if it becomes aware of any material inaccuracy, error, bias, malfunction or other deficiency in any AI Feature or AI Output that could affect the Council's operations or any individual and provide reasonable assistance to Council to Mitigate the impacts of such.

9.16 Any AI Feature and all AI Output shall be fully compliant with the UK GDPR and all other applicable data protection legislation.

Transparency and audit

9.17 The Supplier shall maintain a register of all AI Features used in the provision of the Services and shall make this register available to the Council on request.

9.18 The Supplier shall provide the Council with reasonable information about the nature, purpose and operation of each AI Feature (including the AI Technology and AI Platforms used) to enable the Council to carry out any data protection impact assessment or equality impact assessment that the Council considers necessary.

9.19 The Supplier shall permit the Council (or the Council's nominated auditor) to audit the Supplier's compliance with this clause on reasonable notice (where feasible to do so) during the Subscription Term.

Termination and data handling

9.20 On termination or expiry of this Agreement, the Supplier shall promptly delete or return (at the Council's election) all Council Data held within or processed by any AI Feature, including all embeddings, vector indexes, logs and evaluation data to the extent they contain, are based on or are derived from Council Data, and shall certify such deletion or return in writing to the Council.

10. COUNCIL'S OBLIGATIONS

10.1 The Council shall:

10.1.1 provide the Supplier with:

(a) all reasonably necessary co-operation in relation to this Agreement; and

(b) all reasonably necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Council Data, relevant security access information and configuration services;

10.1.2 without affecting its other obligations under this Agreement, comply with all Laws and regulations with respect to its activities under this Agreement; and

10.1.3 ensure that its network and systems comply with the relevant specifications reasonably provided by the Supplier from time to time.

10.2 The Council shall own all right, title and interest in and to all of the Council Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Council Data.

11. FEES AND PAYMENT

11.1 The Council shall pay to the Supplier:

11.1.1 the charges for the Implementation Services and Migration Services which shall be invoiced at the times and in the instalments specified in Schedule 1, rather than annually in advance. Such invoices shall otherwise be subject to the invoicing procedure and payment terms set out in Schedule 8;

11.1.2 the Subscription Fee in accordance with this clause 11 and Schedule 1. The Subscription Fee shall accrue only from the Go-Live Date, and no Subscription Fee shall be payable in respect of any period before that date. The Supplier shall invoice the Subscription Fee annually in advance during the Initial Subscription Term, no earlier than the Go-Live Date and each anniversary of that date, for the period of twelve (12) months commencing on the relevant date or, if shorter, the remainder of the Initial Subscription Term, with the Subscription Fee pro-rated accordingly. Where the Council exercises its option to extend this Agreement, the Supplier shall invoice the Subscription Fee for each Renewal Period in advance, no earlier than the first day of that Renewal Period, at the rate applicable in accordance with clause 11.7;

11.1.3 the Support Fee in accordance with clause 4.4 and Schedule 1. The Support Fee shall accrue only from the Go-Live Date, and no Support Fee shall be payable in respect of any period before that date. The Supplier shall invoice the Support Fee annually in advance during the Initial Subscription Term, no earlier than the Go-Live Date and each anniversary of that date, for the period of twelve (12) months commencing on the relevant date or, if shorter, the remainder of the Initial Subscription Term, with the Support Fee pro-rated accordingly. Where the Council exercises its option to extend this Agreement, the Supplier shall invoice the Support Fee for each Renewal Period in advance, no earlier than the first day of that Renewal Period, at the rate applicable in accordance with clause 11.7;

11.1.4 where applicable:

(a) the Additional User Subscription Fees for additional User Subscriptions purchased by the Council in accordance with clause 3; and

(b) the Excess Storage Fees, subject to the Council agreeing to the additional charges in accordance with clause 11.6.

11.2 The Fees shall be calculated in accordance with this clause 11 and Schedule 1 and invoiced and paid in accordance with Schedule 8.

11.3 The Council shall be entitled to deduct from any invoice the amount of any Service Credit Balance (as defined in clause 4.3) confirmed in the most recent Quarterly Service Credit Statement not previously applied.

11.4 If the Council fails to pay any undisputed Fees properly invoiced under this Agreement, the Supplier shall have the right to, and as the Supplier's sole remedy, charge interest at the rate of 4% above the base rate of the Bank of England from time to time, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

11.5 All amounts and fees stated or referred to in this Agreement:

11.5.1 shall be payable in pounds sterling;

11.5.2 are inclusive of value added tax.

11.6 The Excess Storage Fees are set out in Schedule 1 but if, at any time whilst using the Services the Council exceeds the amount of data storage specified in the Documentation, the Supplier shall notify the Council of any such additional charge payable for such additional storage at the Supplier's then current excess data storage fees. If the Council agrees to the additional charges, the Supplier may charge the Council the applicable amount.

11.7 The Supplier shall be entitled to increase:

11.7.1 the Subscription Fee to reflect any increase in the Consumer Price Index (**CPI**) only, provided that any increase must not exceed 3% of the Subscription Fee payable immediately before the Renewal Period;

11.7.2 the Additional User Subscription Fees;

11.7.3 the Support Fees payable pursuant to clause 4.4; and/or

11.7.4 the Excess Storage Fees payable pursuant to clause 11.6,

at the start of each Renewal Period, provided the Supplier provides the Council with 90 days' prior notice, and Schedule 1 shall be deemed to have been amended accordingly. For the avoidance of doubt, the increases set out in clauses 11.7.2 to 11.7.4 shall not be linked to CPI, shall be reasonable and shall not exceed 3% of the relevant fee payable immediately before the relevant Renewal Period. Any unused entitlement to increase any of the fees as permitted by this clause 11.7 may not be carried forward to a subsequent Renewal Period.

11.8 The Supplier shall not be entitled to increase the costs relating to Implementation Services and/or Migration Services and shall be fixed as set out in Schedule 1.

11.9 The Supplier shall indemnify the Council on a continuing basis against any liability, penalty or cost incurred, levied, demanded or assessed at any time in respect of the Supplier's failure to account for to pay any VAT relating to payments made to the Supplier under this Agreement.

Set-off and Withholding

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

11.11 The Supplier may not set off any amount owed by the Council to the Supplier against any amount due to the Council under this Agreement or under any other agreement between the Supplier and the Council.

Financial Distress

11.12 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Council in writing if there is any downgrade in the credit rating issued by any Rating Agency of the Supplier (and in any event within five (5) Business Days of the occurrence of the downgrade).

11.13 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Council in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Business Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

11.14 In the event of a Financial Distress Event, the Parties shall comply with the provisions of Schedule 9 (*Financial Distress*).

Benchmarking

11.15 The Supplier has an ongoing obligation throughout the Term to provide the Services on the best commercial terms available.

11.16 Notwithstanding the general obligation under clause 11.15, the Council reserves the right, in its absolute discretion, to subject any or all of the Charges, Services or Service Levels to a benchmark review during the Term, subject to a maximum of one such review in each twelve (12) month period, to determine whether the relevant Services are good value, whether individually or as a whole.

11.17 The process for any benchmark review conducted in accordance with Clause 11.16 (including purpose and scope of a particular review, appointment of an independent third party to undertake the review, content of the output of such review and required action to be taken based on the findings) shall be agreed between the Parties, subject always to the Council's ultimate authority where the Parties are unable to agree.

Payment Terms Compliance

11.18 The Parties acknowledge that payment provisions may be implied into this Agreement and into qualifying Sub-contracts by the Procurement Act. The Supplier shall provide the Council with such information, evidence and assistance as the Council may reasonably require to monitor and report on payment compliance, including payment of undisputed invoices to Sub-contractors within the applicable statutory period.

Open Book

11.19 The Supplier shall provide the Council with such information and evidence as the Council may reasonably require to verify the Charges, assess value for money, support benchmarking, assess proposed Changes or comply with audit and public procurement obligations. Such information may include details of costs, expenses, overhead rates, day rates, time incurred, salaries and employment costs of personnel engaged in the Services, third-party costs, discounts, rebates, gainshare, margin and profit assumptions. The Supplier shall ensure that equivalent rights are included in all material Sub-contracts where relevant to the calculation or verification of the Charges.

Continuous Improvement

11.20 The Supplier shall, at its own cost, provide the Council with an annual continuous improvement report identifying improvements, innovations, new technologies, process changes, sustainability improvements, service efficiencies, cyber resilience improvements and cost saving opportunities relevant to the Services.

11.21 Where any improvement, Change, automation, reduction in resource requirement, reduction in third-party cost, business change implemented by the Council or other efficiency reduces the Supplier's cost of providing the Services, the Supplier shall notify the Council and the Charges shall be reduced by an amount which fairly reflects the saving, with effect from the date the saving is realised.

12. PROPRIETARY RIGHTS

12.1 The Council acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated in this Agreement, this Agreement does not grant the Council any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

12.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

13. INTEROPERABILITY AND DATA ACCESS

13.1 The Supplier shall ensure that the Services provide the interfaces, application programming interfaces (**APIs**) and data export functionality set out in the System Specification and the Technical Requirements, including (where applicable) integration with the Council's document management, geographic information, business intelligence, financial and other corporate systems identified in the System Specification.

13.2 The Supplier shall ensure that any API made available as part of the Services is appropriately permissioned, scoped, secured and documented, and shall provide the Council with such access keys, tokens, credentials and technical documentation as are reasonably necessary for the Council or its third-party suppliers to configure and use such interfaces.

13.3 The Supplier shall not materially degrade, restrict or withdraw any API or data export functionality referred to in this clause without the Council's prior written consent, save where required to maintain the security of the Services.

13.4 The Supplier shall ensure that Council Data can at all times be extracted from the Services in a complete, structured, commonly-used and machine-readable format, whether via the API, a bulk export function or such other means as may be agreed with the Council, to support the Council's ongoing operational needs and its rights on termination under clause 23.

14. CONFIDENTIALITY

14.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives before or after the date of this Agreement contained within and in connection with this Agreement and the Services, including but not limited to:

14.1.1 the existence and terms of this Agreement or any agreement entered into in connection with this Agreement;

14.1.2 any information that would be regarded as confidential by a reasonable business person relating to:

(a) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and

(b) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);

14.1.3 any information developed by the parties in the course of carrying out this Agreement;

14.1.4 any information detailed in Schedule 3; and

14.1.5 any other information which, by its nature, the circumstances of its disclosure or the manner in which it is treated by the disclosing party, a reasonable person would understand to be confidential, whether or not it is marked or

otherwise identified as confidential and whether or not it falls within clauses 14.1.1 to 14.1.4 above.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

14.2 The provisions of this clause shall not apply to any Confidential Information that:

14.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

14.2.2 was lawfully available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

14.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or

14.2.4 the parties agree in writing is not confidential or may be disclosed; or

14.2.5 is lawfully developed by or for the receiving party independently of the information disclosed by the disclosing party.

14.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

14.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or

14.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 14.

14.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

14.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

14.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

14.5 Subject to clauses 14.6 to 14.9, a party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

14.6 The Supplier acknowledges that the Council is subject to the Freedom of Information Act 2000 (**FOIA**) as amended from time to time, or the Environmental Information Regulations 2004 (**EIR**), as amended from time to time, and shall provide assistance to the Council in order for the Council to comply with its obligations under the EIR and the FOIA.

14.7 The Council shall use reasonable endeavours to notify the Supplier in advance if feasible to do so where it receives a request under EIR and/or FOIA concerning the Supplier's Confidential Information and take into account the views of the Supplier. The Supplier shall respond to the Council within 5 Business Days after receiving the Council's notice of the request. In the event that the Supplier fails to respond within the requisite period, the Council reserves the right to disclose any such information it deems appropriate.

14.8 The Council in its absolute discretion shall determine whether Supplier's Confidential Information is: (i) exempt from disclosure under FOIA and/or EIR; and (ii) to be disclosed in response to a request for information under the EIR or FOIA and in no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Council.

14.9 Where the Supplier has commercially sensitive information such as trade secrets that it reasonably believes would qualify for any protection under section 43 of the FOIA and any such equivalent section in any relevant information disclosure legislation to which a request for information relates, then the Supplier shall inform the Council as soon as reasonably practicable in writing of such information either before or within a reasonable timeframe after the Commencement Date. The Supplier acknowledges

however that the decision whether such information applies under the relevant section is the sole discretion of the Council.

14.10 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

14.11 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Agreement are granted to the other party, or to be implied from this Agreement.

14.12 On termination or expiry of this Agreement, each party shall:

14.12.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;

14.12.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

14.12.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 23 (Termination).

14.13 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

14.14 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.

14.15 The above provisions of this clause 14 shall survive for a period of [five (5) years] from termination or expiry of this Agreement. The confidentiality provisions in Schedule 7 shall survive indefinitely.

Procurement Act – information and assistance

14.16 Nothing in this clause 14 shall prevent the Council from disclosing or publishing information (including information relating to this Agreement and its performance and payments under it) where the Council considers such disclosure is required in order to comply with any applicable law or guidance relating to public procurement, transparency and freedom of information, including but not limited to, where applicable the Procurement Act 2023, any regulations made under it, the Social Partnership and Public Procurement (Wales) Act 2023 and the Well-being of Future Generations (Wales) Act 2015.

14.16.1 The Supplier shall, at no additional cost to the Council, provide such information, confirmations and assistance as the Council may reasonably require in connection with the Council's obligations under the Procurement Act 2023 and any regulations made under in respect of this Agreement, including (without limitation) to assist the Council in:

14.16.2 assessing and monitoring the Supplier's status and the status of its supply chain and any associated persons, in relation to any mandatory or discretionary exclusion grounds;

14.16.3 preparing, publishing or amending any notice or information required to be given under the Procurement Act (including, where applicable, contract award notices, contract details notices, contract change notices, contract performance notice, procurement termination notices, contract termination notices and payment compliance); and

14.16.4 carrying out any review, audit or reporting in respect of this Agreement required under or in connection with the Procurement Act 2023 or any applicable Welsh Government or central government procurement policy note.

14.17 The Supplier must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual or potential Conflict of Interest. The Supplier must promptly notify and provide details to the Council if an actual, perceived or potential Conflict of Interest happens or is expected to happen.

14.18 The Council will consider whether there are any reasonable steps to Mitigate an actual, perceived or potential Conflict of Interest. If, in the opinion of the Council, such steps do not or will not resolve an actual or potential Conflict of Interest, the Council may terminate the Agreement immediately by giving notice in writing to the Supplier.

15. SOCIAL PARTNERSHIP AND SOCIALLY RESPONSIBLE PROCUREMENT

15.1 The Supplier acknowledges that the Council may be subject to duties and requirements under the Social Partnership and Public Procurement (Wales) Act 2023 and related statutory guidance, socially responsible procurement requirements and association Welsh Government policies and reporting requirements from time to time.

15.2 In performing the Services and this Agreement, the Supplier shall co-operate with the Council and provide such information, assistance and evidence as the Council may reasonably require to support the Council's compliance with its obligations under or in connection with the Social Partnership and Public Procurement (Wales) Act 2023, including, but not limited to information relating to:

15.2.1 Fair work, workforce engagement, pay, terms and conditions, training, health and safety, equality, diversity and inclusion;

15.2.2 Workforce matters arising on outsourcing, re-tendering, exit or staff transfer;

15.2.3 Supply chain management, prompt payment and use of Sub-contractors;

15.2.4 Environmental, decarbonisation, circular economy and resource efficiency measures;

15.2.5 Welsh language, accessibility and Community Benefits; and

15.2.6 any socially responsible procurement objectives, reporting requirements or contract management measures as identified by the Council and notified to the Supplier, or the Council Requirements.

15.3 The Supplier shall maintain appropriate records to evidence compliance with this clause and shall provide those records to the Council on request.

15.4 The Supplier shall procure equivalent obligations from Sub-contractors where relevant to the Services.

16. **WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015**

16.1 The Supplier acknowledges that the Council is required to have regard to sustainable development and well-being objectives in the exercise of its functions and in the procurement and management of its contracts.

16.2 In performing the Services, the Supplier shall support the Council in furthering those objectives and shall, where relevant to the Services:

16.2.1 have regard to the need to deliver the Services in a manner that supports long-term thinking, prevention, collaboration, integration and involvement as required by the Well-being of Future Generations (Wales) Act 2015;

16.2.2 co-operate with the Council to identify and implement reasonably practicable measures that improve accessibility, inclusion, resource efficiency and environmental performance in relation to the Services; and

16.2.3 provide such information, evidence and assistance as the Council may reasonably require to monitor, assess and report on the extent to which the Services support the Council's applicable well-being, sustainability and related public sector duties.

16.3 The Supplier shall not do or omit to do anything which impedes the Council's ability to comply with any such duty to the extent applicable to the Services.

16.4 Where the Council has identified specific well-being, decarbonisation, accessibility, Community Benefits, circular economy or sustainability requirements, and notified the Supplier of such requirements, the Supplier shall comply with those requirements and report against them at the frequency reasonably required by the Council.

17. **WELSH LANGUAGE STANDARDS**

17.1 The Supplier acknowledges that the Council operates as a bilingual organisation in Wales and is subject to the Welsh language standards imposed under section 44 of the Welsh Language (Wales) Measure 2011 (the **Welsh Language Standards**).

17.2 The Supplier shall, in performing the Services, comply with all Welsh language obligations and standards, including where applicable those arising from or connected with the Welsh Language Standards, Welsh Government requirements, or the Council's own bilingual policies and Welsh language commitments, and in particular shall ensure that all public-facing interfaces meet the specific bilingual functionality

requirements set out in the Technical Requirements. The Supplier shall not do or omit to do anything which prevents or hinders the Council from complying with any applicable Welsh language standards.

18. COUNCIL DATA AND SECURITY REQUIREMENTS

18.1 The requirements set out in this clause 18 are in addition to, and do not replace, the requirements set out in the Technical Requirements and/or the System Specification. In the event of any inconsistency between this clause 18 and the Technical Requirements and/or the System Specification, the provision imposing the higher standard on the Supplier shall prevail.

18.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to Council Data.

18.3 The Supplier shall not store, copy, disclose, or use Council Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council.

18.4 To the extent that Council Data and/or any documents, materials or records relating to the Services are held and/or processed by the Supplier, the Supplier shall supply that Council Data and/or such documents, materials or records to the Council as reasonably requested and in any event within five (5) Business Days of any such request, in a format and on media reasonably specified by the Council so as to enable the Council to make prompt and effective use of the same.

18.5 The Supplier shall preserve the integrity of Council Data and prevent the corruption or loss of Council Data at all times that the relevant Council Data is under its control or the control of any Sub-contractor.

18.6 The Supplier acknowledges that the Council places great emphasis on confidentiality, integrity and availability of information and consequently on the security of premises and the security of any of the Supplier's systems. The Supplier also acknowledges the confidentiality of Council Data.

18.7 The Supplier shall be responsible for the security of the Supplier System and any of its other systems used in connection with the Services and shall at all times provide a level of security which is in accordance with Good Industry Practice and Law and complies with any security policy of the Council or any policy the Council requires the Supplier to develop, implement and maintain.

18.8 Without limiting clause 18.7, the Supplier shall, and shall procure that its Sub-Contractors shall, at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (in accordance with Good Industry Practice):

18.8.1 loss of integrity of Council Data;

18.8.2 loss of confidentiality of Council Data;

18.8.3 unauthorised access to, use of, or interference with Council Data by any person or organisation;

18.8.4 unauthorised access to network elements, premises and tools used by the Supplier in the provision of the Services;

18.8.5 use of the Supplier's systems or Services by any third party in order to gain unauthorised access to any computer resource or Council Data; and

18.8.6 loss of availability of Council Data due to any failure or compromise of the Services.

18.9 The Supplier shall comply with the Cyber Security Requirements and shall provide the Services in a manner which does not cause the Council to breach any applicable Cyber Security Requirements. The Supplier shall implement and maintain appropriate technical and organisational security measures having regard to the nature of the Services, the sensitivity of Council Data, the criticality of the Council's operations, the risk of harm to the Council, Services Users and the public and Good Industry Practice. Such measures shall include, where relevant:

18.9.1 Access control and multi-factor authentication;

18.9.2 Encryption in transit and at rest;

18.9.3 Privileged access management;

18.9.4 Vulnerability management and patching;

18.9.5 Logging, monitoring and alerting;

18.9.6 Secure configuration and hardening;

18.9.7 Secure software development controls;

18.9.8 Segregation of Council Data;

18.9.9 Backup and restoration controls;

18.9.10 Incident response arrangements; and

18.9.11 Supply chain cyber security controls.

18.10 The Supplier shall notify the Council immediately, and in any event within 12 hours after becoming aware of any Cyber Security Incident. The notification shall include, to the extent known:

18.10.1 the nature of the incident;

18.10.2 the systems, Services, data, Service Users and operations affected;

18.10.3 when the incident occurred and when it was discovered;

18.10.4 the suspected or known cause;

18.10.5 the likely impact on the Council, Council Data, Services Users and the Services;

18.10.6 any Personal Data implications;

18.10.7 steps taken or proposed to contain, Mitigate and remediate the incident; and

18.10.8 any regulatory, NCSC, competent authority, law enforcement or customer notification implications.

18.11 The Supplier shall provide regular updates, preserve all relevant evidence and logs, provide all reasonable assistance to the Council and its advisers, undertake root cause analysis and provide a written incident report within 5 Business Days or such shorter period as the Council reasonably requires.

18.12 Upon becoming aware of any circumstances referred to in clause 18.8 the Supplier shall immediately take all reasonable steps necessary to:

18.12.1 remedy such breach or protect the Supplier systems against any such potential or attempted breach or threat; and

18.12.2 prevent an equivalent breach in the future

Such steps shall include any action or changes reasonably required by the Council.

18.13 The Supplier shall procure annual vulnerability testing by an accredited third party, carry out fortnightly vulnerability, antivirus and malware scans, and carry out quarterly penetration testing. Additional penetration testing shall be carried out when major changes to the Services are published. The Supplier shall maintain a defined timeline for remediation of all vulnerabilities discovered and shall provide the Council with copies of all testing reports promptly on request.

18.14 The Supplier shall indemnify the Council on a full indemnity basis against any loss or damages suffered by the Council in relation to any breach by the Supplier of its obligations under this Agreement, which cause the Council to breach any Cybersecurity Requirements.

19. IPR INDEMNITY

19.1 The Supplier shall defend the Council, the Authorised Users, its affiliates and subsidiaries and its and their officers, directors and employees against any and all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Council arising out of or in connection with any claim brought against the Council in connection with its use of the Services for actual or alleged infringement of a third party's intellectual property rights in any jurisdiction.

19.2 If the Supplier is required to indemnify the Council under this clause 19, the Council shall:

19.2.1 notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 19.1 (**IPR Claim**);

19.2.2 allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Supplier shall obtain the Council's prior approval of any settlement terms, such approval not to be unreasonably withheld;

19.2.3 provide the Supplier with such reasonable assistance regarding the IPR Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Council's costs so incurred; and

19.2.4 not, without prior consultation with the Supplier, make any admission relating to the IPR Claim or attempt to settle it, provided that the Supplier considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Council into disrepute.

19.3 In the defence or settlement of any claim, the Supplier shall use all reasonable endeavours to procure the right for the Council to continue using the Services, replace or modify the Services without a reduction or alteration in functionality so that they become non-infringing.

19.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Council to the extent that the alleged infringement is based on:

19.4.1 a modification of the Services or Documentation by anyone other than the Supplier or its agents, subcontractors or partners or with the Supplier's consent or approval; or

19.4.2 the Council's use of the Services or Documentation otherwise than in accordance with the Documentation; or

19.4.3 the Council's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or

19.4.4 Council Data; or

19.4.5 the Council's breach of this Agreement.

20. SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

20.1 Notwithstanding the requirement for consent of the Council pursuant to clause 8.9, the Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

20.1.1 manage any Sub-contractors in accordance with Good Industry Practice;

20.1.2 comply with its obligations under this Agreement in the delivery of the Services; and

20.1.3 assign, novate or otherwise transfer to the Council or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement,

at all times the Supplier shall remain responsible for the actions of any Sub-contractors.

20.2 In order to assist the Council to reach a decision on a proposed sub-contract, with such application for consent and prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Council and provide such information as reasonably requested by the Council, which may include but not be limited to:

20.2.1 the proposed Sub-contractor's name, registered office and company registration number;

20.2.2 the scope of any Services to be provided by the proposed Sub-contractor;

20.2.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Council that the proposed Sub-contractor meets the qualifying criteria relevant to the Agreement;

20.2.4 a copy of the proposed Sub-contract; and

20.2.5 the nature, scope and purpose of any processing of personal data that will be processed under the Sub-contract.

Supply chain protection

20.3 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

20.3.1 giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;

20.3.2 requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

20.3.3 that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 20.3.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 20.3.4 after a reasonable time has passed;

20.3.4 requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

20.3.5 giving the Council and its Audit Agent rights in relation to audit, inspection, access, reporting and co-operation rights equivalent to those granted by the Supplier under this Agreement and that are directly enforceable by the Council;

20.3.6 giving the Council a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and

20.3.7 requiring the Sub-contractor to include a clause to the same effect as this Clause 20.3 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

20.4 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;

20.5 Notwithstanding any right of the Supplier's right to sub-contract pursuant to this Clause 20, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

Exclusion of Sub-contractors

20.6 Where the Council considers that a Sub-contractor or proposed Sub-contractor is an excluded supplier or excludable supplier (as defined in the Procurement Act), or that its appointment would otherwise create a material procurement, legal, cyber security, reputational, financial, operational or service continuity risk, the Council may require the Supplier not to appoint that Sub-contractor or to replace that Sub-contractor. The Supplier shall comply with such requirement within the period reasonably specified by the Council.

20.7 The Supplier shall ensure that each Sub-contract contains obligations equivalent to those imposed on the Supplier under this Agreement to the extent relevant to the Goods, Services or facilities provided by the Sub-contractor, including but not limited to obligations relating to confidentiality, data protection, cyber security, audit, records, business continuity, social partnership, Welsh language, prompt payment and termination assistance.

21. LIMITATION OF LIABILITY

Unlimited liability

21.1 Neither party limits its liability for:

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

21.1.2 fraud or fraudulent misrepresentation by it or its employees;

21.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

21.1.4 their own tax liabilities;

21.1.5 any liability to the extent it cannot be limited or excluded by Law.

Financial and other limits

21.2 Subject to Clauses 21.1 (*Unlimited Liability*) and Clauses 21.5 and 21.6 (*Consequential losses*) and any other agreed cap on liability per category set out in below, the Supplier's liability:

21.2.1 in respect of loss or damage to the Council's premises or other property or assets of the Council (excluding personal data) in each and any Contract Year shall not exceed £5 million;

21.2.2 in respect of loss or damage to personal data and/or the indemnity under paragraph 14.6 of Schedule 7 (Data Protection Indemnity) in each and any Contract Year shall be unlimited;

21.2.3 in respect of loss or damage from any IPR Claim or any claim under the indemnity under clause 19 (IPR Indemnity) in each and any Contract Year shall not exceed £10 million;

21.2.4 in respect of any loss or damage or any claim arising in relation to a Cyber Security Incident or a breach of the Cyber Security Requirements in each and any Contract Year shall not exceed £5 million;

21.2.5 in respect of any other losses or damage incurred by the Council under or in connection with this Agreement as a result of breaches by the Supplier in each and any Contract Year shall not exceed £5 million.

21.3 For the avoidance of doubt, deductions from Fees (Service Credits and repayment of Charges paid in advance for Services not provided) shall not count against any liability cap and shall not be taken into consideration when calculating the Supplier's liability under Clause 21.2.

21.4 Subject to Clause 21.1 (*Unlimited Liability*), Clause 21.5 and Clause 21.6 (*Consequential Losses*) and without prejudice to the Council's obligation to pay the Charges as and when they fall due for payment, the Council's total aggregate liability arising under, or in connection with this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:

21.4.1 for non-payment of invoices for Services purchased, to the amount unpaid; or

21.4.2 in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Council, to the Charges paid and/or due to be paid under this Agreement in the Contract Year immediately preceding the occurrence of the Default.

Consequential Losses

21.5 Subject to clause 21.1 (*Unlimited Liability*) and Clause 21.6, neither Party shall be liable to the other Party for:

21.5.1 any indirect, special or consequential Loss; or

21.5.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

21.6 Notwithstanding Clause 21.5 but subject to Clause 21.2, the Supplier acknowledges that the Council may, amongst other things, recover from the Supplier the following

Losses incurred by the Council to the extent that they arise as a result of a Default by the Supplier:

21.6.1 any additional operational and/or administrative costs and expenses incurred by the Council, including costs relating to time spent by or on behalf of the Council in dealing with the consequences of the Default;

21.6.2 any wasted expenditure or charges;

21.6.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;

21.6.4 any compensation or interest paid to a third party by the Council;

21.6.5 any fine or penalty incurred by the Council pursuant to Law and any costs incurred by the Council in defending any proceedings which result in such fine or penalty;

21.6.6 any losses incurred by the Council as a result of a Supplier Termination Event.

Mitigation

21.7 Each Party shall use all reasonable endeavours to Mitigate any loss or damage suffered arising out of or in connection with this Agreement, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Agreement.

22. INSURANCE

22.1 The Supplier shall maintain in force at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this agreement:

22.1.1 a public liability insurance policy with a limit of at least £5 million per claim;

22.1.2 a professional indemnity insurance policy with a limit of at least £5 million per claim; and

22.1.3 employer's liability insurance with a limit of at least £5 million for claims arising from a single event or series of related events in a single calendar year.

22.2 The Supplier shall ensure that the Council's interest is noted on each insurance policy, or that a generic interest clause has been included. On the written request of the Council, the Supplier shall provide the Council with a copy of each insurance policy. On the renewal of each policy, the Supplier shall promptly send a copy of the receipt of the premium paid by the Supplier to the Council.

22.3 The Supplier shall, during the term of this agreement, and for a period of one year thereafter:

22.3.1 administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for the Council set out in this Agreement;

22.3.2 do nothing to invalidate any insurance policy or to prejudice the Council's entitlement thereunder; and

22.3.3 procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies for the Council which are provided as at the Effective Date.

23. TERM AND TERMINATION

23.1 This Agreement shall, unless otherwise terminated as provided in this clause 23, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the Council shall have the option to extend for further 12-month periods (each referred to as a **Renewal Period**) up to a maximum of three further years.

23.2 The Council may terminate this Agreement by issuing a written notice to the Supplier:

(a) if a Supplier Termination Event is triggered;

(b) if a Force Majeure Event endures for a continuous period of more than 60 days;

(c) if the Council considers that the Agreement has been awarded or substantially amended to the extent that the Procurement Act requires a new procurement procedure;

(d) a termination ground applies under section 78 of the Procurement Act;

(e) the Supplier has become an excluded supplier or excludable supplier;

(f) a Conflict of Interest has arisen and cannot be resolved;

(g) a Sub-contractor is an excluded supplier or excludable supplier and the Supplier has failed to replace that Sub-contractor when required by the Council; or

(h) termination is otherwise required or permitted to enable the Council to comply with the Law,

and this Agreement shall terminate on the date specified in such notice;

23.3 The Council may terminate this Agreement for convenience at any time by giving three (3) months' notice to the Supplier.

23.4 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

23.4.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 60 days after being notified in writing to make such payment;

23.4.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;

23.4.3 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 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

23.4.4 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;

23.4.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

23.4.6 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;

23.4.7 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 (being a company, partnership or limited liability partnership);

23.4.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

23.4.9 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;

23.4.10 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 the other party's assets and such attachment or process is not discharged within 14 days;

23.4.11 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 23.4.3 to clause 23.4.10 (inclusive);

23.4.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

23.4.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or

23.4.14 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

23.5 On termination of this Agreement for any reason:

23.5.1 all licences granted under this Agreement shall terminate and the Council shall cease all use of the Services and/or the Documentation within sixty (60) days of the date of termination of this Agreement;

23.5.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

23.5.3 the Supplier shall provide all assistance and information requested by Council and shall co-operate with Council and any replacement provider of the Services to facilitate a smooth transition from the Supplier; and

23.5.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

23.6 On termination of this Agreement for any reason, the Supplier:

23.6.1 shall make no further use of the Council Data;

23.6.2 at the written direction of the Council, the Supplier shall destroy or return the Council Data, including a complete and structured export of all Council Data in a commonly-used, non-proprietary electronic format reasonably specified by the Council so as to enable the Council (or a Replacement Supplier) to make full and continued use of such data without further reliance on the Supplier's systems. Where the Council requests the return of Council Data, such return shall be completed within thirty (30) days of the date of termination and any electronic data shall be considered deleted for the purpose of this clause where it has been put beyond use by the Supplier; and

23.6.3 shall preserve all Council Data in its possession for a period of not less than ninety (90) days following the date of termination, pending receipt of instructions from the Council under clause 23.6.2.

23.7 The Supplier acknowledges that the Council may be required under section 80 of the Procurement Act 2023 and any associated regulations to publish a contract termination notice or other transparency notice following termination or expiry of this Agreement and agrees that the Council may do so notwithstanding any duty of confidentiality owed to the Contractor in respect of the fact of, and reasons for, termination.

24. FORCE MAJEURE

24.1 Subject to the remaining provisions of this Clause 24 (and, in relation to the Supplier, subject to its compliance with its obligations under its Service Continuity Plan), a Party may claim relief under this Clause 24 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

24.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to Mitigate its effect.

24.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 24 to the extent that consequences of the relevant Force Majeure Event:

24.3.1 are capable of being Mitigated by any of the Services including compliance with the Service Continuity Plan, but the Supplier has failed to do so; and/or

24.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

24.4 Subject to Clause 24.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

24.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and Mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

24.6 Where, as a result of a Force Majeure Event:

24.6.1 an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

(a) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to clause 23.2 (Termination by the Council); and

(b) neither Party shall be liable for any Default arising as a result of such failure;

24.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

24.8 Relief from liability for the Affected Party under this Clause 24 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 24.7.

25. PREVENTION OF FRAUD AND BRIBERY

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

25.1.1 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

25.1.2 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.

25.2 The Supplier shall not during the term of this Agreement:

25.2.1 commit a Prohibited Act; and/or

25.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

25.3 The Supplier shall during the term of this Agreement:

25.3.1 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 Relevant Requirements and prevent the occurrence of a Prohibited Act; and

25.3.2 keep appropriate records of its compliance with its obligations under Clause 25.3.1 and make such records available to the Council on request.

25.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of Clause 25.1 and/or 25.2, or has reason to believe that it has or any of the Supplier Personnel have:

25.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

25.4.2 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

25.4.3 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.

25.5 If the Supplier is in Default under Clauses 25.1 and/or 25.2, the Council may by notice:

25.5.1 require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

25.5.2 immediately terminate this Agreement.

25.6 Any notice served by the Council under Clause 25.5, shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

26. CONFLICT

Unless otherwise expressly stated, if there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement prevail, except that the provisions of Schedule 10 shall prevail over the provisions in the main body of this Agreement to the extent that there is any inconsistency.

27. DISPUTE RESOLUTION PROCEDURE

If any dispute arises out of this Agreement the Parties shall first attempt to resolve the matter informally through designated representatives to the Agreement. If the Parties are not able to resolve the dispute informally within 15 Business Days from the date the informal process was requested by written notice, it shall be passed to the Chief Executive Officers (or a suitably senior officer with authority to settle the dispute) of the Parties who will attempt to resolve the dispute by negotiation. If the dispute is still not resolved within 15 Business Days of initiating negotiations between the Chief Executive Officers (or a suitably senior officer with authority to settle the dispute), the Parties will attempt to resolve the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. A Party may litigate if the dispute is not resolved by mediation within 1 month from the date the mediator is appointed. Any Party may apply for an injunction, whether or not a dispute has been escalated under this clause.

28. VARIATION

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

29. WAIVER

29.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

29.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

30. RIGHTS AND REMEDIES

30.1 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

30.2 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.

31. SEVERANCE

31.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

31.2 If any provision or part-provision of this Agreement is deemed deleted under clause 30.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. ENTIRE AGREEMENT

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

32.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

32.3 Each party agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

32.4 Nothing in this clause shall limit or exclude any liability for fraud.

33. ASSIGNMENT

33.1 The Council shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

33.2 The Supplier may not at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Council.

34. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

35. THIRD PARTY RIGHTS

Except as otherwise provided in this Agreement, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

36. COUNTERPARTS

36.1 This Agreement may be executed in any number of counterparts, each of which constitutes a duplicate original, but all the counterparts together constitute the one agreement.

36.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) takes effect as the transmission of an executed “wet-ink” counterpart of this Agreement.

36.3 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

37. **NOTICES**

37.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

37.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

37.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):

(a) Supplier: [EMAIL ADDRESS].

(b) Council: PublicProtection@ynysmon.llyw.cymru and procurement@ynysmon.llyw.cymru.

37.2 Any notice shall be deemed to have been received:

37.2.1 if delivered by hand, at the time the notice is left at the proper address;

37.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or

37.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

37.3 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.

38. **GOVERNING LAW**

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.

SCHEDULE 1

FEES

1. SUBSCRIPTION FEE

The Subscription Fee shall be £[AMOUNT], based on sixty-two (62) User Subscriptions at £[AMOUNT] per User Subscription.

2. ADDITIONAL USER SUBSCRIPTION FEE

Additional User Subscriptions may be purchased by the Council in accordance with clause 3 at £[AMOUNT] per User Subscription.

3. EXCESS STORAGE FEES

The Supplier's excess storage fees current as at the Effective Date are set out below: [EXCESS STORAGE FEES].

4. SUPPORT FEE

The Support Fee for the Supplier's standard and enhanced Support Services described in Schedule 10 shall be £[AMOUNT] per annum.

5. SERVICE CREDITS

5.1 Service Credits shall be calculated by reference to the table below for each calendar month in which a Service Level Failure occurs.

Monthly Availability	Service Credit (% of monthly proportion of annual Subscription Fee)
99.0% to 99.49%	5%
98.0% to 98.99%	10%
95.0% to 97.99%	25%
Below 95.0%	50%

5.2 Service Credits shall be calculated by reference to the table below for each Support Level Failure.

Time to respond to / resolve ticket (relative to SLA)	Service Credit (% of monthly proportion of annual Subscription Fee)
1 – 1.49x	5%
1.5 – 1.99x	10%
2 – 3.99x	25%
4x or longer	50%

5.3 Service Credits shall be reconciled quarterly in accordance with clause 4.3 and maintained as a Service Credit Balance against the Council's account until applied by deduction from the next annual Subscription Fee invoice or paid in cash in accordance with clause 4.2.

5.4 The monthly proportion of the annual Subscription Fee for the purposes of calculating Service Credits shall be one twelfth (1/12) of the annual Subscription Fee then in effect.

6. IMPLEMENTATION AND MIGRATION FEES

The charges for the Implementation Services and Migration Services shall be a fixed fee of £[AMOUNT], comprising the implementation and migration cost items set out in the Tender Pricing Schedule. These charges shall be a one-time fee and shall not recur annually.

Notwithstanding any requirement in this Agreement for Fees to be invoiced and paid annually in advance, the Supplier may invoice the implementation and migration charges in two instalments as follows: (a) 50% on the date of signature of this Agreement; and (b) the remaining 50% on the Go-Live Date. Each instalment shall be invoiced no earlier than achievement of the selected milestone and shall be payable in accordance with the invoicing procedure and payment terms of this Agreement.

If the written acceptance option is selected, delivery alone shall not entitle the Supplier to invoice the balance, and acceptance shall not be deemed to occur merely through delivery, use or the passage of time.

SCHEDULE 2

MANDATORY POLICIES

The Mandatory Policies are:

- Access to Information Policy
- Administrative Access Security Policy
- Corporate Safeguarding Policy
- Data Processing Policy
- Data Protection Policy
- Digital Publishing Policy
- Dignity at Work Policy
- Equality and Diversity Policy
- Information Risk Policy
- IT Security Policy
- Personal Data Classifications Policy
- Personal Data Security Incidents Policy
- Processing of Special Category Personal Data and Sensitive Personal Data Policy
- Records Management Policy
- Regulation of Investigatory Powers Act 2000 Policy
- Subject Access Policy
- Use of Generative AI Policy
- Welsh Language Policy
- Welsh Language Standards
- Whistleblowing Policy

SCHEDULE 3

SUPPLIER'S NETWORK AND INFORMATION SYSTEMS SECURITY

1. SECURITY OF SYSTEMS AND FACILITIES

The Supplier's information system security arrangements, including its measures for risk analysis, human resources, security of operations, security architecture, secure data and system life cycle management, encryption and its management, protection against damage, supply chain accessibility and traceability, and physical and logical access control, shall comply with the requirements set out in the Technical Requirements.

2. BUSINESS CONTINUITY MANAGEMENT

2.1 The Supplier shall be responsible for ensuring that it has an appropriate Service Continuity Plan in place, which shall cover the following elements:

2.1.1 **Business Continuity** – to set out the arrangements to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services;

2.1.2 **Disaster Recovery** – to set out the arrangements to be invoked to ensure continuity of the business operations of the Council supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact; and

2.1.3 **Insolvency Continuity** – to set out the arrangements to be invoked to ensure continuity of the business operations of the Council supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier with, as far as reasonably possible, minimal adverse impact.

2.2 The Supplier shall:

2.2.1 ensure that it is able to implement the provisions of its Service Continuity Plan at any time in accordance with this Agreement;

2.2.2 review its Service Continuity Plans:

(a) on a regular basis and in any event at least once every twelve (12) months;

(b) within three (3) months of the Service Continuity Plan being invoked;

(c) within 14 days of a Financial Distress Event; and

(d) on request by the Council;

2.2.3 test its Service Continuity Plans on a regular basis (and in any event not less than once in every Contract Year);

2.2.4 provide updates to the Council on a regular basis in relation to the Service Continuity Plans including and changes to ensure that its plans comply and implement Good Industry Practice;

2.2.5 provide a copy of the Service Continuity Plans on request by the Council; and

2.2.6 ensure that any changes to its Service Continuity Plans do not have a negative impact on its resilience arrangements.

2.3 The Supplier shall ensure that it complies with the Council's information security policy as amended from time to time.

3. MONITORING, AUDITING AND TESTING

3.1 The Supplier shall monitor its performance against its obligations under this Agreement and in particular against the service level set out in clause 4.3 of the Agreement. The Supplier shall send the Council a report detailing the level of service actually achieved in accordance with Paragraph 6.

3.2 The Supplier shall report full details of service usage and availability on a protected web-based application which shall be accessible to the Council at all times.

3.3 Service Credits shall be calculated in accordance with the tables set out in Paragraph 5 of Schedule 1.

SCHEDULE 4

HOSTING REQUIREMENTS

This Schedule 4 forms part of, and shall be read together with, the Technical Requirements referred to in Schedule 6.

1. CYBER SECURITY AND RESILIENCE

1.1 The Supplier shall comply with the Cybersecurity Requirements and, in addition, the hosting-specific requirements set out in this Schedule. This Schedule applies in addition to, and does not replace, the hosting-related requirements set out in the Technical Requirements, and in the event of any inconsistency between this Schedule and the Technical Requirements, the provision imposing the higher standard on the Supplier shall prevail.

1.2 The Supplier shall not change hosting location, cloud region, data centre, material infrastructure provider or material security architecture without the Council's prior written approval.

2. PROVISION OF THE HOSTING SERVICES

2.1 The Supplier shall make available the hosting services described in this Schedule (the Hosting Services) from the Effective Date for the duration of the Subscription Term.

2.2 The Supplier shall make the Hosting Services available to the Council during the hours specified in the Documentation excluding:

2.2.1 scheduled maintenance which the Supplier shall use reasonable endeavours to undertake during the periods agreed with the Council in accordance with paragraph 5 below;

2.2.2 emergency maintenance; or

2.2.3 downtime caused in whole or part by Force Majeure.

2.3 The Supplier shall create and maintain an annual schedule of planned maintenance to the Hosting Services which shall be agreed with the Council. Once the maintenance schedule has been agreed with the Council, the Supplier shall only undertake such planned maintenance in accordance with the maintenance schedule.

2.4 The Supplier shall give as much notice as is reasonably practicable to the Council prior to carrying out any emergency maintenance.

2.5 The Supplier shall carry out any necessary maintenance (whether planned maintenance or emergency maintenance) where it reasonably suspects that the Hosting Services or any part of them has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible, to minimise) disruption to the Services.

2.6 The Supplier will provide as much notice as it is able regarding any emergency maintenance or downtime caused by Force Majeure, but the Council acknowledges that it may receive no advance notification for such events.

2.7 The Supplier may determine, at its sole discretion, that providing appropriate service levels requires additional equipment and/or bandwidth, and may install that equipment and/or bandwidth without approval from the Council, provided that it does not diminish in any way the functionality, connectivity, security or compatibility of the Services.

2.8 The Supplier shall maintain and update the Software. Should the Council determine that the Software includes a defect, the Council may at any time file error reports and the Supplier shall use all reasonable commercial endeavours promptly to correct any errors. During maintenance periods, the Supplier may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. The Supplier shall use all reasonable commercial endeavours to avoid unscheduled downtime for Software maintenance.

2.9 The Supplier shall maintain technical support on the two most current releases of the Software.

3. **Business Continuity and Disaster Recovery**

3.1 Without prejudice to the Supplier's obligations under the Technical Requirements, the Supplier shall, as a minimum: (a) take a full system backup of Council Data at least daily; (b) maintain a Recovery Point Objective (**RPO**) of one hour or less in the event of system outage; (c) maintain a Recovery Time Objective (**RTO**) for the core system of eight hours or less in the event of system outage; and (d) host Council Data at a data centre or data centres rated Uptime Institute Tier III or better (or an equivalent published standard).

4. **SECURITY TESTING**

4.1 The Council may perform, or request that the Supplier performs, security testing of the Services or of any infrastructure or facilities used to provide the Services, upon reasonable notice in writing.

4.2 The Council agrees that it shall not test, or require the Supplier to perform security tests pursuant to paragraph 12 above, more than once in any twelve (12) month period, save where the Council has good reason to believe there is a security issue with the Services being provided.

4.3 For the purpose of paragraph 12 above, security tests may include but are not limited to network discovery, port/service identification, vulnerability scanning, password cracking, remote access testing or penetration testing.

4.4 The Supplier shall notify the Council immediately it becomes aware of any incident, and respond without delay to all queries and requests for information from the Council about any incident, whether discovered by the Supplier or the Council, in particular bearing in mind the extent of any reporting obligations the Council may have under the Network and Information Systems Regulations 2018 (NIS Regulations) and Data Protection Legislation, and that the Council may be required to comply with statutory or other regulatory timescales.

4.5 The Supplier agrees to co-operate with the Council in relation to:

4.5.1 all aspects of its compliance with the NIS Regulations (if applicable); and

4.5.2 any requests for information, or inspection, made by any regulator (including in connection with the NIS Regulations).

5. **WARRANTY**

5.1 The Supplier warrants that the systems and equipment used in the performance of the Hosting Services will be free of all encumbrances (except as agreed in writing with the Council).

6. **COUNCIL DATA**

6.1 The Supplier shall perform secure back-ups of all Council Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Council (or to such

other person as the Council may direct) at all times upon request and are delivered to the Council at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the parties).

6.2 The Supplier shall ensure that any system on which the Supplier holds any Council Data, including back-up data, is a secure system that complies with the Technical Requirements.

6.3 If Council Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, the Council may:

6.3.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Council Data to the extent and in accordance with the requirements specified in the Service Continuity Plan, the Technical Requirements or as otherwise agreed or required pursuant to this Agreement, and the Supplier shall do so as soon as practicable but not later than five (5) Business Days from the date of receipt of the Council's notice; and/or

6.3.2 itself restore or procure the restoration of Council Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Service Continuity Plan and/or the Technical Requirements.

6.4 If at any time the Supplier suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Council immediately and inform the Council of the remedial action the Supplier proposes to take.

7. HOSTING SET-UP

7.1 The set-up phase of the Hosting Services includes those services provided by the Supplier to design, install, configure and test the Hosting Services, as well as the hosting facility and internet connectivity.

8. INSTALLATION AND CONFIGURATION

8.1 The Supplier shall procure, install and configure the hosting equipment to provide access to the Software. This includes the rack mounting of servers and related equipment, installation of system and database software components, configuration of clustering and cross-connects, installation of the Software, and loading of initial

Council Data. The hosting equipment shall comply with the specification set out in the Documentation.

9. **FACILITY**

9.1 The hosting equipment shall be installed in a rack-mounted configuration inside a professional hosting facility designed for such use. The facility shall be equipped with access security, climate control, fire suppression, and managed power supply with UPS and generator back-up, and shall meet the standards set out in the Technical Requirements.

10. **INTERNET CONNECTIVITY**

10.1 The Supplier shall provide internet connectivity either itself or (if stated in the Documentation) through an internet service provider from the switch or handover points at the Council's facility or facilities detailed in the Documentation to the hosting equipment at the hosting facility. The connectivity shall include multiple, diversely routed high-speed connections, a firewall for security and a load balancer for traffic management and speed optimisation. The Council shall make its own arrangements for internet access in order to access the Software when accessing the Software otherwise than at the Council's facility or facilities detailed in the Documentation.

10.2 The Supplier shall supply burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access. The internet connectivity provided by the Supplier shall not be less than that set out in the Documentation.

11. **CONTINUING HOSTING SERVICES**

11.1 The continuing Hosting Services provided by the Supplier include internet connectivity (as detailed in paragraph 26 above), load distribution management, security services, monitoring, back-up, release management and change control, and administration services.

12. **LOAD DISTRIBUTION MANAGEMENT**

12.1 The Supplier shall provide load-balancing services to distribute load and redundancy across application servers.

SCHEDULE 5 – SYSTEM SPECIFICATION

The System Specification for the Case Management System is as set out in the document entitled “PABO System Specification” prepared by the Council and provided to the Supplier as part of the procurement process, which is incorporated into this Agreement by reference. The Supplier shall deliver the Services in accordance with the requirements set out in the System Specification, including all “MUST” rated requirements as a minimum.

SCHEDULE 6 – TECHNICAL REQUIREMENTS

The minimum Technical Requirements for the Services are as set out in the document entitled "Minimum Technical Requirements" prepared by the Council and provided to the Supplier as part of the procurement process, which is incorporated into this Agreement by reference. The Technical Requirements shall be read together with, and interpreted consistently with, the System Specification. The Supplier shall comply with all requirements set out in the Technical Requirements throughout the Subscription Term.

SCHEDULE 7

DATA PROTECTION

PART 1

DATA PROCESSING

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor, unless otherwise specified in the Scope of Processing Requirements set out in Part 2 of this Schedule. The only processing that the Supplier is authorised to do is listed in the Scope of Processing Requirements set out in this Schedule by the Council and may not be otherwise determined by the Supplier. The email address of the Council's Data Protection Officer is dpo@anglesey.gov.uk.

2. The Supplier shall notify the Council immediately if it considers that any of the Council instructions infringe the Data Protection Legislation.

3. The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing, or otherwise in relation to, any processing. Such assistance may, at the discretion of the Council, include:

   3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

   3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

   3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

   3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

4. The Supplier shall no less than once every twelve (12) months during the Term:

   4.1 review the data processing table in Part 2 of this Schedule to ensure that it remains up to date and the Council shall at its discretion agree any changes required in writing;

4.2 complete a Data Protection Impact Assessment questionnaire issued by the Council from time to time; and

4.3 provide any other information requested by the Council on an annual basis.

5. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

5.1 process that Personal Data only in accordance with the table set out in Part 2 of this Schedule, unless the Supplier is required to do otherwise by Law to otherwise process that Personal Data. Where the Supplier is relying on Law as the basis for processing Personal Data, the Supplier shall promptly notify the Council before processing the Personal Data required by the Law unless notification is prohibited by Law;

5.2 ensure that it has in place Protective Measures, are appropriate to protect against a Data Loss Event, which the Council may reasonably reject (but failure to reject shall not amount to approval by the Council of the adequacy of the Protective Measures) having taken account of the:

5.2.1 nature of the data to be protected;

5.2.2 harm that might result from a Data Loss Event;

5.2.3 state of technological development; and

5.2.4 cost of implementing any measures;

5.3 ensure that:

5.3.1 the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular the table in Part 2 of this Schedule);

5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

(a) are aware of and comply with the Supplier's duties under this clause;

(b) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

(c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and

(d) have undergone adequate training in the use, care, protection and handling of Personal Data;

5.4 not transfer Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

5.4.1 the Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or DPA 2018 Section 75) as determined by the Council;

5.4.2 the Data Subject has enforceable rights and effective legal remedies;

5.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

5.4.4 the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

5.5 at the written discretion of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

6. If the Supplier or any Sub-processor wishes to Process and/or transfer any Personal Data outside of the UK the Supplier shall submit a Change Request to the Council which, if the Council agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure and this Paragraph 6:

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

6.1.1 the Personal Data which will be transferred to and/or Processed outside the UK;

6.1.2 the countries in which the Personal Data will be transferred to and/or processed in; and

6.1.3 any Sub-processors or other third parties who will be Processing and/or receiving Personal Data in those countries;

6.1.4 how the Supplier will ensure an adequate level of protection and compliance with the Protective Measures in respect of the Personal Data that will be Processed in and/or transferred to the counties outside the UK so as to ensure the Council compliance with the Data Protection Legislation.

6.2 in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current the Council and Commissioners policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data outside the UK; and

6.3 the Supplier shall comply with such other further instructions with respect to processing issued by the Council and shall carry out such other actions as the Council may notify in writing, including:

6.3.1 implementing a transfer mechanism approved for the purposes of UK GDPR, including, where applicable, the UK International Data Transfer Agreement, the UK Addendum to the EU Standard Contractual Clauses, any adequacy regulations, or any replacement mechanism offering adequate safeguards under the Data Protection Legislation) into this Agreement or a separate data processing agreement between the Parties; and

6.3.2 procuring that any Sub-processor or other third party who will be Processing and/or receiving or accessing the Personal Data in any country outside the UK either enters into:

(a) a direct data processing agreement with the Council on such terms as may be required by the Council; or

(b) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Council and the Sub-processor relating to the relevant Personal Data transfer,

(c) and in each case which the Supplier acknowledges may include the incorporation of a transfer mechanism approved for the purposes of UK GDPR, including, where applicable the UK International Data Transfer Agreement, the UK Addendum to the EU Standard Contractual Clauses, any adequacy regulations or any replacement mechanism offering adequate safeguards under the Data Protection Legislation) and any Protective Measures that the Council deem necessary for the purpose of protecting Personal Data.

7. Subject to Paragraph 8, the Supplier shall notify the Council immediately if it:

7.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

7.2 receives a request to rectify, block or erase any Personal Data;

7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

7.4 receives any communication from the Information Commission or any other regulatory the Council in connection with Personal Data processed under this Agreement;

7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

7.6 becomes aware of a Data Loss Event.

8. The Supplier's obligation to notify under Paragraph 7 shall include the provision of further information to the Council in phases, as details become available.

9. Taking into account the nature of the processing, the Supplier shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 7 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

9.1 the Council with full details and copies of the complaint, communication or request;

9.2 such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

9.3 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;

9.4 assistance as requested by the Council following any Data Loss Event;

9.5 assistance as requested by the Council with respect to any request from the Information Commission, or any consultation by the Council with the Information Commission.

10. The Supplier shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of the Council obligations under the Data Protection Legislation to the extent that the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

11. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Paragraph. This requirement does not apply where the Supplier employs fewer than two hundred and fifty (250) persons, unless:

11.1 the Council determines that the processing is not occasional;

11.2 the Council determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or

11.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

12. The Supplier shall allow for audits of its Data processing activity by the Council or the Council designated auditor.

13. The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation and contact details of which if applicable are set out in the Order Form.

14. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

14.1 notify the Council in writing of the intended Sub-processor and processing;

14.2 obtain the written consent of the Council;

14.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 7 such that they apply to the Sub-processor; and

14.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

14.5 The Supplier shall remain fully liable for all acts or omissions of any of its Sub-processors.

14.6 The Supplier shall indemnify the Council (calculated on a full indemnity basis) for any damage, costs or Losses (including legal costs) incurred by the Council in connection with any third party claim made or threatened against the Council in connection with loss, unauthorised disclosure or breach of the Data Protection Legislation or the provisions of this Schedule 7 by the Supplier or any Sub-processor in relation to any Personal Data. This indemnity shall not apply to the extent that the Supplier's act or omission was as result of the express written instruction of the Council.

14.7 the Council may, at any time on notice, revise this Paragraph by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement) and requiring any further Protective Measures.

14.8 The Parties agree to take account of any guidance issued by the Information Commission and may on notice amend this agreement to ensure that it complies with any guidance issued by the Information Commission.

PART 2

SCOPE OF PROCESSING REQUIREMENTS

Description	Details

Subject matter of the processing	Storage and management of data relating to Public Protection functions within a hosted database system, including:
	• Environment Health
	  o Noise & Statutory Nuisance
	  o Pollution & Contaminated Land
	  o Food Safety
	  o Animal Health
	  o Housing Standards
	  o Port Health
	  o Public Health (communicable (infectious) diseases)
	• Trading Standards
	  o Consumer Rights
	  o Food Standards
	  o Product Safety
	  o Rogue Traders & Fraud Prevention
	• Health & Safety
	  o Workplace Accident Investigations
	  o Pest & Animal Control
	• Licensing
	  o Premises Licensing
	  o Special Procedures Licensing
	  o Trade Licensing
	  o Hackney Carriages
	• Private Housing
	  o Empty Homes
	  o Accessibility Improvements

Duration of the processing	Duration of the Subscription Term as defined at the start of this agreement and for any such time after its expiry as required to complete the repatriation of data as specified in section 23.6.
Nature and purposes of the processing	The functions detailed in the full specification document, including: • Management of records regarding the status and usage of commercial and residential properties and other sites across the area covered by the authority. • Management of records regarding businesses based outside of the authority but carrying out business therein or with the residents thereof. • Logging, investigation and resolution of complaints and concerns raised regarding businesses, residents or properties within the area of the authority relating to:

	○ Environmental Health, including pollution, noise and other statutory nuisances; ○ Trading Standards, including consumer rights, product safety and failure to comply with other regulations; ○ Health & Safety, including workplace accidents or accidents on commercial premises involving members of the public; ○ Licensing, including breaches of licence conditions and unlicensed operation of licensable activities. • Implementation of routine inspection programmes of business premises and other sites across the area covered by the authority. • Booking and implementation of Pest Control appointments • Management of records of licences awarded to businesses, premises and individuals across the area covered by the authority • Management of Port Health inspections of vessels and processing of Maritime Declarations of Health. • Management of programmes to bring empty premises back into use and provide assistance in the implementation of accessibility equipment in both private and public housing. This data is processed under the lawful bases of Public Task and Legitimate Interest.
Type of Personal Data	• Name • Address • Postcode • Email address • Date of birth • Telephone number • Driving licence details • Criminal record details (in the context of DBS checks) • Heath data (in the context of H&S or Public Health investigations) • Details of enforcement notices and prosecutions against individuals and corporations
Categories of Data Subject	• Business owners and traders operating within the Isle of Anglesey • Business owners and traders operating outside the Isle of Anglesey but conducting business therein of with the residents thereof • Home- and land-owners of properties within the Isle of Anglesey • Individuals (regardless of location) making complaints or other reports to the Public Protection division.

	• Victims of and witnesses to statutory nuisances, fraudulent trading, workplace accidents or other issues requiring investigation by the Public Protection division. • Owners and operators of vessels calling at the Port of Holyhead or other harbours within the Council's remit • Owners of stray or nuisance animals • Public and private sector tenants raising concerns about their housing standards • Individuals apply for licences issues by the Council as Licensing Authority. • Other individuals in direct communication or interaction with the Public Protection division.
Plan for return and destruction of the data once the processing is complete (unless there is a requirement under the Data Protection Legislation to preserve that type of data)	Upon termination of conclusion of this agreement, all data is to be returned to the Council and destroyed by the supplier in accordance with the requirements in section 23.6 except where explicitly overridden by other sections of this agreement.

SCHEDULE 8

FEES AND INVOICING

1. APPLICABLE PRICING MECHANISM

1.1 The Fees shall be calculated using the pricing mechanism and on the basis of the rates and prices specified in Schedule 1.

2. SUPPLIER INVOICES

2.1 The Supplier shall prepare and provide to the Council for approval of the format a template invoice within ten (10) Business Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 2.2 together with such other information as the Council may reasonably require to assess whether the Fees that will be detailed therein are properly payable. If the template invoice is not approved by the Council then the Supplier shall make such amendments as may be reasonably required by the Council. If the Council uses an e-invoicing system then the Supplier shall instead comply with the requirements of that system.

2.2 The Supplier shall ensure that each invoice is submitted in the correct format for the Council's e-invoicing system, or that it contains the following information:

2.2.1 the date of the invoice;

2.2.2 a unique invoice number;

2.2.3 the period(s) to which the relevant Fees relate;

2.2.4 the correct reference for this Agreement;

2.2.5 the reference number of the purchase order to which it relates (if any);

2.2.6 the dates between which the Services subject of each of the Fees detailed on the invoice were performed;

2.2.7 a description of the Services;

2.2.8 the pricing mechanism used to calculate the Fees;

2.2.9 the total Fees gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the

Council under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;

2.2.10 details of any Service Credits or similar deductions that shall apply to the Fees detailed on the invoice as applicable;

2.2.11 reference to any reports required by the Council in respect of the Services to which the Fees detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Council, then to any such reports as are validated by the Council in respect of the Services);

2.2.12 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and

2.2.13 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

2.3 The Supplier shall invoice the Council in respect of Services in accordance with the requirements of this Paragraph 2. The Supplier shall first submit to the Council a draft invoice setting out the Fees payable, together with the relevant Supporting Documentation. The Parties shall endeavour to agree the draft invoice within five (5) Business Days of its receipt by the Council. Following agreement of the draft invoice, the Council shall promptly issue the corresponding purchase order to the Supplier, unless an existing purchase order covers the relevant Fees. The Supplier may then submit its invoice for the agreed amount, quoting the applicable purchase order reference.

2.4 Each invoice shall at all times be accompanied by any required Supporting Documentation. Any assessment by the Council as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Council any other documentation reasonably required by the Council from time to time to substantiate an invoice.

2.5 The Supplier shall submit all invoices and Supporting Documentation to the Council's designated email address as notified to the Supplier in writing or if that is not possible to the Council's address (as stated at the top of this Agreement) with a copy (again including any Supporting Documentation) to such other person and at such place as the Council may notify to the Supplier from time to time. The Council may change the method of submitting invoices and Supporting Documentation by giving the Supplier reasonable prior written notice specifying the new method and its effective date. Any

such change shall not affect the validity of invoices and Supporting Documentation properly submitted before that date.

2.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Council in writing.

2.7 The Council shall regard an invoice as valid only if it complies with the provisions of this Paragraph 2. Where any invoice does not conform to the Council's requirements set out in this Paragraph 2, the Council shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

2.8 If the Council fails to consider and verify an invoice in accordance with Paragraphs 2.3 and 2.7, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 3.1 (*Payment in 30 days*) after a reasonable time has passed.

3. **PAYMENT TERMS**

3.1 Subject to the relevant provisions of this Schedule, the Council shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.

3.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

SCHEDULE 9

FINANCIAL DISTRESS

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

Credit Rating Level means the credit rating or business failure risk assessment assigned to the Supplier by Dun & Bradstreet;

Credit Rating Threshold means a Credit Rating Level indicating no immediate risk of business failure;

Financial Standing Criteria means the following criteria: the Supplier has annual turnover of at least six (6) times the annual Support Fee; the Supplier has a current ratio equal to or greater than one (1); and the Supplier's Credit Rating Level meets the Credit Rating Threshold;

Rating Agency means Dun & Bradstreet.

2. **CONSEQUENCES OF FINANCIAL DISTRESS EVENT**

2.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Council becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall:

2.1.1 at the request of the Council, meet the Council as soon as reasonably practicable (and in any event within 3 Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Council may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

2.1.2 where the Council reasonably believes (taking into account the discussions and any representations made under Paragraph 2.1.1 that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement submit to the Council for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Business Days of the initial

notification (or awareness) of the Financial Distress Event or such other period as the Council may permit and notify to the Supplier in writing).

2.2 The Council shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Council does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Council within 5 Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Council or referred to the Dispute Resolution Procedure under Paragraph 2.3.

2.3 If the Council considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

2.4 Following approval of the Financial Distress Remediation Plan by the Council, the Supplier shall:

2.4.1 regular basis (which shall not be less than fortnightly):

(a) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Council, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and

(b) provide a written report to the Council setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

2.4.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 2.4.1, submit an updated Financial Distress Remediation Plan to the Council for its approval, and the provisions of

Paragraphs 2.2 and 2.3 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

2.4.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

2.5 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Council and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 2.4.

3. TERMINATION RIGHTS

3.1 The Council shall be entitled to terminate this Agreement under Clause 23.2 (Termination by Council) if:

3.1.1 the Supplier fails to notify the Council of a Financial Distress Event in accordance with Clause 11.12 or Clause 11.13 of the Agreement;

3.1.2 the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 2 above; and/or

3.1.3 the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 2.5.

SCHEDULE 10

SUPPORT SERVICES

1. **Definitions**

1.1 In this Schedule, the following definitions shall apply:

1.1.1 **Incident** means, for the purposes of this Schedule, any failure, fault, error, defect or malfunction of the Services reported by the Council or identified by the Supplier, excluding a Service Level Failure to the extent already addressed under clause 4.3 and paragraph 5 of Schedule 1;

1.1.2 **Priority Level** means the priority level (1 to 4) assigned to an Incident in accordance with paragraph 6 below;

1.1.3 **Resolution Time** means the maximum time, measured from the time an Incident is logged, within which the Supplier shall resolve or provide a permanent or temporary workaround for the Incident, as set out in the table at paragraph 1 above;

1.1.4 **Response Time** means the maximum time, measured from the time an Incident is logged, within which the Supplier shall acknowledge the Incident and commence diagnosis, as set out in the table at paragraph 1 above; and

1.1.5 **Support Hours** means the hours during which the Supplier shall make the support services described in this Schedule available.

2. **Response and Resolution Times**

2.1 The Supplier shall meet the following minimum Response Time and Resolution Time targets for each Priority Level (as defined in paragraph 2.2 below), measured from the time the relevant Incident is logged with the Supplier's service desk:

2.2 If the Supplier fails to meet a Response Time or Resolution Time for a given Incident, this shall constitute a Support Level Failure for the purposes of clause 4.4, and shall be credited in accordance with the service credit rates set out in paragraph 5 of Schedule 1, aggregated with Service Credits for Service Level Failures.

Priority Level	Response Time	Resolution Time
Priority 1 (Critical)	30 minutes	2 hours
Priority 2 (High)	1 hour	4 hours
Priority 3 (Medium)	1 business day	3 business days
Priority 4 (Low)	2 business days	5 business days

3. **Support Hours and Channels**

3.1 The Supplier shall make the support services described in this Schedule available during Normal Business Hours (08:30 – 16:30 Monday to Friday)

3.2 The Supplier shall make the following support channels available to the Council: telephone helpdesk, online ticketing portal.

4. **Escalation**

4.1 Where the Supplier fails, or the Council reasonably believes the Supplier is likely to fail, to meet a Response Time or Resolution Time in respect of a Priority 1 or Priority 2 Incident, the Council may escalate the Incident in accordance with the following escalation path: named service delivery manager, account manager, named director, and the Supplier shall provide the Council with up to date contact details for each escalation point on request.

5. **Reporting and Review**

5.1 The Supplier shall provide the Council with a written report, no less frequently than monthly, setting out the number of Incidents logged in the reporting period, the Priority Level assigned to each, and the Supplier's performance against the Response Time and Resolution Time targets set out in paragraph 1 above.

5.2 The parties shall review the Priority Level definitions, Response Time and Resolution Time targets, Support Hours and escalation path set out in this Schedule no less frequently than annually, and may agree amendments in writing in accordance with clause 28 (Variation).

5.3 If the Supplier fails to meet a Response Time or Resolution Time for a given Incident, this shall constitute a Support Level Failure for the purposes of clause 4.4, and shall be credited in accordance with the service credit rates set out in paragraph 5 of Schedule 1, aggregated with Service Credits for Service Level Failures.

6. **Priority Levels**

6.1 Each Incident reported to the Supplier shall be assigned a Priority Level by the Supplier, acting reasonably and in good faith and having regard to any reasonable representations made by the Council, in accordance with the following table:

Priority Level	**Description**	**Example(s)**
Priority 1 (Critical)	An Incident that renders the Services wholly unavailable to all or substantially all Authorised Users, or that causes a critical business function of the Council to be inoperable, with no available workaround.	System entirely unavailable due to connectivity failure at hosting. No users able to log in to system due to global issue with authentication method (e.g. SSO token expiry)
Priority 2 (High)	An Incident that materially degrades the performance of the Services or renders a significant function unavailable to a material number of Authorised Users, where a workaround is available but is materially disruptive.	Critical function of system (e.g. case record creation) unavailable to all users, but all other functions working as normal.
Priority 3 (Medium)	An Incident that affects the functionality of the Services for one or more Authorised Users but does not prevent the Council from carrying out its core business functions,	Non-critical function of system (e.g. PDF document generation) unavailable to all users.

	and where a reasonable workaround is available.	Critical function unavailable to certain users but not globally unavailable.
Priority 4 (Low)	A cosmetic, minor or low-impact Incident, or a general query, that does not materially affect the use of the Services.	Welsh language / accessibility issue with web interface following update. Unexpected alert / error-type messages displaying with no functional impact.

Signed by [**NAME OF DIRECTOR**]		……..…….……
for and on behalf of [**NAME OF SUPPLIER**]		Director
Signed by [**NAME OF DIRECTOR**]		……..…….……
for and on behalf of **ISLE OF ANGLESEY COUNTY COUNCIL**		Director
Signed by [**NAME OF OFFICER**]		……..…….……
for and on behalf of **ISLE OF ANGELSEY COUNTY COUNCIL**		Director

[**OR**]

THE COMMON SEAL OF ISLE OF ANGLESEY COUNTY COUNCIL was hereto affixed in the presence of: Signature: ……. Name: ……. Position: …….	