

LONDON COUNCILS

and

[CONTRACTORS NAME]

LONDON LORRY CONTROL SCHEME
Web Hosting and Support Services Agreement

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THIS AGREEMENT is made as of the _____ day of _____ 2015

BETWEEN

- (1) **LONDON COUNCILS** whose principal place of business is at 59 ½ Southwark Street, London SE1 0AL (the ‘Customer’ or ‘London Councils’); and
- (2) **[CONTRACTORS NAME]** being a company registered in England under Company Registration No. **XXXXXXXXXX** whose registered office is situate at **[INSERT ADDRESS]** (the ‘Contractor’)

RECITALS

- (A) The Customer runs the London Lorry Control Scheme, which controls the movements of HGV’s on residential roads at night and at weekends. Up until now, London Councils have used a collection of largely paper-based case management processes that are no longer fit-for-purpose. The objective of this contract is to provide an integrated, end-to-end case management system that brings together permit issuing and enforcement of the scheme.
- (B) The Contractor has developed and owns or has licensed from third parties a certain computer software system known as **London Lorry Control Scheme** and more fully described in the Agreement.
- (C) The Contractor wishes to deliver to the Customer a web hosting service for the System and to grant to the Customer a licence to use such web hosting service and any associated System documentation.
- (D) The Contractor also wishes to provide support and other services to the Customer more fully described in the Agreement.
- (E) The Customer desires to be supplied with the above as more fully described in this Agreement.
- (F) The Customer has entered into this Agreement based on its Invitation to Tender dated **XXXXXXXXXX** and in reliance amongst other things on the representations made in the Contractor’s Response dated **XXXXXXXXXX** including but not limited to the technical excellence, experience and track record quoted by the Contractor in such response.

NOW IT IS AGREED as follows:

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Acceptance Certificate'	the certificate of acceptance or other written acceptance on the successful completion of the test data;
'Acceptance Date'	the date on which the web hosting service is accepted (or deemed to be accepted) by the Customer pursuant to clause 12;
'Agreement'	this Agreement which shall contain the terms of the Services to be performed by the Contractor and payment terms for the Customer;
'Anniversary Date'	the anniversary of the Commencement Date;
'Background Intellectual Property Rights'	the pre-existing Intellectual Property Rights created prior to or outside the scope of this Agreement;
'Charges'	the charges or fees payable by the Customer to the Contractor for the Services and set out in <u>Schedule 3 (Charges)</u> ;
'Commencement Date'	the date of the Agreement first mentioned above;
'Content'	materials which may include data, information, text, media content, features, products, services, advertisements, promotions, links, pointers, technology, software and databases for publication on the Website (including without limitation, literary, artistic, audio and visual content), including any publication or information created as a result of the Services;
'Contractor Know-how'	the Contractor's methodology and stylistic conventions, and its own distinctive elements in respect of graphics, design, organisation, presentation, layout, user interfaces, navigation, and the combination, co-ordination and interaction of these elements;
'Customer Branding'	the words, terms and phrases including the Customer's logo, trademarks, service marks, or such other words, terms and phrases notified in writing by the Customer to the Contractor;
'Delivery Date'	the delivery date(s) of the Services and the Support Services and/or other deliverables agreed in writing, as may be agreed by the Customer;
'Data Protection Legislation'	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Prac-

tice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

'Equipment'	such Customer computer equipment including servers, personal computers and operating systems and operating environment, or other replacements or upgrades which is in the ownership or under the control of the Customer;
'External Area'	any online area in or outside the Website, including but not limited to any sites on the World Wide Web section of the Internet;
'Foreground Intellectual Property Rights'	the Intellectual Property Rights created by a party pursuant to and within the scope of this Agreement;
"Go Live Date"	the date(s) on which each Phase and, together, the System goes live, which is agreed between the parties in writing to be the Go Live Date;
'Implementation Plan'	the detailed plan in which the Services are to be implemented and performed;
'Initial Term'	three years from the Commencement Date;
'Intellectual Property Claim'	defined in clause 17.1 below;
'Intellectual Property Rights'	all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;
'Internet'	The global network of computer systems, including without limitation, the World Wide Web;
'Key Performance Indicators (KPIs)'	defined in schedule 7
'Invitation to Tender'	the Invitation to Tender dated xxxxxx and set out in <u>Schedule 1</u> ;
'Location'	the computer room or other area(s) where the Equipment is located as notified by the Customer from time to time;
'Licence'	the licence(s) granted by the Contractor pursuant to this Agreement;

‘Milestone Dates’	the dates the Milestones are to be achieved, as set out in the Implementation Plan, or as otherwise agreed in writing by the parties;
‘Milestones’	the milestones to be achieved within a Phase;
‘Phase’	an individual phase within the Services, which together with all phases form the Services;
‘Representative’	the representative appointed by each party respectively, authorised to take decisions on behalf of such party;
‘Response’	the Contractor’s response to the Customer’s Invitation to Tender;
‘Service Credit’	defined in schedule 7
‘Service Levels’	the level of service for the delivery of the Support Services and set out in <u>Schedule 7 (Service Levels)</u> ;
‘Service Point’	defined in schedule 7
‘Services’	the activities undertaken by the Contractor in the performance of and as specified in this Agreement (including the Support Services);
‘System Documentation’	the operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Customer by the Contractor for aiding the use and application of the System and web hosting service;
‘Specification’	the Customer’s specification of the System and web hosting service and Services describing the facilities and functions thereof, a copy of which is annexed to this Agreement in <u>Schedule 1</u> ;
‘Subsequent Term’	a period of one year, following the expiry of the Initial Term, or a previous Subsequent Term;
‘Support Services’	the activities undertaken by the Contractor to support the Services after the Go-Live Date;
‘System’	the London Lorry Control Scheme that is more particularly described in <u>Schedule 1</u> which forms part of the Services, the databases and infrastructure of the Website and web hosting service, including updates, enhancements and additions to any part of it;
‘Third Party Software’	software proprietary to third parties comprised in the Website, the System, or in any other products designed, developed or produced by the Contractor under this Agreement or used to provide or operate the Website and listed as such in the <u>Contractors Response (Schedule 2)</u> ;

‘Virus’ a computer program that copies itself or is copied to other storage media including, without limitation, magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user’s files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as ‘worms’ or ‘Trojan horses’;

‘Website’ the network location on the World Wide Web, written in hypertext mark-up language format developed in accordance with these terms and conditions containing digital text, graphics, sound, and video and accessed via the Internet;

‘World Wide Web’ The service provided over the Internet for the retrieval and transfer of documents using hypertext transfer protocol;

1.2 In the Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 reference to a gender includes the other gender and the neuter;

1.2.3 words importing persons include firms, companies and corporations and vice versa;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.2.5 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

1.2.6 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

1.2.7 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.2.8 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.

1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

3 Due Diligence

3.1 The Contractor acknowledges that it:

- 3.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- 3.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date of this Agreement; and
- 3.1.3 has entered into this Agreement in reliance on its own due diligence alone.

4 Duration

- 4.1 This Agreement shall commence on the Commencement Date and shall continue for the Initial Term, and thereafter for a Subsequent Term, unless terminated in accordance with this Agreement.
- 4.2 Either party may terminate the Agreement upon giving to the other at least ninety (90) days' notice in writing, such notice to expire not earlier than the third Anniversary Date of the Initial Term, or the end of a Subsequent Term.
- 4.3 The Agreement shall expire automatically on the Anniversary Date of the second Subsequent Term.

5 Agreement

- 5.1 The terms and conditions of this Agreement shall govern the Services provided by the Contractor under this Agreement. Should the terms of the Agreement conflict with the terms of any Schedule, the terms of the Agreement shall prevail, unless agreed otherwise, in writing.

6 Contractor's Obligations

- 6.1 The Contractor agrees to undertake the following services:
 - 6.1.1 to provide the Services described in Schedule 1, including but not limited to:
 - a) creative Content design;
 - b) Content updating;
 - c) hosting services;
 - d) such other task as the Customer may request from time to time.

- 6.1.2 to provide the Support Services with effect from the Go Live Date and in accordance with the Service Levels described in Schedule 7 (Service Levels), which shall include, but is not limited to:
- a) website maintenance and technical support;
 - b) System support;
 - c) System backup;
 - d) service recovery;
 - e) help desk.
- 6.1.3 to provide such other additional services the Customer requires from time to time, as agreed in writing.
- 6.2 The Contractor shall:
- 6.2.1 provide the Services with skill and expertise to a professional standard, and in a timely and efficient manner, using suitably experienced personnel, to meet the Customer's business requirements, as described in Schedule 1 or as otherwise agreed between the parties in writing;
 - 6.2.2 provide training necessary for the Customer to operate the Services;
 - 6.2.3 customise and maintain the architecture of the System appropriately in reliance on information provided by the Customer;
 - 6.2.4 manage, edit, update and maintain the Website, including but not limited to interactive communication capabilities and interactive tools;
 - 6.2.5 ensure continuing integration with existing websites identified by the Customer;
 - 6.2.6 provide any training necessary for the Customer to operate the Website.
- 6.3 The Contractor shall ensure that the Services in Schedule 1 shall be completed within the price agreed and set out in Schedule 3 (Charges). Additional services shall be charged at prices agreed between the parties.
- 6.4 The Contractor shall co-operate with the Customer's employees and other independent consultants whenever necessary or desirable in the performance of the Services.
- 6.5 The Contractor shall designate a Representative. The Contractor may change the identity of the Representative or any of the details of the Representative with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.
- 6.6 The Contractor shall comply with all the terms of this Agreement.

- 6.7 Not used.
- 6.8 The Contractor shall ensure that the System and Website has the following characteristics:
- 6.8.1 be a user-friendly, interactive, original site;
 - 6.8.2 be accessible 24 hours a day without delay;
 - 6.8.3 bring together coherently material from a variety of the Customer's publications, and other information relevant to visitors to the Website;
 - 6.8.4 promote best practice, offer practical information and facilitate networking for its visitors; and
 - 6.8.5 be easy to navigate, up-to-date and authoritative.
- 6.9 The Contractor may not, without the written consent of the Customer, establish any Link to any External Area except as set out in the Specification. Any Link created shall be subject to such terms and conditions as the Customer may require in the creation or maintenance of the Link, including but not limited to any requirement to pay fees for such Links or obligation to market or provide the Website through such External Area. However, if required by the Customer, the Contractor shall provide Links to other websites identified by the Customer.
- 6.10 The parties acknowledge that the Specification represents the minimum requirements for the System, and that they do not constitute a definitive or complete set of requirements.
- 6.11 Each party confirms to the other that it shall not transmit, display or otherwise include in the Content:
- 6.11.1 any material which is defamatory, offensive, abusive, indecent, obscene, pornographic, threatening or annoying, or which may incite violence, cruelty of any sort or discriminate against people in a way which may be illegal, including but not limited to racial hatred, or which is otherwise illegal;
 - 6.11.2 any material which infringes the Intellectual Property Rights of the other party or of a third party.
- 6.12 The Contractor undertakes to design the Website so that it shall efficiently comply with all applicable laws and regulations in relation to its design, accessibility and purpose, including but not limited to laws and regulations concerning disability and discrimination, data protection and electronic commerce.

7 Customer's Obligations

- 7.1 The Customer agrees to inform the Contractor on the Customer's business practices which affect the Services.

- 7.2 The Customer shall pay for the Services in accordance with the terms of this Agreement.
- 7.3 The Customer shall designate a Representative and inform the Contractor of the identity and details of such Representative. The Customer may change the identity of the Representative or any of the details of the Representative on written notice to the Contractor.

8 Payment

- 8.1 In consideration of the Services delivered or performed by the Contractor under this Agreement, the Customer shall pay the Charges in Schedule 2 in the amounts and at the rates and frequency set out in the Agreement.
- 8.2 The Charges payable under this Agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Customer at the rate and in the manner prescribed by law against submission of a valid tax invoice.
- 8.3 The Charges payable by the Customer under this Agreement shall be paid within thirty (30) days after the receipt by the Customer of the Contractor's invoice.
- 8.4 The Contractor shall invoice the Customer for the Charges after successful acceptance testing on or after the Acceptance Date or as otherwise agreed between the parties in writing.
- 8.5 All invoices shall be accompanied by supporting documentation in a breakdown of the costs.
- 8.6 Expenses may be payable, but only as such is expressly set out in Schedule 2 (Charges).

9 Not used.

10 Implementation

- 10.1 The Contractor shall deliver a detailed Implementation Plan to the Customer within ten (10) days of the Commencement Date, unless otherwise agreed by the parties in writing. The Implementation Plan should be sufficiently detailed as is necessary to manage the implementation of the Services effectively. Once agreed with the Customer, performance shall be monitored against the Implementation Plan.

11 Milestone Delays

- 11.1 If at any time the Contractor becomes aware that it shall not (or is unlikely to) achieve any Milestone by the Milestone Date it shall as soon as is reasonably practicable (and not later than seven (7) days) notify the Customer in writing of the delay giving full details of:

- 11.1.1 the reasons for the delay;
 - 11.1.2 the consequences of the delay; and
 - 11.1.3 a correction plan.
- 11.2 Whatever the reasons for the delay (whether caused by the Customer or not), the Contractor shall make all reasonable endeavours to eliminate or mitigate the consequences of the delay.
- 11.3 The correction plan shall be submitted to the Customer for approval.
- 11.4 The Contractor shall comply with the correction plan following its approval by the Customer.
- 11.5 Delays resulting from the Customer's actions or omissions to act shall be taken into account in the correction plan in assessing the impact of the Customer's delay on the Contractor, (PROVIDED THAT the Contractor had first notified the Customer in writing at the time of the delay that the Customer's delay would impact on the Milestone Dates) and if agreed, the Milestone Dates shall be extended to take into account the Customer's delay.
- 12 Testing and Acceptance**
- 12.1 The Customer shall supply to the Contractor immediately after uploading the Customer's information, test data which in the reasonable opinion of the parties is suitable to test whether the System and web hosting service is in accordance with Schedules 1 and 2, together with the results expected to be achieved by processing such test data. The Contractor shall not be entitled to object to such test data or expected results unless the Contractor can demonstrate to the Customer that they are not suitable for testing the System and web hosting service as aforesaid, in which event the Customer shall make reasonable amendments to such test data and expected results as the Contractor may request. The Contractor shall submit to the Customer a test plan for Customer's approval, after which the Contractor and the Customer shall carry out joint testing of the test data in the presence of each other's authorised representative on the Equipment using the System and web hosting service by way of acceptance testing within seven (7) days after such receipt at a time mutually convenient to both parties.
- 12.2 The Contractor shall for each Milestone submit the deliverables relating to that Milestone for testing and the parties shall follow the applicable provisions of the testing procedures below.
- 12.3 If the Contractor successfully completes the requisite Milestone tests, the Customer shall issue a Milestone achievement certificate. Notwithstanding the issuing of any Milestone achievement certificate, the Contractor shall remain solely responsible for ensuring that the Contractor's solution as designed and developed is suitable for the delivery of the Services, for ensuring that the Ser-

- vices are implemented in accordance with this Agreement and that the Service Levels are achieved during the operational phase. No rights of estoppel or waiver shall arise as a result of the issue of a Milestone achievement certificate (or conditional Milestone achievement certificate).
- 12.4 The Contractor shall carry out system tests on the System at each Milestone and after all components of the System have been installed and commissioned, shall carry out a full integration test on the System. When the Contractor has completed such full integration test and thereby demonstrated that all elements of the installed System inter-operate correctly and effectively, the Contractor shall store the System so that it is available for Acceptance Tests, and shall ensure that access for the purpose and duration of the Acceptance Tests is restricted through use of a password or other similar access code to persons approved by the Customer.
- 12.5 Acceptance Tests shall be prepared by the Customer which shall test that the System conforms to Schedules 1 and 2. The Customer shall supply the test data which in the reasonable opinion of the parties is suitable to test whether the System is in accordance with the Schedules 1 and 2 together with the results expected to be achieved by processing such test data and any other requirements agreed between the parties. The Contractor shall not be entitled to object to such test data or expected results unless the Contractor can demonstrate to the Customer that they are not suitable for testing the System as aforesaid, in which event the Customer shall make any reasonable amendments to such test data and expected results as the Contractor may request.
- 12.6 The Customer shall carry out the Acceptance Tests in respect of the System as set out in the Acceptance Tests over the number of days set out in the Implementation Plan for Acceptance Testing.
- 12.7 If there are any failures in the Acceptance Tests, the Customer shall inform the Contractor while the Acceptance Tests are in progress or promptly thereafter. The Contractor shall and in any event not later than three (3) days following notification of the relevant failure, at its own expense correct the errors and notify the Customer that it is ready to repeat the tests and such tests shall be repeated within seven (7) days after such notice at a time mutually convenient to both parties.
- 12.8 Not used.
- 12.9 In the event of failure of the System to pass the repeat tests referred to in clause 12.7 the Customer shall be entitled to terminate this Agreement.
- 12.10 If this Agreement is terminated under clause 12.9 above, the Customer shall notify the Contractor either:
- 12.10.1 to deliver promptly to the Customer the Incomplete Materials, in which event the Customer shall pay to the Contractor such reasonable amount in respect of the Incomplete Materials as may be agreed between the parties, and the Contractor shall be deemed to have granted to the Customer a perpetual, royalty free, non-exclusive licence to use and sub-

licence as the Customer may deem fit, in the Incomplete Materials and any Third Party Software comprised in the Incomplete Materials; or

12.10.2 to retain the Incomplete Materials, in which event the Customer shall not be liable to pay to the Contractor the fees or any amount whatsoever under this Agreement.

12.11 If the Customer does not submit a failure notification to the Contractor within fourteen (14) days of the test, the Customer shall accept in writing that the System and web hosting service have correctly processed the test data by achieving the expected results. In any event, uploading of the Customer's data shall be deemed to be completed and the System and web hosting service shall be deemed to be accepted if System and web hosting service has been put into operational use.

13 Not used.

14 Intellectual Property Rights

14.1 The Background Intellectual Property Rights of the Customer shall remain the property of the Customer.

14.2 The System, System Documentation and web hosting service (but not the Content) are the Background Intellectual Property Rights of the Contractor and shall remain the property of the Contractor.

14.3 The data inputs and outputs, end-user documentation, reports or communications produced by the System and web hosting service by or for and on behalf of the Customer shall be the Foreground Intellectual Property Rights of the Customer and owned absolutely by the Customer.

14.4 Any bespoke work produced by the Contractor for the Customer to the database shall be the Foreground Intellectual Property Rights of the Contractor.

14.5 The Contractor grants a licence to use the Contractor's Background Intellectual Property Rights and the Contractor's Foreground Intellectual Property Rights in any bespoke work for the purposes of and for the duration of this Agreement.

Content

14.7 All Intellectual Property Rights in the Content shall at all times vest exclusively in the Customer, except for Content owned by third parties, in respect of which the Customer shall ensure that it has the necessary consents or licences to use and display, and to authorise the Contractor's access and use.

- 14.8 The Customer grants to the Contractor a non-exclusive, non-transferable royalty-free licence to use the Content solely for the purposes of designing, developing, producing and maintaining the Website and System in accordance with this Agreement, and while this Agreement remains in force.
- 14.9 If either party learns of any claim of infringement of the Customer's Intellectual Property Rights in the Content, it shall promptly notify the other party. The Contractor shall do all such things as the Customer may reasonably require at the Customer's expense to assist the Customer in taking proceedings or any other actions the Customer may reasonably take to terminate or prevent any such claim.

Customer Branding and Domain Name

- 14.10 The Customer grants the Contractor a non-exclusive non-transferable licence to use and copy the Customer Branding, only so far as is necessary for providing the Services under the terms of this Agreement and while this Agreement remains in force.
- 14.11 For the avoidance of doubt, the Customer's domain name is and remains the property of the Customer and the Contractor may use such name only in the performance of this Agreement.

Contractor Know-how

- 14.14 For the avoidance of doubt the Contractor shall be entitled to use the Contractor Know-how in the provision of services similar to these Services to other customers of its business.

Third Party Software

- 14.15 The Contractor shall not include any Third Party Software in the Website, or the System unless and until the Contractor has procured the right from the relevant third party owner or licensor of the Third Party Software to permit such use.

15 Copying

- 15.1 The Customer may make such copies of the System Documentation as is reasonably necessary for its business operations. The Contractor shall provide the Customer with at least two (2) copies of the System Documentation containing sufficient information to enable proper use of all the facilities and functions set out in Schedule 2. The Customer shall ensure that all copies of the System Documentation shall bear the Contractor's proprietary notice.

16 Not used.

17 Intellectual Property Rights Infringement and Claim

- 17.1 The Contractor shall defend at its own expense any claim brought against the Customer alleging

that the use of the System, the System Documentation and/or the web hosting service infringes the Intellectual Property Rights of a third party ('Intellectual Property Claim') and the Contractor shall pay all costs and damages awarded or agreed to in settlement of an Intellectual Property Claim PROVIDED THAT the Customer:

- 17.1.1 furnishes the Contractor with prompt written notice of the Intellectual Property Claim;
 - 17.1.2 provides the Contractor with reasonable assistance in respect of the Intellectual Property Claim;
 - 17.1.3 gives to the Contractor the sole authority to defend or settle the Intellectual Property Claim.
- 17.2 If, in the Contractor's reasonable opinion, the use of the System, the System Documentation and/or the web hosting service are or may become the subject of an Intellectual Property Claim then the Contractor shall either:
- 17.2.1 obtain for the Customer the right to continue using the System, the System Documentation and/or the web hosting service which are the subject of the Intellectual Property Claim; or
 - 17.2.2 replace or, with the written consent of the Customer, modify the System, the System Documentation and/or the web hosting service which are the subject of the Intellectual Property Claim so they become non-infringing, provided that there is no loss in functionality.
- 17.3 If the remedies set out in clause 17.2 above are not in the Contractor's opinion reasonably available, then the Customer shall stop using the System, the System Documentation and/or the web hosting service which is the subject of the Intellectual Property Claim and the Contractor shall refund to the Customer the Charges, whereupon this Agreement shall immediately terminate.

18 Warranties

- 18.1 The Contractor warrants that its title to the property in the System, the System Documentation and the web hosting service of which it is the copyright owner is free and unencumbered and that it has the right, power and authority to license the same and any third party software upon the terms and conditions of this Agreement and shall remain so during the term of this Agreement.
- 18.2 The Contractor warrants that it has the right, power and authority to:

- 18.2.1 licence the Contractor's Background Intellectual Property Rights and the Contractor's Foreground Intellectual Property Rights to the Customer;
- 18.2.2 licence the Contractor's Foreground Intellectual Property Rights to the Customer, free and unencumbered upon the terms and conditions of this Agreement.
- 18.3 The Contractor warrants that it has and shall maintain in effect all necessary licences and any other authorisations and rights required in providing the Services, including those to the enhancements, modifications and upgrades to any third party software.
- 18.4 The Contractor warrants that neither the execution nor the performance of this Agreement shall conflict with any agreement or arrangement to which the Contractor is party or any legal or administrative arrangement by which the Contractor is bound.
- 18.5 The Contractor warrants that following an Acceptance Date:
- 18.5.1 the System and web hosting service will provide the facilities and functions set out in the Specification when properly used on the Equipment;
- 18.5.2 the System Documentation will provide adequate instructions to enable the Licensee to make proper use of such facilities and functions;
- 18.5.3 the System and web hosting service will operate fully with any third party software referred to in Schedules 1 and 2;
- 18.6 The Contractor warrants that its obligations under this Agreement will be provided with reasonable care and skill of a professional standard or the standard currently available in the software industry, if greater, and that all personnel will have qualifications and experience appropriate for the tasks to which they are allocated.
- 18.7 The Contractor warrants that itself, its officers, servants, agents and subcontractors take all reasonable precautions to ensure that no known Virus or other disruptive element for which detection and antidote software is generally available are coded or introduced into the System and web hosting service.
- 18.8 Not used.
- 18.9 The Contractor warrants that the Support Services shall comply with the Service Levels in Schedule 7 (Service Levels).
- 18.10 If the Contractor receives written notice from the Customer after the Acceptance Date of any

breach of the said warranties, the Contractor shall at its own expense and within seven (7) days, or such shorter period provided under the Service Levels, after receiving such notice remedy the defect or error in question.

18.11 When notifying a defect or error the Customer shall (so far as it is able) provide the Contractor with a documented example of such defect or error.

18.12 The said warranties above shall not apply to the extent that any defect in the System or web hosting service arose or was exacerbated as a result of:

18.12.1 incorrect use or operation of the System or web hosting service;

18.13 The Contractor warrants that it is of sound financial standing and the Contractor is not aware of any circumstances (except those expressly disclosed by the Contractor) which may adversely affect its financial standing during the performance of the Agreement.

18.14 The Contractor warrants that it has and will have sufficient working capital, skilled staff, equipment, machinery and other resources available to it in order to carry out the Services.

19 Insurance

19.1 The Contractor shall from the Commencement Date of this Agreement and during the term of this Agreement maintain the following insurance policies with an insurance company of repute to cover its liabilities arising out of or connected with this Agreement for any one event or series of events as follows:

19.1.1 professional indemnity insurance in the sum of at least £1,000,000;

19.1.2 public liability insurance in the sum of at least £1,000,000; and

19.1.3 employer's liability insurance in the sum of at least £5,000,000.

19.2 The Contractor shall notify the Customer immediately in the event that any such insurance policy at any time ceases to be in force, and shall immediately take out replacement insurance.

19.3 The Contractor shall on request of the Customer immediately supply copies of the relevant certificates of insurance at any time during the continuation of this Agreement.

20 Liability, Indemnity and Limitations

20.1 Notwithstanding any other provision in this Agreement, neither party excludes or limits liability to

the other for any claims, losses, damages, costs or expenses:

20.1.1 caused by the negligence or the negligence of its officers, employees, agents and sub-contractors in connection with the performance of their duties; or

20.1.2 fraudulent misrepresentation; or

20.1.3 damage to tangible property; or

20.1.4 breach of confidentiality or data protection; or

20.1.5 any other liability which by law cannot be excluded.

20.2 Each party shall indemnify the other party for any claims, losses, damages, costs or expenses incurred by the other party under clause 20.1 above.

20.3 Except as provided in clause 20.1 above, each party's maximum liability to the other party for any claims, losses, damages, costs and expenses arising under this Agreement or otherwise for any cause whatsoever shall be limited to the sum of the insurance cover in clause 19 above.

20.4 The parties acknowledge and agree that the limitations contained in this clause 20 are reasonable in the light of all the circumstances.

21 Security and Control

21.1 The Customer may refuse admission to the Customer's premises of any of the Contractor's personnel whom the Customer believes represents a security risk, or require the Contractor to exclude such personnel from working on the Services or does not have the required levels of training and expertise or where the Contractor has other grounds for doing so. The decision of the Customer shall be final.

21.2 The Contractor shall:

21.2.1 keep confidential the passwords or other security information relating to the Customer;

21.2.2 use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as at the prevailing industry norm for similar services.

21.2.3 notify the Customer promptly of any unauthorised access or use of the Customer's data.

21.3 The Contractor shall:

- 21.3.1 use its best endeavours to keep confidential the passwords or other security information relating to the Website and the System;
- 21.3.2 ensure compliance with the Customer's strategic and security requirements to protect the authenticity and integrity of the Website and System, and pro-actively provide security for the Website and the System, ensuring that adequate security protections are in place;
- 21.3.3 regularly review its security policies and the actual security of the Website and the System, and inform the Customer of any additional measures necessary to maximise security of the Website, System and the integrity of the Content;
- 21.3.4 make a daily backup copy of the Content in an agreed format, and deposit such copy with the Customer on demand;
- 21.3.5 provide and implement when necessary a disaster recovery programme and service for the Customer.
- 21.3.6 use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as at the prevailing industry norm for similar services.
- 21.3.7 carry out CRB checks on all personnel working under this Agreement who have access to the Customer's data. The Contractor shall notify the Customer of the CRB report on each personnel.
- 21.3.8 notify the Customer promptly of any unauthorised access or use of the Customer's data as soon as it becomes aware of the same.

22 Confidential Information

- 22.1 Each party to this Agreement undertakes, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential, trade secrets, business or financial information whether in oral, written, graphic or machine-readable form, including information contained or embodied in the System, System Documentation and/or web hosting service, the Specification, and other information supplied by a party to the other party (collectively referred to as 'Information') with the same degree of care it employs to its own confidential information of a like nature, PROVIDED THAT this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).
- 22.2 Both parties shall not without the prior written consent of the other party divulge any part of the Information to any person except:

- 22.2.1 to their own employees, servants or agents and then only to those employees, servants or agents who need to know the same;
- 22.2.2 to either party's auditors, an officer of Inland Revenue, an officer of HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other party and then only in pursuance of such right duty or obligation;
- 22.2.3 any person who is for the time being appointed by either party to maintain the Equipment on which the System and web hosting service are for the time being used and then only to the extent necessary to enable such person to properly maintain the Equipment.
- 22.3 Each party undertakes to ensure that persons and bodies referred to in clause 22.2 are notified, before the disclosure of any part of the Information, that the Information is confidential, that a duty of confidence is owed to the other party and the nature of the prohibitions of this clause 22.
- 22.4 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 22.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

23 Termination

- 23.1 Either party may terminate the Agreement on notice in accordance with the provisions set out in clause 4.
- 23.2 The Agreement may be terminated forthwith on giving notice in writing:
- 23.2.1 by the Customer, if the Contractor commits any serious, persistent or continuing breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within thirty (30) days after the receipt of a request in writing from the Customer to do so, to remedy the breach (such request to contain a warning of the Customer's intention to terminate);
- 23.2.2 by the Contractor, if the Customer commits any serious, persistent or continuing breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within thirty (30) days after receipt of a request in writing from the Con-

tractor to do so, to remedy the breach (such request to contain a warning of the Contractor's intention to terminate;

- 23.2.3 by either party, if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or if a receiver or manager is appointed over all or any part of its assets or if it generally becomes unable to pay its debts within the meaning of Section 123 or Section 268 of the Insolvency Act 1986.
- 23.3 Forthwith upon the termination of the Agreement under clause 23.2.2, and if requested, the Customer shall return to the Contractor the System Documentation and all copies of the whole or any part thereof or, if requested by the Contractor, shall destroy the same and certify in writing to the Contractor that they have been destroyed, provided that the Customer may retain a copy for audit purposes. .
- 23.4 If this Agreement is terminated in whole or in part for any reason, the Contractor shall, subject to payment of its reasonable fees at its standard price list, co-operate fully with the Customer and any third party service provider to ensure an orderly migration of the Services and data to the Customer or, at the Customer's request, a replacement contractor.
- 23.5 In providing the migration services, the Contractor shall:
- 23.5.1 ensure that all data is fully exportable in a common format, to be agreed between the parties, in order to enable the data to be transferred to the Customer, and for onward transmission to a future third party provider, with the minimum of disruption;
- 23.5.2 provide the Customer with a full dataset, as required;
- 23.6 Forthwith on termination, the Contractor shall return all of the Customer's Confidential Information, and the Contractor shall refund to the Customer any fees paid in advance, on a pro-rated basis.
- 23.7 Any termination of the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party.

24 Survivorship

- 24.1 The provisions of clauses 1, 6, 14, 17, 19, 20, 22, 23.3 – 23.7, 25, 26, 30, 37, 40, 48, 49 or any

other clause which is expressly or by implication intended to come into or continue in force on or after such termination shall by its nature be deemed to survive the termination of this Agreement.

25 Data Protection

- 25.1 The Contractor undertakes to comply with the provisions of the Data Protection Act 1998 and any related European legislation in so far as the same relates to the provisions and obligations of this Agreement, and if processing personal data on behalf of the Customer ("Personal Data") the Contractor will only act in accordance with the instructions of the Customer.
- 25.2 The Contractor will take appropriate technical and organisational security measures which are satisfactory to the Customer against the unauthorised and unlawful processing, loss, destruction, damage or disclosure of the Customer's Personal Data.
- 25.3 The Contractor will take all reasonable steps to ensure the reliability of personnel having access to Personal Data and to ensure that such persons are fully aware of the measures to be taken when processing the Customer's Personal Data.
- 25.4 When the Contractor receives a written request from the Customer about, or a copy of, the Customer's Personal Data, the Contractor will supply such information or data to the Customer within such time and in such form as is specified in the request or, if no period of time is specified in the request, then within ten (10) working days from the date of the request.
- 25.5 The Customer remains solely responsible for determining the purposes and manner in which the Customer's Personal Data is to be processed. The Contractor will not share the Customer's Personal Data with any other party unless there is a written contract in place that requires such party to
- 25.5.1 only process the Customer's Personal Data in accordance with the Customer's instructions to the Contractor; and
- 25.5.2 comply with the same data protection requirements that the Contractor is required to comply with under this Agreement.
- 25.6 The Contractor shall comply with data protection legislation in respect of any personal data to which it has access or which it may use in providing the Support Services. The Contractor shall maintain secure records for reporting to the Customer of all personal data submitted in conformity with the principles of data protection legislation, including, if relevant, details of those persons who choose to opt in to receive promotional material or other information. Once such records have been reported, the Contractor shall not retain a copy of any such personal data.

- 25.7 The Contractor shall safely destroy and not keep any copy of data provided by the Customer for the performance of the Services following its use for the purpose for which it was provided without the prior written consent of the Customer.

26 Freedom of Information

- 26.1 The Contractor shall comply with all requests for information it receives from the Customer in relation to the works and to this Agreement in a timely and efficient manner.
- 26.2 The Contractor in executing the works may request that certain information arising out of the execution of the works be classified as reserved information under the Freedom of Information Act 2000 ("FoIA") and therefore not disclosable by the Customer to third parties.
- 26.3 Information which is agreed between the parties to be reserved information will be contained in Schedule 4 to this Agreement. The schedule will list the class or category of information or the information itself and will specify which exemptions under the FoIA apply to each specified class category or specific information. In each case the schedule shall indicate when it is likely that the information can be made available under the FoIA or if the information is unlikely ever to be made so available that this is the case. Where such information is exempt under the rules governing commercial matters (s.43(2) FoIA) then unless special circumstances apply it will not be withheld under the FoIA for more than seven (7) years after the end of this Agreement
- 26.4 Information relating to the overall value performance or completion of this Agreement, or relating to contract records and administration, will not be accepted as reserved information. The Customer may however withhold access to such information under the FoIA in appropriate cases. The decision as to whether to withhold information shall be for the Customer alone to determine. It shall have no obligation to consult the Contractor. The Contractor may designate unit prices where applicable or more detailed pricing information as reserved information.
- 26.5 The Customer will make information available under the FoIA from five (5) years after signature of this Agreement in the absence of specific agreement to the contrary. In the event that the Customer receives a request for such information before the expiry of the five (5) year period which it considers it may be appropriate to provide it will wherever possible notify the Contractor in writing and take account of any representations made by the Contractor within seven (7) days of receipt of the notice by the Contractor.
- 26.6 Other than as set out above the Customer shall have no obligation to consult the Contractor where any request for information whether under the FoIA or otherwise touches or concerns this Agreement.

- 26.7 Should it subsequently transpire that any information has been incorrectly classified as reserved information by the Contractor or any competent public authority orders the information to be released the Contractor shall immediately deliver such information to the Customer and reimburse all the costs incurred by the Customer as a result of the Contractor seeking to classify the information as reserved information.

27 Amendments

- 27.1 This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties.

28. Notices

- 28.1 All notices under this Agreement shall be in writing.

- 28.2 Notices shall be deemed to have been duly given:

28.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

28.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or

28.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

28.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid,

- 28.3 in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

29 Agency, Partnership

- 29.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

30 Announcements

- 30.1 No party shall issue or make any public announcement or disclose any information regarding this

Agreement unless prior written consent has been obtained from the other party.

- 30.2 Without prejudice to the above, the Contractor may issue an initial press release announcing the entering into this Agreement, provided that the Contractor discloses the press release to and seeks prior written approval from the Customer.

31 Entire Agreement

- 31.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.
- 31.2 For the avoidance of doubt, any terms and conditions which are contained or referred to in any purchase order generated by the Contractor shall not apply unless specifically accepted in writing by the Customer and referred to in this Agreement.

32 Force Majeure

- 32.1 Notwithstanding anything else contained in this Agreement, neither party shall be liable for any delay in performing its obligations under this Agreement if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve the party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this Agreement and by law):

32.1.1 any costs arising from such delay shall be borne by the party incurring the same;

32.1.2 either party may, if such delay continues for more than ten (10) weeks, terminate this Agreement forthwith giving notice in writing to the other by reason of such termination.

33 Inspection of Records

- 33.1 The Customer reserves the right, at its own expense, to inspect the Contractor's time sheets, or other documents that reveal time spent by the Contractor's personnel on the Customer's Services. The Contractor shall make available such documents during normal business hours for at least seven (7) years following the termination of this contract.

34 Severance

- 34.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

35 Waiver

- 35.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

36 Duplicates

- 36.1 This Agreement may be executed in duplicate, each of which shall be an original, and such duplicates shall together constitute one and the same agreement.

37 Time of the Essence

- 37.1 Time shall be of the essence in this Agreement as regards any time, date or period mentioned in this agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.

38 Non-poaching of Staff

- 38.1 Each party covenants with the other party that it shall not either during the term of this Agreement or within a period of six (6) months thereafter directly or indirectly entice away or endeavour to entice away from the other party any person who has during the previous twelve (12) months been employed by the other party involved in the performance of this Agreement.

39 Sub-contracting

- 39.1 With the prior written consent of the Customer, the Contractor may perform any or all of its obligations under this Agreement through agents or sub-contractors, PROVIDED THAT the Contractor shall remain liable for such performance and shall indemnify the Customer against any loss or damage suffered by the Customer arising from any act or omission of such agents or sub-contractors.

40 Successors and Assignees

- 40.1 This agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party in this Agreement shall include its successors and permitted assignees.

- 40.2 In this Agreement references to a party include references to a person:

40.2.1 who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under this Agreement (or any interest in those rights); or

40.2.2 who, as administrator, liquidator or otherwise, is entitled to exercise those rights,

and in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

41 Third Parties

- 41.1 Nothing in this Agreement confers or purports to confer on any person that is not a party to this Agreement, any benefit or right to enforce any term of this Agreement and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

42 Equal Opportunities

- 42.1 Contractor will not unlawfully discriminate within the meaning and scope of the Equality Act 2010, or any other equality legislation relating to age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnerships, pregnancy and maternity, including any statutory modification or re-enactment of statutes, statutory instruments, byelaws or equivalent European legislation relating to equal opportunities that may be in force or come into force during the execution of the Services.

- 42.2 Contractor shall comply with the Customer's Equal Opportunities Policy, a copy of which is

attached to this Agreement as Schedule 5 (Equal Opportunities).

- 42.3 Contractor shall take all necessary steps to secure the observance of the provisions of sub-clause 43.1 and 43.2 above by all in the execution of this Agreement.

43 Corrupt Gifts Rules

- 43.1 Contractor shall comply with the Customer's Rules. In particular their attention is drawn to the provisions of Corrupt Gifts which are set out in Schedule 6 (Corrupt Gifts).

44 Costs and Expenses

- 44.1 Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

45 Set-off

- 45.1 Where either party has incurred any liability to the other party, whether under this Agreement or otherwise, and whether such liability is liquidated or unliquidated, each party may set-off the amount of such liability against any sum that would otherwise be due to the other party under this Agreement.

46 Language

- 46.1 This Agreement is made only in the English language. If there is any conflict in the meaning between the English language version of this Agreement and any version or translation of it in any other language, the English language version shall prevail.

47 Compliance with Relevant Law

- 47.1 The Contractor will comply with all applicable laws, rules and regulations in respect of the performance of this Agreement.

48 Alternative Dispute Resolution

- 48.1 The parties agree that before issuing a claim under the Civil Procedure Rules 1998 (as amended from time to time) ("CPR") they shall attempt to settle any dispute that arises under or in connection with this Agreement in good faith. If within ten (10) working days the parties acting through the Town Clerk (or his nominated representative) on behalf of the Customer and the managing director (or his nominated representative) on behalf of Contractor fail to resolve the dispute between them, either party may issue a claim under CPR, or if they agree, enter into a

Model Mediation Agreement as published by the Centre of Dispute Resolution, from time to time. Where the parties enter into such an Agreement, either party may refer the matter to the Courts, if the dispute remains unresolved for twenty (20) days from the date of the Model Mediation Agreement referred to above.

49 Law and Jurisdiction

- 49.1 This Agreement and all matters arising from it (and any dispute resolutions) shall be governed by and construed in accordance with English law notwithstanding the conflict of law provisions.
- 49.2 If the parties cannot resolve the dispute by the procedure set out in clause 48 above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed after the Schedules as of the date first written above.

SCHEDULE 1

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SCHEDULE 2

Contractor's Response

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SCHEDULE 3

Charges

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SCHEDULE 4

Freedom of Information Act 2000

Reserved Information

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SCHEDULE 5

London Councils' Equal Opportunities Policy

April 2010

Policy Agreed	
Joint Consultative Committee	19 April 2010
Corporate Management Board	22 April 2010

Purpose of policy

To ensure that equality and diversity issues are positively and fully incorporated in all aspects of London Councils work. To ensure that all employees demonstrate respect and fairness to their colleagues, the public with whom they come into contact, and the people of London for whose benefit they work. To ensure that the organisation is able to recruit and retain the best staff and celebrate the benefits of diversity on an individual and group level.

1 Guiding Principles

London Councils expects all employees to positively promote the letter and spirit of this policy in all aspects of their work and their dealings with people, both internally and externally. It is expected that these principles will be integral to all London Councils work from inception to implementation.

2 Content of policy/procedure

London Councils has made the following statement about its vision for the future:

London Councils is committed to fighting for more resources for London and getting the best possible deal for London's 33 councils. We develop policy, lobby government and others, and run a range of services designed to make life better for Londoners.

In order to translate this vision into reality, London Councils equal opportunities policy ensures that equality and diversity issues are positively and fully incorporated in all aspects of its work. One of its key objectives is to be open and accountable, with a commitment to equality of opportunity in all that it does, and to reflect the cultural and ethnic diversity of London.

Policy Statement

London Councils will continually strive to challenge direct and indirect discrimination in its organisation, personnel practices and provision of services.

This equal opportunities policy recognises that London is a diverse community, and values each person regardless of race, gender, disability, sexuality, religion and belief, marital status, social background or age.

London Councils aims to:

- ensure fair and equal recruitment to its jobs
- ensure fair and equal treatment of its employees and customers
- develop a culture and working environment free from discrimination and harassment
- act promptly on any complaints of discrimination and harassment
- provide a safe, secure and accessible working environment which values and respects individual's identities and cultures
- have a workforce that reflects the diversity of London's population
- encourage and help all staff to reach their full potential
- monitor and review all policies and procedures from an equalities perspective.

These principles will guide and inform the development of all other employment policies, and the provision of London Councils services and work programmes.

3 Implementation

A commitment to Equal Opportunities underlies the structure of London Councils and the provision of its services. Corporate Management Board will play a key role in ensuring that the policy is complied with within the organisation and in its links with outside agencies and constituent authorities.

Corporate Management Board will review and monitor practices within their spheres of responsibility. It is however the responsibility of all staff to carry out their duties in accordance with the Equal Opportunities Policy at all times.

Human Resources will specifically ensure that the operation of policies and procedures in practice are monitored and reviewed in the light of any concerns about potential discriminatory impact.

SCHEDULE 6

Corrupt Gifts

- 1 Any person or body engaged or appointed by the Customer either to provide services or execute works or supply goods or materials of any kind or nature whatsoever or who hires or uses any Customer property, who shall give, offer or allow any gratuity, gift or benefit of any kind to any person in the Customer's employ (whether under a contract of or for services) shall not be engaged or appointed by the Customer in respect of any further such provision, execution, or supply not permitted any further hire or use.
- 2 The provisions of Paragraph 1 shall apply whether or not the giving, offer or allowance was (a) made by an employee, agent or sub-contractor of the person or body and (b) authorised by the person or body.
- 3 The Contractor shall comply at all times with the provisions of the Bribery Act 2010, in particular Section 7 thereof in relation to the conduct of its employees, or persons associated with it. Moreover, the Contractor warrants that at all times it shall have in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it, and shall provide to the City at its request, within a reasonable time, proof of the existence and implementation of said procedures.

SCHEDULE 7

Service Levels and Service Credits

1. The Contractor shall observe the Service Levels listed in the table below which may be subject to any changes agreed between both parties as required.
2. **System response/speed.** The system shall respond within three seconds of the user depressing the key or mouse button. There will be an agreed set of actions that will measure the system response speed. (To be agreed between the Parties during contract mobilisation).
3. **System availability.** The system shall be available for Users 24 hours a day, 7 days a week. The target will be set at 99% within Core Hours and 95% during NonCore Hours, as shown in the table below.

Ref	Description	Target % Core Hours	Target % Non- core Hours
A	Availability of dedicated IVR phone number	99%	95%
B	Availability of website, portals and end user system functionality	99%	95%
C	Availability of reports	99%	95%
D	Availability of support desk within specified hours	99%	95%
E	CMS availability	99%	95%

4. London Councils will monitor the Contractor's performance to ensure that the Contract and/or services are provided in accordance with this specification and the terms and conditions of the awarded contract.
5. Except where stated, the Contractor shall, at its own expense, collect and present to London Councils in an agreed format, all performance data at the requested frequencies, which shall be delivered a minimum of once monthly. In addition London Councils will carry out random sampling and testing to reassure itself that the reported performance is accurate. The format proposed by the Contractor for approval by London Councils should recognise the partnership approach, be simple and transparent and be easily capable of audit by internal or external bodies.
6. The measurement and criteria for performance may change during the life of the Contract and the Contractor shall work to achieve the requirements set at any time and to record performance in such a way that the relevant data can be collated as defined by Best Value, the Audit Commission or other organisations charged with setting performance standards and target for this range of services.

7. No additional payments will be made by London Councils for any changes in the defined performance management regime and the Contractor shall allow for all costs associated with performance management, record systems and access within their Tender price.
8. At regular management meetings as described above, the Contractor shall provide details of any areas of the service that fail or are failing to meet the specification and KPIs, including details of remedial work undertaken. The Contractor shall present any observations that are made whilst carrying out the service and any other general comments. This performance information and observations shall be presented in a written report to be sent to London Councils no later than five working days prior to the meeting.
9. Best practice suggests that London Councils should periodically compare service performance with other similar service providers. The Contractor will support this requirement by the supply of the relevant management information on this Contract and in addition assist London Councils to benchmark the service(s) against comparable provision within other authorities.
10. Not less than one month prior to the end of each year from the Commencement Date, delegates of London Councils and the Contractor shall meet to agree the targets for the following year.

11 Service Credits

11.1 Service Credits will be deducted monthly in arrears, up to an amount of no more than 10% of contract payments, or in the case of change control items, the value of the item, due in any given period. One service point is equal to one service credit and each service credit is equal to a one per cent reduction in payment.

11.2 Service Credits will apply in accordance with the criteria set out in the table below:

Service Type	Item	Service Level	KPI	Service Points (if target not met)	how measured?	Why Measured?	How often measured?
System Availability (Core Hours)	CMS Availability	CMS & associated IT infrastructure available for target percentage of Core Hours in any given month.	99%	5 per hour that the System/IT infrastructure is not available during the relevant month	KPI target measured as the No of hours the CMS & associated IT infrastructure is available as a percentage of total Core Hours. Service points measured as the no of hours the system is available inside Core Hours.	Lack of CMS/ IT infrastructure prevents all staff working	Monthly
System Availability (Non-Core)	CMS Availability	CMS & associated IT infrastructure and telephony availability for target percentage	95%	1 SPs per hour that the System/IT infrastructure is not available during the	As above, but outside Core Hours	As above	Monthly

Hours)		outside Core Hours.		relevant month			
System Performance	CMS Performance	% of all screen responses (including scanned images) shall be displayed within 3 seconds of depressing the Enter key or mouse button.	95%	1 SPs per percentage point below target	No. of screen responses within 5 seconds against total number	A delay in screen responses affects the productivity of LC staff	Monthly
Reports	CMS performance	% of availability and accuracy of reports	99%	1 point per inaccurate/unavailable report	Number of accurate and available reports to officers through system	In the absence of reports, officers unable to monitor performance of the scheme	Monthly
Change Request/Control	Support Performance	% of all change requests provided within target times	All change request items delivered within one week of target	1 SPs per day delay,	No. of change requests provided within 95% of target times as % of total in year	Delays in changes affects users	As appropriate

12 Key Performance Indicators

12.1 A set of Key Performance Indicators (KPIs) will be used to monitor and manage the performance of the Contractor.

12.2 The delivery of the service must meet the KPIs set out at in the table below:

KPI	Availability Core Hours 99%	Availability Non Core Hours 95%	Frequency
Haulier Portal availability	√	√	24/7
Database availability	√	√	24/7
Access to DVLA portal	√	√	Monday – Friday 9-5
Access to TEC portal	√	√	Monday – Friday 9-5

System speed	√	√	24/7
System Capacity	√	√	24/7
Change request	√	√	Monday – Friday 9-5
Fault resolution	√	√	Monday – Friday 9-5
WEB/IVR portal availability	√	√	24/7
Reporting data accuracy	√	√	Monday – Friday 9-5

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EXECUTED and DELIVERED as a DEED:

by **LONDON COUNCILS**

by means of the following signatory:

John O'Brien
Chief Executive

EXECUTED and DELIVERED as a DEED:

by **[contractors name]**

By: _____
Name: _____
Title: Director

By: _____
Name: _____
Title: Director / Company Secretary

Examined			
Ctee/Court			
Date			
Passed for Sealing			
Fund			
Power			
Seal Folio No			