

AGREEMENT FOR HOSTED SOFTWARE AS A SERVICE

THIS AGREEMENT is made the <DATE>

BETWEEN:

- (1) **DIGITAL DISPATCH (INTL) LTD.**, a company incorporated in England and Wales whose registered office is at 14 Hanborough Business Park, Long Hanborough, Witney, OX29 8LH (hereinafter called “DDUK”);

and

- (2) **<COUNCIL NAME>** of **<COUNCIL ADDRESS>** (hereinafter called the “Council”)

WHEREAS:

- (1) DDUK hosts and provides access to the Software Applications described herein.
- (2) The Council wishes to license and access the Software Applications set forth in Schedule “A” subject to the terms and conditions of this Agreement.
- (3) The Council wishes to provide a service handling trip requests for 3rd party transport operators using DDUKs Applications.

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:

“Applications” or “Software Applications”	means the hosted software applications listed in Schedule “A” and licensed by DDUK to the Council under this Agreement;
“ASP Infrastructure”	means the computer hardware, firmware, software and communications infrastructure which is used to facilitate access to the Applications by the Council whether provided by DDUK or DDUK’s appointed third party;
“Business Day”	means any day other than Saturday, Sunday or a day that is a bank or public holiday in the United Kingdom;
“Business Hours”	means any time between 08:30 and 17:00 on a Business Day, during which DDUK is usually open for business;
“Commencement Date”	means <COMMENCEMENT DATE>;
“Confidential Information”	means all business, technical, financial or other information created or exchanged between the Parties throughout the Term of this Agreement;

“Council Computer Systems”	means the Council's computer hardware, firmware, software and communications infrastructure through and on which the Software Applications are to be used;
“Council Data”	means any data belonging to the Council, or data belonging to third parties that consent to the Council accessing, and which is used by the Council within the Software Applications or otherwise stored in the ASP Infrastructure;
“DPA”	means the Data Protection Act 2018 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Employee”	means the agents, subcontractors, representatives, and servants employed by the Council;
“Fees”	means the implementation, training, software licensing, and ongoing support fees payable by the Council in return for access to the Software Applications, the ASP Infrastructure as set forth in Schedule “B” to this Agreement;
“Intellectual Property”	means, without limitation, all source code, object code, firmware, designs, specifications, databases, models, documentation, instructions, and user manuals;
“Intellectual Property Rights”	means all vested contingent and future intellectual property rights to Intellectual Property including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up and database rights;
“Non-Council User”	means an individual who is not a Council Employee and who may not use the Service in the absence of written consent from DDUK;
“Party”	means any party to the Agreement individually and “Parties” refers to all of the parties to the Agreement collectively. A Party shall include all permitted assigns of the Party in question.
“Service”	means, collectively, the Applications, ASP Infrastructure and support services provided by DDUK to the Council under this Agreement;
“Training Fees”	means the sums payable by the Council in return for training provided by DDUK in accordance with Clause 6 of this Agreement, and as specified in Schedule 4;

“UK GDPR”	means those provisions of the EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679 retained by the UK;
“Users”	means an employee of the Council who shall, from time to time, access the Applications through the ASP Infrastructure;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to this Agreement; and
- 1.2.5 a Clause, sub-Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

2. The Service

2.1 DDUK shall, with effect from the Commencement Date, license the Service to the Council on a non-exclusive basis for the duration of the Term of this Agreement and in accordance with the terms and conditions of this Agreement.

2.2 DDUK shall provide access to the Applications through the ASP Infrastructure and shall use its best and reasonable endeavours to ensure that such access is available, without interruption, 24 hours a day, 7 days a week, 365 days a year. This undertaking shall be subject to the exceptions contained within this Agreement.

3. Term

3.1 The Service will be licensed by DDUK to the Council beginning on the Commencement Date and ending on the expiry, or otherwise termination, of this Agreement (the “Term”). The initial Term of this Agreement shall be for a period of 1 year (the “Initial Term”).

4. Fees and Payment

4.1 The Council shall pay the Fees set forth in Schedule “B” of this Agreement for the provision of the Service. A new service request by the Council may, when delivered

and at DDUK's discretion, incur additional fees. The Council shall, in addition to the Fees and following evidence of a valid VAT invoice, pay DDUK a sum equal to the VAT chargeable on the value of the Goods and Services supplied in accordance with the Contract

- 4.2 All Fees shall be invoiced by DDUK and paid by the Council yearly in advance. New charges and charges for additional services may be invoiced either in advance or in arrears, at the discretion of DDUK. All invoices shall be rendered on DDUK's own invoice form clearly marked with the Council's purchase order number (if applicable). Invoices must show the period to which they relate and the aspects of the Service for which payment is claimed together with the agreed Fees and any other details the Council may require from time to time.
- 4.3 The Council shall pay to DDUK all Fees due within 30 days of the date of invoice from DDUK for the same.
- 4.4 In the event that the Council does not pay all Fees due within the time period specified in Clause 4.3, and the Council fails to rectify such non-payment in full within 15 days of DDUK giving written notice to the Council for such default, in addition to any other remedies available to DDUK in law or under this Agreement, DDUK shall be entitled to suspend delivery of the provision of the Service.
- 4.5 In the event that the Council fails to pay under Clause 4.4 then, without prejudice to Clause 4.4, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at 4% per annum over the Bank of England base rate at the time.
- 4.6 The Fee shall be as set out in Schedule "B" and shall not increase during the Term unless it is agreed between the Parties in writing.
- 4.7 Except where otherwise agreed between the Council and DDUK in writing, the Fee is exclusive of VAT which shall be payable upon receipt of a VAT invoice therefore, if applicable, by the Council in addition to such Fee. The invoice provided to the Council by DDUK in accordance with Clause 4.2 shall show VAT calculations separately.

5. Software Applications

- 5.1 The Software Applications to which the Council shall have access are detailed in Schedule "A" to this Agreement.
- 5.2 The Council may, in its sole discretion, add software applications subject to availability of required applications from DDUK. The Fees shall be amended by the DDUK accordingly in the event of such modification.

6. Training

- 6.1 DDUK shall provide training in accordance with the programme specified in Schedule "C" to all Users that require it.
- 6.2 The cost of all training materials including, but not limited to, books, handouts and interactive resources which may be required shall be included in the Training Fees.
- 6.3 Prior to the Commencement Date, the Council shall determine the number of Users requiring training and shall inform DDUK.

6.4 All Training Fees, as specified in Schedule 4, shall be paid by the Council at the same time as the first instalment of Fees payable under Clause 4. In the event that subsequent training of new Users is required, additional Training Fees shall be charged on an ad-hoc basis with payment due prior to the commencement of such training.

6.5 Further training may be required in the event of significant alterations or upgrades to the Applications and the ASP Infrastructure. DDUK shall inform the Council of such recommended training in advance and shall supply details of all required Training Fees. The Council shall be responsible for all such additional Training Fees.

6.6 Notwithstanding the provisions of this Clause 6, the Council is not bound to utilise DDUK's training services and is free to procure training from alternative sources.

7. Security

7.1 DDUK shall ensure that at all times the ASP Infrastructure includes an encrypted SSL secured connection, firewalled network infrastructure, reserve power supply and applications hosted on multiple servers. All hosted in a secure data centre.

7.2 DDUK shall make daily backups of all data on the ASP server. Such backups will be made to disc and transferred off site.

8. Maintenance

8.1 DDUK shall be responsible for all maintenance and upgrades to the ASP Infrastructure which may from time to time be required.

8.2 Subject to the provisions of Clause 12, the Council shall be responsible for all maintenance and upgrades to the Council Computer Systems which may from time to time be required.

8.3 Whenever possible, DDUK shall use its best and reasonable endeavours to undertake maintenance work outside of the Council's business hours.

8.4 Unless maintenance is corrective in nature, DDUK shall provide at least 5 Business Day's notice of any maintenance which may affect the Council's use of the Service. DDUK shall use its best and reasonable endeavours to provide as much notice as possible in the case of corrective maintenance, however advance notice may not always be possible.

8.5 Where maintenance will disrupt the Service, DDUK shall aim to complete all necessary work within 4 Business Hours or as soon as possible thereafter where resolution in that time is not possible.

8.6 Whenever possible, DDUK shall provide a workaround solution to the Council to enable the Council's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.

9. Service Availability

9.1 DDUK shall ensure that the Service is available during all non-maintenance hours, and is responsible for taking all reasonable measures to ensure service continuity.

- 9.2 DDUK shall be responsible for all system back-ups and any restores of system back-ups that are required.
- 9.3 DDUK shall be responsible for ensuring system back-ups are maintained in a geographical location at a suitable distance from the Service to ensure any localised event does not impact the ability to restore the system if required.
- 9.4 DDUK shall have reasonable redundancy (Failover) options available in the event of loss of power, and/or loss of communications.
- 9.6 In the event of any interruption to Service, DDUK will use all reasonable endeavours to respond and resolve the issue within the time frames set out as follows:

Priority	Response	Target Resolution	Comments
P1 – Urgent. A critical part of the system is unusable preventing normal operations	1 business hour	4 business hours	Full fix or usable workaround by target resolution.
P2 – High. Important part of the system is unusable impairing normal operations	1 business hour	1 working day	Full fix or usable workaround by target resolution.
P3 – Medium. Inconvenient problem.	8 business hours	5 working days	Full fix or usable workaround by target resolution.
P4 – Low	5 working days	1 calendar month	

10. Software Application Licences

- 10.1 DDUK grants to the Council a non-exclusive, non-transferable, revocable licence to use each of the Software Applications set forth in Schedule “A”. The Council may allow third party access to the Services where such third parties are acting on behalf of the Council and, in this event, the third party is only permitted to use the Software Applications on behalf of the Council and not for any other purposes. The Council is required to inform DDUK where such third party access is provided.
- 10.2 All Software Applications licensed by DDUK are owned by, and the sole property of, DDUK, and other than the limited licences granted to the Council to use the Software Applications, the Council has no rights, title or interest in or to the Applications.
- 10.3 Where certain Applications are the property of a third party, the relevant licences for those Applications shall be annexed to this Agreement in Schedule “D” and DDUK warrants that it has all requisite authority to sub-licence such Applications to the Council for the purposes of this Agreement and for use under its terms.

11. Applications and ASP Infrastructure Terms of Use

- 11.1 The maximum number of Users that may access the Applications through the ASP

Infrastructure at any given time is set out in Schedule "A".

- 11.2 Users' access to the Applications and the ASP Infrastructure shall be controlled by means of Username and Password.
- 11.3 Should the Council require an increased maximum number of Users, such an increase shall be permitted at the exclusive discretion of DDUK. DDUK reserves the right to increase Fees proportionately, in accordance with Schedule 1, in the event of an increase in the maximum number of Users.
- 11.4 Use by Non-Council Users is not permitted under this Agreement in the absence of express written consent from DDUK, such consent not to be unreasonably withheld. DDUK may require such details as to the reason that access to the Applications and ASP Infrastructure is required by the Non-Council User, details of the Non-Council User and other information which may be specified from time to time.
- 11.5 DDUK shall monitor the Council's use of the Applications and ASP Infrastructure from time to time to ensure compliance with the terms and conditions of this Agreement. In the event that the Council's use of the Service exceeds levels deemed reasonable, DDUK reserves the right to increase Fees, in accordance with Schedule 1, as it deems appropriate, supplying 30 days' written notice to the Council of such an increase.
- 11.6 The Council may only access the Applications detailed in Schedule 2 to this Agreement. The Council may not access other parts of the ASP Infrastructure or other applications in the absence of express written permission from DDUK.
- 11.7 The Council is exclusively responsible for its use of the Service, including the conduct of individual Users (Users to include any authorised Non-Council Users) and must ensure that all use is in accordance with this Agreement. The Council shall notify DDUK immediately of any breaches of this Agreement by any Users or Non-Council Users.
- 11.8 Access to the Applications is only permitted through a secure encrypted Internet gateway, via the ASP Infrastructure. Under no circumstances may the Council download, store, reproduce or redistribute the Applications or any other part of the ASP Infrastructure, without first obtaining the express written permission of DDUK.
- 11.9 The Council's use of the Applications and ASP Infrastructure may, from time to time, be governed by statutory or regulatory rules and requirements external to the terms and conditions of this Agreement. It shall be the Council's exclusive responsibility to ensure that their use of the Service is in compliance with any such laws.
- 11.10 Without limiting anything contained herein, the Council's use of the Service shall be subject to the following limitations, any of which may be waived by DDUK giving their express written consent:
 - 11.10.1 The Council may use the Service only for the sole purpose of carrying on its business of managing and planning passenger transport operated or tendered by the Council;
 - 11.10.2 The Council may not use or redistribute the Applications or the ASP Infrastructure for the purpose of conducting the business of an Application DDUK;

- 11.10.3 The Council may not redistribute or reproduce the Applications or the ASP Infrastructure through any network; and
- 11.10.4 The Council may not allow any unauthorised third party to access the Applications or the ASP Infrastructure.
- 11.11 Neither the Council, nor anyone on their behalf may, in the absence of written consent from DDUK:
 - 11.11.1 Make changes of any kind to the Applications or the ASP Infrastructure; or
 - 11.11.2 Attempt to correct any fault or perceived fault in the Applications or the ASP Infrastructure.

12 Council Computer Systems

- 12.1 Prior to commencement of the Service the Council shall provide details of Computer Systems and local infrastructure to DDUK. DDUK may offer recommendations for upgrades and other alterations. Any such recommendations shall be presented in a written report to the Council.
- 12.2 Where, in the opinion of DDUK, Council Computer Systems are likely to cause disruption to the ASP Infrastructure, DDUK may request that the Council disconnects from the ASP Infrastructure until advised that reconnection is possible. DDUK may require changes such as upgrades or equipment replacement to be made to the Council Computer Systems prior to reconnection. DDUK maintains the right to withdraw the Services if the Council Computer Systems or Infrastructure are not sufficient to maintain operations.
- 12.3 In the event of any unauthorised access by the Council of Applications or the ASP Infrastructure, DDUK shall be entitled to terminate access indefinitely or temporarily as it deems appropriate and to terminate this Agreement in accordance with the requirements of Clause 22.1.2 below.
- 12.4 The Council shall ensure that no Council Computer Systems are connected to a third party ASP system or other service, communications system or network in such a way that the Service may be accessed by unauthorised third parties.

13. Support

- 13.1 DDUK shall provide telephone support services during Business Hours. The support provided by DDUK shall relate only to the Applications and ASP Infrastructure. Any problems which are related to Council Computer Systems must be resolved by the Council's own support staff
- 13.2 In addition to the standard support provided for in Clause 13.1, DDUK may also provide telephone support services outside of Business Hours. Such additional support services shall be available at additional cost to the Council at the rates set out in Schedule 1.

- 13.3 When seeking support the Council shall use its best and reasonable endeavours to provide the fullest information possible to aid DDUK in diagnosing any faults in either the Applications or the ASP Infrastructure.
- 13.4 If a problem is related to the Application or ASP Infrastructure, whenever possible, DDUK shall provide a workaround solution to the Council to enable the Council's continued use of the Service or to enable use that is as close to normal as is possible under the prevailing circumstances.

14. Intellectual Property

- 14.1 Subject to Clause 14.2, all Intellectual Property Rights subsisting in the Applications and the ASP Infrastructure, including any supporting software and documentation, are the property of DDUK. For the purposes of this Clause 14, 'Applications' and 'ASP Infrastructure' along with supporting software and documentation are taken to include the manner in which all such material is compiled and presented.
- 14.2 Where expressly indicated, the Intellectual Property Rights subsisting in certain Applications and ASP Infrastructure, including any supporting software and documentation, may be the property of named third parties.
- 14.3 The Council shall not either during or after the Term, permit or cause to occur any infringement of any Intellectual Property Rights covered by this Clause 14. Use by the Council and its employees of the Service shall be only within the terms of this Agreement.
- 14.5 The Council shall not, in the absence of DDUK's written consent, reproduce, adapt, translate, reverse-engineer, or make available to any third party any of the Applications, any part of the ASP Infrastructure, or any other material associated with this Agreement where such activity goes beyond the scope of actions permitted by the terms and conditions of this Agreement.
- 14.6 Where the Council either suspects or is aware of any breach of Intellectual Property Rights covered by this Clause 14 it shall be under a duty to inform DDUK of such breach immediately.

15. Council's Data

- 15.1 Subject to Clause 15.2, all Intellectual Property Rights subsisting in Council Data are and shall remain the property of the Council.
- 15.2 In the event of termination of this Agreement a copy of the Council Data held within the database will be provided to the Council by DDUK subject to the foregoing:
- 15.2.1 Council provides a written request to DDUK no later than 30 days after the effective date of termination that Council wishes to receive a copy of Council's Data; and
- 15.2.2 at the time of Council's request all fees due and owing to DDUK by Council have been paid in full; and
- 15.2.3 Council has paid to DDUK a reasonable fee for DDUK's services, costs, and third-party expenses related to the extraction of Council's Data; and

- 15.2.4 DDUK will use reasonable commercial efforts to provide Council Data in an industry standard format.

16. Confidentiality

- 16.1 During the Term of this Agreement and after the termination or expiration of this Agreement for any reason, DDUK shall use its best and reasonable endeavours to ensure that all Council Data is kept secure and confidential. DDUK shall not, in the absence of express written consent from the Council, disclose Council Data to any third party unless such disclosure is required by law in which case the Council shall be notified in writing of the disclosure.
- 16.2 During and after the Term of this Agreement, the following obligations shall apply to the Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party"):
- 16.2.1 may not use any Confidential Information for any purpose other than the performance of their obligations under this Agreement;
- 16.2.2 may not disclose any Confidential Information to any third party except with the prior written consent of the Disclosing Party; and
- 16.2.3 shall make every effort to prevent the unauthorised use or disclosure of the Confidential Information.
- 16.3 Notwithstanding Clause 16.2, the obligations of confidence referred to in this Clause 16 shall not apply to any Confidential Information that:
- 16.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;
- 16.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
- 16.3.3 is required to be disclosed by any applicable law or regulation;
- 16.4.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect thereof and who imposes no obligations of confidence upon the Receiving Party; or
- 16.4.5 is required to ensure the compliance of the Council with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 16.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this Clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which they may be entitled.
- 16.4 The obligations of the Parties under all provisions of this Clause shall survive the expiry

or the termination of this Agreement irrespective of the reason for such expiry or termination.

17. Freedom of Information Act 2000 (the “FOIA”) and the Environmental Information Regulations (the EIR”)

17.1 The Council is subject to the requirements of the FOIA and the EIR. DDUK will assist and co-operate with the Council in carrying out its obligations under that legislation.

17.2 Subject to clause 17.3 below the Council shall be responsible for determining at its absolute discretion whether:

17.2.1 The information is exempt from disclosure under the FOIA and EIR; or

17.2.2 The information is to be disclosed in response to a request for information; and

In no event shall DDUK respond directly to a request for information unless expressly authorised to do so by the Council.

17.3 Unless it is not reasonably practicable, the Council will consult with DDUK if it receives a request for information relating to this Agreement or the Services under the FOIA or the EIR and shall take due account of any representations DDUK makes before it makes any decision to provide information and/or rely on any exemptions under the FOIA and/or the EIR. In particular the Council agrees that it will apply a presumption of non-disclosure on the grounds of confidentiality and/or commercial prejudice to any request for information that DDUK has reasonably designated as confidential or commercially sensitive (which includes technical or trade secrets and the confidential aspects of tenders) PROVIDED THAT the Council retains the right to provide any such information in response to a request for information where it reasonably concludes that it cannot properly rely on relevant exemptions of exceptions under the FOIA and the EIR.

18. Data Protection and UK GDPR

18.1 The Parties shall comply with the provisions of the DPA, the UK GDPR and any other relevant data protection law in force so far as applicable to this Contract and the provision of Goods and Services and shall indemnify each other against all actions, costs, expenses claims, proceedings and demands which may be brought against the other Party for breach of statutory duty under these statutes which arises from the use disclosure or transfer of personal data by the other Party or its servants or agents.

For the purposes of this Clause, the terms “Controller”, “Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPR and the UK GDPR.

18.2 Both Parties will duly observe all their obligations under the DPA, UK GDPR and any other relevant data protection law which arise in connection with the Contract.

18.3 Notwithstanding the general obligation in Clause 18.2, where DDUK is processing Personal Data (as defined by the DPA and the UK GDPR) as a Data Processor for the Council, the Contractor shall:

- 18.3.1 process the Personal Data (i) only in accordance with written instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract;
- 18.3.2 comply with all applicable Laws;
- 18.3.3 process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any Regulatory Body;
- 18.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected and should be sufficient to meet the general requirements of the UK GDPR and, in particular Clause __, and ensure the protection of the rights of the Data Subject;
- 18.3.5 take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data and ensure that they comply with this Clause 18;
- 18.3.6 ensure that all employees and other representatives accessing the Personal Data are (i) aware of the terms of this Clause 18 and (ii) have received comprehensive training on Data Protection and UK GDPR and related good practice;
- 18.3.7 taking into account the nature of the Processing, assist the Council by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of the Councils' obligation to respond to requests from individuals exercising their rights laid down in Chapter III of UK GDPR – rights to erasure, rectification, access, restriction, portability, object and right not to be subject to automated decision making etc;
- 18.3.8 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Council;
- 18.3.9 obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractor for the provision of the Goods and Services and to notify the Council of any changes concerning the addition or replacement of a sub-contractor. The Council reserves the right to object, on reasonable and justifiable grounds, to any changes in sub-contractor;
- 18.3.10 ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply

with the obligations set out in this Clause 18;

- 18.3.11 reasonably ensure that DDUK staff and agents do not publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council; and
 - 18.3.12 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council.
- 18.4 DDUK shall notify the Council without undue delay if it:
- 18.4.1 receives a request from a Data Subject to have access to that person's Personal Data, or any other request from a Data Subject seeking to exercise any of their rights as a Data Subject; or
 - 18.4.2 receives a complaint or request relating to the Council's obligations under the DPA, the UK GDPR or any other relevant data protection law in force at the time; or
 - 18.4.3 becomes aware of a Personal Data breach and in any event not later than 36 hours after being made aware of the Personal Data breach.
- 18.5 DDUK will co-operate with all requests from the Council to assist it in complying with the requirements of the DPA, UK GDPR and any other data protection law in force in respect of the Personal Data processed by DDUK on behalf of the Council.
- 18.6 At the choice of the Council, DDUK will safely return, or delete, all the Personal Data upon expiry or otherwise termination of this Agreement. Where the Contractor is to delete the Personal Data, deletion shall include destruction of all existing copies unless otherwise there is a legal requirement to retain the Personal Data. Where there is a legal requirement the Contractor will prior to entering into this Agreement confirm such an obligation in writing to the Council. Upon request by the Council the Contractor shall provide certification of destruction of all Personal Data.
- 18.7 On request DDUK will make available to the Council any information reasonably required to demonstrate that DDUK is compliant with the provisions of this Clause 18. This includes, but is not limited to, complying with any inspections or audits requested by the Council or by any authorised agent of the Council.
- 18.8 The Contractor shall immediately inform the Council's Information Governance Team if, in its opinion, an instruction by the Council infringes the DPA, the UK GDPR or any other relevant data protection law in force at the time.

19. Liability, Limited Warranty

- 19.1 DDUK shall not be liable to the Council for any indirect or consequential loss that the

Council may suffer even if such loss is reasonably foreseeable or if DDUK has been advised of the possibility of Council incurring it.

- 19.2 DDUK's entire liability to Council in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be limited to the actual amount paid by the Council to DDUK under this Agreement.
- 19.3 The Applications are provided on an "as-is" and "as-available" basis and DDUK does not guarantee that the Applications will function error-free or uninterrupted. Council acknowledges that DDUK does not control the transfer of data, including Council Data, over communications facilities, including the internet, and that the Applications licensed under this Agreement may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. DDUK is not responsible for any delays, delivery failures, or other damage resulting from such problems. There are no representations, conditions or warranties other than those expressly provided in this Agreement. The conditions, representations and warranties expressly set out herein are in lieu of, and DDUK expressly disclaims, all conditions, warranties and representations, express, implied or statutory, including implied conditions, warranties or representations in respect of quality, conduct, performance, reliability, availability, merchantability or fitness for a particular purpose, whether arising by usage of trade, by course of dealing, by course of performance, at law, in equity, by statute or otherwise howsoever, to the maximum extent permitted by law.

20. Indemnity

- 20.1 Subject to Clause 19.2 above the Council will indemnify DDUK against all costs, expenses, liabilities, losses, damages and judgments that DDUK may incur or be subject to as a result of any of the following:
- 20.1.1 The Council's misuse of the Applications, ASP Infrastructure or any other element of the Service;
 - 20.1.2 The Council's breach of this Agreement; or
 - 20.1.3 The Council's negligence or other act of default.

21. Force Majeure

- 21.1 Neither DDUK nor the Council shall be liable for breaching this Agreement where that breach results from Force Majeure.
- 21.2 Force Majeure refers to any event that is beyond the reasonable control of the Parties and includes, but is not limited to: Internet failure, industrial action, civil unrest, theft, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

22. Termination

- 22.1 DDUK reserves the right to terminate this Agreement and/or suspend the Service in the following circumstances:
- 22.1.1 If the Council fails to pay Fees when due under this Agreement;

- 22.1.2 If the Council is in breach of the terms of this Agreement and has not rectified the breach within 15 days of receiving written notice in relation to such breach from DDUK;
 - 22.1.3 If the Council becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
 - 22.1.4 If the Council is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
 - 22.1.5 If the Council has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.
- 22.2 The Council reserves the right to terminate this Agreement in the following circumstances:
- 22.2.1 If DDUK is in breach of the terms of this Agreement and has not rectified the breach within 15 calendar days of receiving written notice in relation to such breach from DDUK;
 - 22.2.2 If DDUK becomes the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986;
 - 22.2.3 If DDUK is unable to pay its debts within the definition of Section 123 of the Insolvency Act 1986; or
 - 22.2.4 If DDUK has a receiver, manager, administrator or administrative receiver appointed over all or a substantial part of its undertakings, assets, or income; has passed a resolution for its winding up; or is the subject of a petition presented to a court for its winding up or for an administration order.
- 22.3 Within 7 Business Days of the termination or expiry of this Agreement, the Council shall uninstall or otherwise remove any means of access to the Applications and ASP Infrastructure including, but not limited to, client software supplied by DDUK for that sole purpose. Immediately following taking such action, the Council shall inform DDUK in writing that such action has been taken. DDUK shall have the right to dispatch a representative to the Council's premises for verification purposes.

23. Notices

- 23.1 All notices under this Agreement shall be in writing.
- 23.2 Notices shall be deemed to have been duly given:
 - 23.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 23.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
 - 23.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

- 23.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 23.3 In each case notices should be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.
- 24 Relationship of Parties & Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**
- 24.1 DDUK is an independent contractor and nothing in the Agreement shall be deemed to constitute a partnership or any employment relationship between the Parties nor shall anything in the Agreement be deemed to constitute one Party the agent of the other for any purpose
- 25. Assignment**
- 25.1 Neither Party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld.
- 26. Severance**
- 26.1 The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.
- 27. Entire Agreement**
- 27.1 This Agreement embodies and sets forth the entire agreement and understanding between the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement, save for any representation made fraudulently.
- 27.2 Unless otherwise expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both of the Parties.
- 28. No Waiver**
- 28.1 The Parties agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.
- 29. Non-Exclusivity**
- 29.1 The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.
- 30. Dispute Resolution (Arbitration)**

- 30.1 It is agreed that where any dispute or difference relating to this Agreement arises between the Parties that matter shall be referred to the arbitration of a single arbitrator with appropriate qualifications and practical experience to resolve the particular dispute.
- 30.2 The arbitrator shall be agreed by the Parties or in the event of failure to agree shall be appointed by the President for the time being of the Law Society of England and Wales.
- 30.3 The arbitration shall take place in the UK and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of that Act for the time being in force.
- 30.4 The Parties shall promptly furnish to the arbitrator all information reasonably requested by him relating to the particular dispute, imposing appropriate obligations of confidence.
- 30.5 The Parties shall require the arbitrator to use all reasonable endeavours to render his decision within 30 days following his receipt of the information requested or if this is not possible as soon thereafter as may reasonably be practicable. The Parties shall co-operate fully with the arbitrator to achieve this objective.
- 30.6 The Parties shall share the fees and expenses of the arbitrator equally. The decision of the arbitrator shall be final and binding upon both Parties.

31. Law and Jurisdiction

- 31.1 This Agreement shall be governed by the laws of England and Wales.
- 31.2 Any dispute between the Parties relating to this Agreement shall fall within the jurisdiction of the courts of England and Wales.

32. Gratuities

- 32.1 DDUK shall not, whether itself, or by any partner, director, employee or sub-contractor, solicit or accept any gratuity, tip or any other form of money taking or reward, collection, or charge for any part of the Services other than charges in accordance with the provisions of the Agreement.

33. Observance of Statutory and Other Requirements

- 33.1 DDUK shall ascertain and comply in all respects with the provisions, including codes of practice, EU Directives, general or local Acts of Parliament and any statutory instruments made thereunder, and any Regulations and By-laws of any local or other statutory authority, to be observed and performed in connection with the provision of the Services.

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written

SIGNED by

X _____
for and on behalf of Digital Dispatch (Intl) Ltd.

SIGNED by

X _____
for and on behalf of <COUNCIL NAME>

SCHEDULE “A” – LICENSED SOFTWARE APPLICATIONS

Item	Software Application (Name)	Product Description	Licence Allocation (number of trips per day, and / or licensed users)	Configuration
1				
2				
3				

SCHEDULE “B” – FEES

*All fees quoted exclude VAT, which will be added at the standard rate.

Software Application Fees:

Item	Software Application (Name)	Licence Allocation (number of trips per day, and / or licensed users)	Fee Amount in GBP*	Payment Period (monthly, quarterly, annually)
1				
2				
3				

Support & Maintenance Fees:

Period of Support (monthly, quarterly, annually)	Fee Amount in GBP*

Training Fees:

Item	Software Application	Training Period (days, weeks, months)	No. of Users	Fee Amount in GBP*	Payment (monthly, quarterly, annually)
1					
2					

SCHEDULE “C” - TRAINING

<INSERT TRAINING>

SCHEDULE “D” – THIRD PARTY LICENCES

<INSERT>