

FCS Software

COMMITTEESPRO

COMMITTEE MANAGEMENT SOFTWARE SYSTEM

AGREEMENT FOR THE SUPPLY, INSTALLATION, LICENSING, HOSTING
AND SUPPORT

THIS AGREEMENT is made on the

BETWEEN

- (1) FCS Software Solutions Ltd a company incorporated in England and Wales, with the Company No 12107115, having its registered office at Erdington, Birmingham, England, B24 9QL and having its principal place of business at Corinium House, Corinium Avenue, Gloucester, England, GL4 3HX ("the Provider"); and
- (2) Council name of Council address ("the Customer").

AGREEMENT

1. Definitions

1.1. In this Agreement, except to the extent expressly provided otherwise the following definitions will apply:

"Account" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts

"Agreement" means this agreement including any Schedules, and any amendments to this Agreement from time to time

"Business Day" means any weekday other than a bank or public holiday in England

"Business Hours" means the hours of 09:00 to 17:30 GMT/BST on a Business Day

"Charges" means the following amounts:

- (a) the amounts specified in Part 2 of Schedule 1
- (b) such amounts as may be agreed in writing by the parties from time to time

"Customer Confidential Information" means:

- (a) any information disclosed by or on behalf of the Customer to the Provider during the Term or at any time before the termination of this Agreement, whether disclosed in writing, orally or otherwise, that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and

- (b) the Customer Data

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer but excluding analytics data relating to the use of the Platform and server log files;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement, but excluding any data with respect to which the Provider is a data controller

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including the UK General Data Protection Regulation (UK GDPR).

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer

"Effective Date" means the date of execution of this Agreement

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars)

"Hosted Services" means the hosting of the Platform in Azure, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect OR a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other Platform, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in Part 1 of Schedule 1 (Hosted Services particulars) and in the Documentation

"Initial Agreement Period" means the period commencing on the Effective Date and ending ONE (1) calendar year after the Agreement comes into force

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs)

"Agreement Period" means a consecutive period of ONE (1) calendar year following the Initial Agreement Period

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom

"Platform" means the Platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the Platform and server software used to provide the Hosted Services, and the computer hardware on which that application, database, Platform and server software is installed

"Schedule" means any schedule attached to the main body of this Agreement

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services

"Supported Web Browser" means the current release from time to time of Google Chrome, Microsoft Edge, Firefox, Opera, Apple Safari, or any other web browser that the Provider agrees in writing shall be supported

"Term" means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2

"Update" means a hotfix, patch or minor version update to any Platform software

"Upgrade" means a major version upgrade of any Platform software

2. TERM

- 2.1. This Agreement shall come into force upon the Effective Date.
- 2.2. This Agreement shall continue in force for a period of five years. The five-year term is subject to termination in accordance with Clause 16 or any other provision of this Agreement.

For

3. HOSTED SERVICES

- 3.1 On the Effective Date, the Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account.
- 3.2. The Provider hereby grants to the Customer a non-exclusive, non-transferable Agreement to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with the Documentation, during the Initial Agreement Period and subsequent consecutive Agreement Periods until such time as this agreement is terminated in accordance with Clause 18 or any other provision of this Agreement.
- 3.3. The Agreement granted by the Provider to the Customer under Clause 3.2 is subject to the limitation that the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Customer.
- 3.4. Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the Agreement granted by the Provider to the Customer under Clause 3.2 is subject to the following restrictions:
 - (a) the Customer must not sub-license its right to access and use the Hosted Services
 - (b) the Customer must not permit any unauthorised person to access or use the Hosted Services
 - (c) the Customer must not use the Hosted Services to provide services to third parties
 - (d) the Customer must not republish or redistribute any content or material from the Hosted Services
 - (e) the Customer must not make any alteration to the Platform, except as permitted by the Documentation
 - (f) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

- 3.5. The Customer shall use all reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 3.6. The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services but cannot guarantee 100% availability.
- 3.7. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event
 - (b) a fault or failure of the internet or any public telecommunications network
 - (c) a fault or failure of the Customer's computer Platforms or networks
 - (d) any breach by the Customer of this Agreement; or
 - (e) scheduled maintenance carried out in accordance with this Agreement
- 3.8. The Customer must comply with Schedule 2 (Acceptable Use Policy) and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 2 (Acceptable Use Policy).
- 3.9. The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.10. The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

- 3.11. The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least THIRTY (30) days written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

4. MAINTENANCE SERVICES

- 4.1. The Provider shall provide the Maintenance Services to the Customer during the Term in accordance with Schedule 4 (Service Level Agreement).
- 4.2. The Provider shall where practicable give to the Customer at least TEN (10) Business Days prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this main body of this Agreement.
- 4.3. The Provider shall give to the Customer at least TEN (10) Business Days prior written notice of the application of an Upgrade to the Platform.
- 4.4. The Provider shall give to the Customer written notice of any security Update to the Platform and at least TEN (10) Business Days prior written notice of the application of any non-security Update to the Platform.
- 4.5. The Provider shall provide the Maintenance Services with reasonable skill and care.

- 4.6. The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least THIRTY (30) days written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.
5. SUPPORT SERVICES
 - 5.1. The Provider shall provide the Support Services to the Customer during the Term in accordance with Schedule 4 (Service Level Agreement).
 - 5.2. The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this main body of this Agreement.
 - 5.3. The Provider shall provide the Support Services with reasonable skill and care.
 - 5.4. The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services. The Customer must not use the helpdesk for any other purpose.
 - 5.5. The Provider shall respond in accordance with the Service Level Agreement on Business Days during the Business Hours to all requests for Support Services made by the Customer through the helpdesk.
 - 5.6. The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least THIRTY (30) days written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.
6. CUSTOMER DATA
 - 6.1. The Customer hereby grants to the Provider a non-exclusive Agreement to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
 - 6.2. The Customer warrants to the Provider that the Customer Data when used by the Provider in accordance with this Agreement will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
 - 6.3. The Provider shall create a back-up copy of the Customer Data weekly, differential database back-up every TWELVE (12) hours and transaction log back-ups every FIVE (5) to TEN (10) minutes and shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken and shall retain and securely store each such copy for a minimum period of 30 days.
 - 6.4. Within the period of ONE (1) Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 6.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.
7. NO ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS
 - 7.1. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

8. CHARGES

- 8.1. The Customer shall pay the Charges to the Provider in accordance with this Agreement.
- 8.2. If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 8.2.
- 8.3. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.
- 8.4. The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds 2% per annum over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

9. PAYMENTS

- 9.1. The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in Part 2 of Schedule 1 (Hosted Services particulars).
- 9.2. The Customer must pay the Charges to the Provider within the period of THIRTY (30) days following the issue of an invoice in accordance with this Clause 9, providing that the Charges must in all cases be paid before the commencement of the period to which they relate].
- 9.3. If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may charge the Customer interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month)

10. PROVIDERS CONFIDENTIALITY OBLIGATIONS

- 10.1. The Provider must:
 - (a) keep the Customer Confidential Information strictly confidential
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent and then only under conditions of confidentiality approved in writing by the Customer
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care
 - (d) act in good faith at all times in relation to the Customer Confidential Information
- 10.2. Notwithstanding Clause 10.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to this Agreement.
- 10.3. This Clause 10 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality
 - (b) is or becomes publicly known through no act or default of the Provider; or
 - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality
- 10.4. The restrictions in this Clause 10 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 10.5. The provisions of this Clause 10 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.
11. DATA PROTECTION
- 11.1. Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.
- 11.2. The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement.
- 11.3. The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to this Agreement, the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 3 (Data processing information) and of the types specified in Part 2 of Schedule 3 (Data processing information); and the Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 3 (Data processing information).
- 11.4. The Provider shall only process the Customer Personal Data during the Term and for not more than THIRTY (30) days following the end of the Term, subject to the other provisions of this Clause 11.
- 11.5. The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data as set out in this Agreement or any other document agreed by the parties in writing).
- 11.6. The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.
- 11.7. Notwithstanding any other provision of this Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 11.8. The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 11.9. The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Part 4 of Schedule 3 (Data processing information).
- 11.10. The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least FOURTEEN (14) days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Provider must not implement the changes. The

Provider shall ensure that each third-party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 11.

- 11.11. The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 11.12. The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider shall report any Personal Data breach relating to the Customer Personal Data to the Customer within 24 hours following the Provider becoming aware of the breach. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.12.
- 11.13. The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 11.14. The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 11. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 11.14.
- 11.15. If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

12. WARRANTIES

12.1. The Provider warrants to the Customer that:

- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement
- (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
- (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

12.2. The Provider warrants to the Customer that:

- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification
- (b) the Hosted Services will be free from Hosted Services Defects
- (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services
- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

- (e) the Platform will incorporate security features reflecting the requirements of good industry practice
- 12.3. The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 12.4. The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 12.5. If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:
 - (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 12.6. The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 12.7. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

13. ACKNOWLEDGEMENTS AND WARRANTY LIMITATIONS

- 13.1. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 13.2. The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 13.3. The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those Platforms that are specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or Platforms.
- 13.4. The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

14. LIMITATIONS AND EXCLUSIONS OF LIABILITY

- 14.1. Nothing in this Agreement will:
 - (a) limit or exclude any liability for death or personal injury resulting from negligence
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation
 - (c) limit any liabilities in any way that is not permitted under applicable law; or

- (d) exclude any liabilities that may not be excluded under applicable law
- 14.2. The limitations and exclusions of liability set out in this Clause 14 and elsewhere in this Agreement:
- (a) are subject to Clause 14.1; and
 - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement
- 14.3. Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 14.4. Neither party shall be liable to the other party in respect of any loss of use or production.
- 14.5. Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software, providing that this Clause 14.5 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 5.
- 14.6. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 14.7. The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement in the TWELVE (12) month period preceding the commencement of the event or events.
- 14.8. The aggregate liability of each party to the other party under this Agreement shall not exceed the total amount paid and payable by the Customer to the Provider under this Agreement.
15. FORCE MAJEURE EVENT
- 15.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 15.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue
- 15.3. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.
16. TERMINATION
- 16.1. The customer may terminate this Agreement by giving to the Provider at least 30 days written notice of termination and there shall be no entitlement to any refund of sums paid to the Provider.
- 16.2. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 16.3. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved

- (ii) ceases to conduct all (or substantially all) of its business
- (iii) is or becomes unable to pay its debts as they fall due
- (iv) is or becomes insolvent or is declared insolvent; or
- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
- (d) if that other party is an individual:
 - (i) that other party dies
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order

17. EFFECTS OF TERMINATION

17.1. Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely), Clauses 1, 2.11, 6, 9.2, 9.4, 10, 11.1, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, 11.9, 11.10, 11.11, 11.12, 11.13, 11.14, 11.15, 11.16, 14, 17, 20 and 21.

17.2. Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

17.3. Within 30 days following the termination of this Agreement for any reason:

- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of this Agreement,

without prejudice to the parties' other legal rights.

18. NOTICES

18.1. Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in Clause 18.2 and Part 3 of Schedule 1 (Hosted Services particulars)):

- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or
- (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting,

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

- 18.2. The Provider's contact details for notices under this Clause 18 are FCS Software, Corinium House, Corinium Avenue, Gloucester, England, GL4 3HX.
- 18.3. The addressee and contact details set out in Clause 18.2 and Part 3 of Schedule 1 (Hosted Services particulars) may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 18.

19. SUBCONTRACTING

- 19.1. The Provider must not subcontract any of its obligations under this Agreement without the prior written consent of the Customer, providing that the Customer must not unreasonably withhold or delay the giving of such consent.
- 19.2. The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 19.3. Notwithstanding the provisions of this Clause 19 but subject to any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

20. GENERAL

- 20.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 20.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 20.3. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 20.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 20.5. This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 20.6. Subject to Clause 14.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

21. DISPUTE RESOLUTION PROCESS

- 21.1. All disputes arising under or in connection with this Agreement shall initially be referred to the representatives of each party who customarily manages the relationship between the parties. If such representatives are unable to resolve the dispute within FIVE (5) Business Days after referral of the matter to them, the managers of the representatives shall attempt to resolve the dispute. If, after FIVE (5) Business Days they are unable to resolve the dispute, senior executives of the parties shall attempt to resolve the dispute. If, after FIVE (5) Business Days they are unable to resolve the dispute, the parties shall submit the dispute to the chief executive officers of the parties for resolution.

- 21.2. If the dispute cannot be resolved by the parties' representatives nominated in Clause 21.1, the parties will refer the dispute to mediation under the process set out in Clause 21.3.
- 21.3. The process for mediation and consequential provisions for mediation are:
- 21.3.1. a neutral advisor or mediator will be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within TEN (10) Business Days after a request by one party to the other parties to appoint a Mediator or if the Mediator agreed upon is unable or unwilling to act, any party will within TEN (10) Business Days from the date of the proposal to appoint a Mediator or within TEN (10) Business Days of notice to the parties that they are unable or unwilling to act, apply to the Chairman of the Law Society to appoint a Mediator.
 - 21.3.2. the parties will within TEN (10) Business Days of the appointment of the mediator agree a programme for the exchange of all relevant information and the structure of the negotiations.
 - 21.3.3. unless otherwise agreed by both parties in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be connected in confidence and without prejudice to the rights of the parties in any future proceedings.
 - 21.3.4. if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and will be binding on the parties once it is signed by their authorised representatives.
 - 21.3.5. failing agreement, any of the parties may invite the mediator to provide a non-binding but informative opinion in writing. The opinion will be provided on a without prejudice basis and will not be used in evidence in any proceedings relating to this Agreement without the prior written consent of all the parties.
 - 21.3.6. if the parties fail to reach agreement in the structured negotiations within TWENTY (20) Working Days of the Mediator being appointed, or any longer period the parties agree on, then any dispute or difference between them may be referred to the courts.
- 21.4. Neither party shall commence legal proceedings with regard to a dispute until completion of the dispute resolution procedures set forth in this Clause 21, except to the extent necessary to preserve its rights or maintain a superior position against other creditors or claimants.
- 21.5. During the pendency of the dispute resolution proceedings described in this Clause 21, the Provider shall continue to provide the Services so long as the Customer shall continue to pay all undisputed amounts to the Provider in a timely manner.

22. HEALTH AND SAFETY

- 22.1. The Provider will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement. The Customer will promptly notify the Provider of any health and safety hazards which may exist or arise at the Customer premises and which may affect the Provider in the performance of its obligations under this Agreement.
- 22.2. While on the Customer premises, the Provider will comply with any health and safety measures implemented by the Customer in respect of Providers staff and other persons working there.
- 22.3. The Provider will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Customer premises if that incident causes any personal injury or damage to property which could give rise to personal injury.
- 22.4. The Provider will comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Providers staff and other persons working on the Customer premises in the performance of its

obligations under this Agreement.

23. BRIBERY AND CORRUPTION

23.1. The Customer shall be entitled to cancel the Agreement and recover from the Provider the amount of any loss (excluding consequential loss) resulting from such cancellation, if the Provider, its staff or any other person employed by the Provider in relation to the Agreement with the Customer shall have committed any offence under the Bribery Act 2010 or any amendment thereto or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972 or any other Statutory re-enactment or modification thereof.

24. FREEDOM OF INFORMATION ACT 2000 (FOIA)

24.1. The Provider recognises that the Customer is subject to legal duties which may require the release of information under FOIA or the Environmental Information Regulations 1992 or any other applicable legislation or codes governing access to information and that the Customer may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.

24.2. The Provider is responsible for identifying any information believed to be exempt and produce a Schedule of such information to the Customer upon request from the Customer. The Schedule must include the ground of FOIA exemption which is relevant to each element of the exempted information.

24.3. Notwithstanding anything in this Agreement to the contrary, in the event that the Customer receives a request for information under the FOIA or any other applicable legislation governing access to information, the Customer shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to information, save that in relation to any such information that is Exempted Information, the Customer shall use reasonable endeavours to consult the Provider as soon as reasonably practicable and shall not disclose the information requested, if in the Customer's opinion (having taken into account the views of the Provider) that an exemption is, or may be applicable in accordance with the relevant section of the FOIA in the circumstances.

24.4. In the event that the Customer incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of any information identified by the Provider as potentially exempt, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Provider shall indemnify the Customer.

24.5. In any event the Customer shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure (pursuant to the obligations of the FOIA) of any Exempted Information or other information relating to this Agreement or other applicable legislation governing access to information.

24.6. The Provider will assist the Customer to enable the Customer to comply with its obligations under FOIA or other applicable legislation governing access to information. In the event that the Customer receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the Provider's assistance in obtaining the information that is the subject of such request or otherwise, the Provider will respond to any such request for assistance from the Customer at its own cost and promptly and in any event within 10 days of receiving the Customer's request.

24.7. In any event, the decision of the Customer to confirm or deny that the information requested is held by the Customer, or to disclose the information, shall be final.

25. GOVERNING LAW AND JURISDICTION

25.1. This Agreement will be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Process, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY

<Insert name> on <Insert date>, duly authorised for and on behalf of the Provider:

<Insert Job Title>

<Sign>

SIGNED BY

<Insert name> on <Insert date>, duly authorised for and on behalf of the Customer:

<Insert Job Title>

<Sign>

SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

1. Specification of Hosted Services

- Azure SQL Database
- Azure app service (Core Application)
- Azure app service (Core Application API)

2. Charges

Please note that all charges are exclusive of VAT

Initial Fee and Service Charges

Service Description	Amount £
CommitteesPro including support	£10,000
Hosting Fee (as per Specification of Hosted Services)	£10,000 - £20,000
Implementation and initial user training services	£6,000
Data Migration (agendas, minutes & decisions)	TBC (please request a quote, all costs based on SIA rate card)
Total	£26,000 - £36,000

Annual Fee

Service Description	Amount £
CommitteesPro including support	£10,000
Hosting Fee (as per Specification of Hosted Services)	£10,000 - £20,000
Total	£20,000 - £30,000

3. Contractual notices

The Provider
FCS Software Solutions Ltd
Corinium House
Corinium Avenue
Gloucester
GL4 3HX

The Customer

Customer to insert contractual notices address details

SCHEDULE 2 (ACCEPTABLE USE POLICY)

1. Introduction

1.1 This acceptable use policy (the "Policy") sets out the rules governing:

- (a) the use of [the website at URL], any successor website, and the services available on that website or any successor website] (the "Services"); and
- (b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("Content").

1.2 References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to FCS Software (and "we" and "our" should be construed accordingly).

1.3 By using the Services, you agree to the rules set out in this Policy.

1.4 We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

1.5 You must be at least 16 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 16 years of age.

2. General usage rules

2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2 You must not use the Services:

- (a) in any way that is unlawful, illegal, fraudulent, deceptive or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

2.3 You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral right, database right, trademark right, design right, right in passing off, or other intellectual property right;
- (d) infringe any right of confidence, right of privacy or right under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;

- (g) be in contempt of any court, or in breach of any court order;
 - (h) constitute a breach of racial or religious hatred or discrimination legislation;
 - (i) be blasphemous;
 - (j) constitute a breach of official secrets legislation; or
 - (k) constitute a breach of any contractual obligation owed to any person.
- 3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.
4. Graphic material
- 4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question.
- 4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.
- 4.3 Content must not be pornographic or sexually explicit.
5. Factual accuracy
- 5.1 Content must not be untrue, false, inaccurate or misleading.
- 5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true; and statements of opinion contained in Content and relating to persons (legal or natural) must be reasonable, be honestly held and indicate the basis of the opinion.
6. Negligent advice
- 6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy, medical or other professional advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy, medical or other professional] advisory services.
- 6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.
7. Etiquette
- 7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.
- 7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.
- 7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.
- 7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.
- 7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.
- 7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.
- 7.7 You must ensure that Content does not duplicate other content available through the Services.
- 7.8 You must ensure that Content is appropriately categorised.

- 7.9 You should use appropriate and informative titles for all Content.
- 7.10 You must at all times be courteous and polite to other users of the Services.
- 8. Marketing and spam
 - 8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.
 - 8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.
 - 8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.
 - 8.4 You must not use the Services to promote, host or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, multi-level marketing schemes, "get rich quick" schemes or similar letters, schemes or programs.
 - 8.5 You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.
- 9. Regulated businesses
 - 9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.
 - 9.2 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.
 - 9.3 You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.
- 10. Monitoring
 - 10.1 You acknowledge that we do not actively monitor the Content or the use of the Services.
- 11. Data mining
 - 11.1 You must not conduct any Platformatic or automated data scraping, data mining, data extraction or data harvesting, or other Platformatic or automated data collection activity, by means of or in relation to the Services.
- 12. Hyperlinks
 - 12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.
- 13. Harmful software
 - 13.1 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
 - 13.2 The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 3 (DATA PROCESSING INFORMATION)

1. Categories of data subject

- Councillors
- Council Officers
- Public
- Unstructured data (information contained within documents and scanned images)

2. Types of Personal Data

- Contact details
- Names
- Salutations
- Dates of birth
- Gender
- Ethnicities
- Religious affiliations
- Disability statuses
- Addresses
- Email
- Telephone
- Usernames
- Unstructured data (information contained within meeting documents and scanned images)

3. Purposes of processing

- Developed by FCS Software Solutions Ltd, CommitteesPro is a Committee Management Software system for local authorities. The system facilitates the processing of;
 - Report and decision preparation and sign-off
 - Meeting management (Agendas, minutes and decisions)
 - Forward Plan (and other corporate business plans)
 - Maintaining records for Councillors (register of interest, declarations at meetings, voting, etc)
- The management of all this information enables the Customer to manage the Council's decision making processes.

4. Security measures for Personal Data

- Database only accessible from the API (not exposed to the public internet)
- Data encrypted at rest using Transparent Data Encryption (TDE)
- SSL encryption used when transferring data between the API and Application
- Microsoft advanced threat protection

SCHEDULE 4 (SERVICE LEVEL AGREEMENT)

1. Goals & Objectives

The purpose of this Agreement is to ensure that the appropriate commitments are in place to enable the Provider to provide the consistent delivery and support service to the Customer.

The goal of this Agreement is to obtain mutual agreement for the service provision between the Provider and the Customer.

The objectives of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities
- Present a clear, concise and measurable description of service provision to the customer
- Match perceptions of expected service provision with actual service support & delivery

2. Periodic Review

This Agreement is valid from the Effective Date of this Agreement and is valid until further notice. This Agreement should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current Agreement will remain in effect.

The Business Relationship Manager for the Agreement is responsible for regularly reviewing the Agreement. Contents of this document may be amended as required, provided mutual agreement is obtained from the Customer and communicated to all affected parties. The Business Relationship Manager will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

Business Relationship Manager: Ricky Clarke
Review Period: Annually (12 months)

3. Service Agreement

The following detailed service parameters are the responsibility of the Provider in the ongoing support of this Agreement.

3.1. Service Scope

The following Services are covered by this Agreement;

- Staffed telephone support
- Monitored email support
- Remote assistance

3.2. Customer Requirements

Customer responsibilities and/or requirements in support of this Agreement include:

- Reasonable availability of a customer representative when resolving a service-related incident or request.

3.3. Service Provider Requirements

Service Provider responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with service-related incidents

4. Service Management

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services and related components.

4.1. Service Availability

The Service Availability covered in this Agreement is as follows:

- Telephone support: 09:00 to 17:30 Monday – Friday
 - Calls received out of office hours will be forwarded to a voicemail and a response will be provided on the next Business Day
- Email support: Monitored 09:00 to 17:30 Monday – Friday
 - Emails received outside of office hours will be acknowledged and responded to on the next Business Day.
- Emergency Support: Monitored outside of the Business Hours
 - An emergency telephone support service will be available to address urgent issues e.g. where the system is down and inaccessible

4.2. Service Requests

In support of services outlined in this Agreement, the Service Provider will respond to service-related incidents and/or requests submitted by the Customer within the following time frames:

- 0-4 hours (during business hours) for issues classified as High priority.
- Within 1 working day for issues classified as Medium priority.
- Within 2 working days for issues classified as Low priority.