

KPSN PARTNERSHIP SERVICES AGREEMENT

RELATING TO THE

KENT PUBLIC SERVICE NETWORK

BETWEEN

(1) THE KENT COUNTY COUNCIL

- AND -

(2) SOUTH, CENTRAL & WEST COMMISSIONING SUPPORT UNIT

Agreement Number: SCW2022

CONTENTS

1.	Interpretation and Definitions	5
2.	Overview	9
3.	Partnership Status	10
4.	Commencement and Termination	10
5	Provision of the Service	14
6	Acceptable Use	14
7	Service Management	14
8	Data Protection and Information Governance	15
9	Information Security	15
10	Network Security	16
11	Access Controls	16
12	Equipment.....	17
13	Connection of Equipment to the Service.....	17
14	Access and Site Regulations	18
15	Use of the Service	18
16	Charges	19
17	Partner's Obligations	20
18	Limitation of Liability	21
19	Force Majeure	22
20	Escalation and Dispute Resolution	22
21	Changes to the Agreement	23
22	Assignment.....	23
23	Entire Agreement	23
24	Notices	24
25	Waiver.....	24
26	Severance	24
27	Confidentiality	24
28	Freedom of Information.....	25
29	Partner's Indemnity.....	26

30	Third Party Rights	26
31	Variation	26
32	Law	26
Schedule 1	KPSN Services, Descriptions and Service Levels	28
Schedule 2	Change Control Procedure	29
1.	Definition	29
2.	SCOPE	29
3.	Procedures.....	30
4.	Standard & Normal Changes	30
5.	Emergency Changes	31
6.	Implementation of a Change.....	31
7.	Paper Based Approach.....	31
8.	Raising a Change on the portal	32
Schedule 3	Incident Management Process	33
Schedule 4	Acceptable Usage Policy	34
Schedule 5	KPSN Security Policy	38
Schedule 6	Charging Process	42
Schedule 7	KPSN Partnership Objectives	44
Schedule 8	KPSN Partnership Governance Model	47
Schedule 9	KPSN Partnership Levels	48
Appendix 1	Onboarding Communications and Contact list	49
Appendix 2	Core Cost Model	53
	Reference Documents	53

FORM OF AGREEMENT

THIS AGREEMENT is made on the 23/05/2022

Parties:

THE KENT COUNTY COUNCIL of County Hall, Maidstone, ME14 1XQ (“the Council”); and
South, Central & West Commissioning Support Unit (SCW) whose registered office is at
Omega House, 112 Southampton Road, Eastleigh, SO50 5PB (the “Partner”);
(each a “**party**” and together the “**parties**”).

WHEREAS:

- (A) The Council will deliver quality network services to Kent’s communities, authorities and public service providers as they meet the challenges facing government, education and health in the 21st century. The KPSN Partnership and Network will be agile, flexible and pro-active in meeting the changing business needs of its Partners. It will build on current effective practice to deliver best value, secure and resilient shared network services.
- (B) The Council are looking to build upon services, deliver improvements where necessary, expand and extend the range of services offered, within the region, amongst the wide range of user organisation.
- (C) The Council will support regeneration and economic development in Kent in relation to the services and when possible. Should the Council invest in regeneration and economic development and the marketplace is then able to support the service requirements within Kent, then the Council may look to novate this Agreement to such a supplier.
- (D) The Council shall enter into KPSN Contracts with KPSN Suppliers as the Accountable Body on behalf of the KPSN Partnership ensuring that Partners can order Services directly from any KPSN Supplier.
- (E) This Agreement sets out the mechanism and the terms under which the Partner may place orders and receive Services under a KPSN Contract and their obligations in respect of the same.
- (F) The Partners have agreed to work together as the KPSN Partnership to provide a strategic and collaborative framework that will deliver shared core ICT services to enable value for money (VFM) business change via access the Kent Public Service Network and associated KPSN Services.
- (G) The Council is the lead authority for the Partnership.
- (H) All the Partners who enter into and sign this Agreement are committed to the objectives and priorities set out in Schedules 7 and 8.

Agreed Terms:

1. INTERPRETATION AND DEFINITIONS

- 1.1. The definitions and rules of interpretation in this Clause 1 apply throughout this Agreement.

Accountable Body: means Kent County Council who will act as necessary on behalf of the Partnership in accordance with the terms of this Agreement;

Catalogue Services / KPSN Service Catalogue: means services purchased by a Partner from the KPSN Service Catalogue which may include Tail Circuits, security services, application services etc;

Change(s): any change to this Agreement including to any of the Services;

Change Control Procedure: the procedure for changing this Agreement, as set out in Schedule 2, changes to the Agreement include adding additional Services for Partners as they require them;

Change in Law: any change in any applicable law which impacts on the performance of the Services and which come into force after the Effective Date;

Charges: Service charges and any other charges which may become due and payable pursuant to this Agreement;

Confidential Information: any information, however conveyed or presented, that relates to the business, affairs, operations, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential") or which is obviously confidential in nature;

Contract Owner: is the legal owner of the contract (s) required to delivery agree KPSN services;

Data Controller: has the meaning given to that term (or to the term 'controller') in Data Protection Laws;

Data Processor: has the meaning given to that term (or to the term 'processor') in Data Protection Laws;

Data Protection Legislation: means the Data Protection Act 1998 ("DPA") and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable, the guidance and codes of practice issued by the Information Commissioner;

Data Protection Laws: means as applicable and binding on the Council, the Client and/or the Services:

- (a) in the United Kingdom:
 - (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
 - (ii) the GDPR, and/or any corresponding or equivalent national laws or regulations;
- (b) in member states of the European Union: The Data Protection Directive, or the GDPR once applicable, and all relevant member

state laws or regulations giving effect to or corresponding with any of them; and

- (c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

Data Protection Losses: means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - (iii) the [reasonable] costs of compliance with investigations by a Supervisory Authority;

Data Security Breach: means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data;

Data Subject: has the meaning given to that term in Data Protection Laws;

Data Subject Request: means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

Default: any material breach or default of either party in complying with its obligations under this Agreement;

Default Notice: a default notice issued by either party to the other whereby the other party is in Default of the Agreement;

Dispute: any dispute under this Agreement;

Dispute Resolution Procedure: the dispute resolution procedure set out in Clause 20;

Effective Date: the date of this Agreement;

Financial Year: this covers the period April to March;

FOIA: means the Freedom of Information Act 2000;

Force Majeure Event: any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Council, the Council's Personnel or any other failure in the Council's supply chain;

GDPR: means the General Data Protection Regulation (EU) 2016/679;

GDPR Date: means from when the GDPR applies on 25 May 2018;

Initial Term: a period of 12 months from the Effective Date;

Intellectual Property Rights/IPR's: means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

KPSN: the Kent Public Service Network;

KPSN Charging Process: the charging process set out at Schedule 6;

KPSN Contract(s): a contract that the Council has entered into with a third party for the benefit of the KPSN Partnership to supply the KPSN Services;

KPSN Executive Board: the body responsible for the strategic direction of the KPSN Network, as further described in Schedule 8;

KPSN Management Board: the body responsible for the service and delivery management of the KPSN Network, as further described in Schedule 8;

KPSN Partner(s): means an entity which has been accepted to the KPSN Partnership as a Primary, Sponsored or Affiliate Partner (in each case having the meaning given in Schedule 9) and having signed this Agreement;

KPSN Partnership: is the organisation the composition of which is agreed by the Council from time to time and forming a partnership of public sector bodies who are the main recipients of the Services and who have signed up to the KPSN memorandum of understanding;

KPSN Partnership Services Agreement: the Council's contract with individual KPSN Partners;

KPSN Service(s) / Service(s): the services to be delivered by or on behalf of a KPSN Supplier under a KPSN Contract to the Council, and Service means any of the Services (or any part of any of them) as described within the relevant KPSN Contract and Schedule 1 of this Agreement;

KPSN Supplier: is a supplier who is contracted to supply the Services to the Council;

KPSN Supplier's Software: means the software which is owned by the KPSN Supplier and which is to be used in the context of the provision or receipt of the services;

New Partner: means an organisation accepted as a KPSN Partner by the KPSN Management Board / KPSN Executive Board;

Personal Data: has the meaning given to that term in Data Protection Laws;

Personal Data Breach: means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

Processing: has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);

Processing Instructions: has the meaning given to in the Data Protection Legislation;

Protected Data: means Personal Data received from or on behalf of the Council about the performance of the Client's obligations under this Agreement;

Public Contracts Directive: Directive 2014/24/EU of the European Parliament and of the Employer of 26 February 2014;

Regulation: the Public Contracts Regulations 2015;

Regulatory Body / Bodies: those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any applicable law to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of the Council;

Sensitive Personal Data: as defined in the GDPR relates to information concerning a data subject's racial or ethnic origin, political opinions, religious beliefs, trade union activities, physical or mental health, sexual life, details of criminal offences and the processing of genetic data, biometric data for uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation;

Service Description: a description of the Services the Partner as set out in accordance with Schedule 1;

Service Levels: the service levels to which the Operational Services are to be provided by KPSN Supplier(s), as set out in Schedule 1;

Shared Personal Data: means the personal data, and sensitive personal data to be shared between the parties in accordance with the project requirements;

Sub-Contractors: those persons with whom the KPSN Supplier enters into a sub-contract or its or their servants or agents, and any third party with whom that third party enters into a sub-contract or its servants or agents;

Subject Access Request: means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

Supervisory Authority: means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws;

Tail Circuit: means the circuit that connects a location to the core network;

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement which are agreed pursuant to Clause 4.2; or
- (b) the earlier termination of this Agreement in accordance with Clause 4;

Termination Notice: any notice to terminate this Agreement which is given by either party in accordance with Clause 4;

User(s): any individual or organisation authorised by a Partner to receive the KPSN Services;

Working Day: Monday to Friday, excluding any bank or public holidays in England and Wales;

- 1.2. Words in the singular include the plural and in the plural, include the singular.
- 1.3. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.4. Clause and schedule headings shall not affect the interpretation of this Agreement.
- 1.5. References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Agreement.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7. If there is any conflict or ambiguity between the clauses of this Agreement and the schedules and/or the appendices, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.7.1.1. the clauses;
 - 1.7.1.2. the schedules;
 - 1.7.1.3. the appendices, and
 - 1.7.1.4. the reference documents.
- 1.8. Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 1.9. A reference to this Agreement includes a reference to the schedules, appendices and reference documents to this Agreement.
- 1.10. Any phrase introduced by the words including, includes, in particular or for example or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.11. Writing or written includes faxes and e-mail.
- 1.12. A person includes a corporate or unincorporated body (whether or not having separate legal personality).

2. OVERVIEW

- 2.1. This Agreement sets out terms and conditions that shall apply to all Services described and offered in Schedule 1 other than where such description explicitly excludes one or more of the terms and conditions set out in this Agreement. It also sets out the mechanism and the terms under which a Partner may place orders / receive Services under the KPSN Contract(s) and their obligations in respect of the same.
- 2.2. Schedule 1 describes the Services and descriptions for those Services that are to be delivered to the Partner by a KPSN Supplier.
- 2.3. The Partner may directly place orders on a KPSN Supplier by way of the Change Control Process as defined in Schedule 2, Change Control Procedure.
- 2.4. Once a Change Control Note has been agreed between the Partner and the relevant KPSN Supplier, the KPSN Supplier will then liaise directly with the Partner to ensure delivery of the Service within the agreed delivery timelines.
- 2.5. Once the Service has been delivered to the Partner the relevant KPSN Supplier will invoice the Council, who will in turn invoice the Partner. The responsibility to check the accuracy of the invoice remains with the Partner.

- 2.6. At no point is the Partner to be considered as a party to a KPSN Contract, whether implied or otherwise.
- 2.7. Should the Partner wish to receive additional Services that have not been agreed as part of Schedule 1, then the Partner should inform the Council and the KPSN Supplier of their wish to receive additional Services and then raise a Change Control Note in accordance with the Change Control Procedure in Schedule 2.
- 2.8. The Council warrants that it has complied with the Regulations in procuring the KPSN Supplier for the provision of the Services to the Partner.
- 2.9. The Council warrants that it shall bear the responsibility and / or liabilities relating to all acts omissions or errors resulting in a claim against the Partner for the breach of the Regulations.
- 2.10. In complying with their respective obligations under this Agreement the parties shall (where applicable) comply with the Governance Model attached as Schedule 8 to this Agreement
- 2.11. Under this Agreement the Council's responsibilities towards the Partner in relation to the provision of the KPSN Services are as set out below:
 - 2.11.1: to ensure that the KPSN Supplier(s) procured by the Council delivers the Services in a timely manner
 - 2.11.2: deals promptly with the Partner's complaints in relation to the KPSN Services provided by the KPSN Supplier(s)
 - 2.11.3: monitors the services provided by the KPSN Supplier(s) to ensure that the Partner always receives value for money
 - 2.11.4: to ensure that it together with the KPSN Supplier(s) bring and provide innovation and development to the KPSN Services
 - 2.11.5: provide invoices and statements to the Partner in a timely fashion to facilitate the Partner in meeting its annual budget setting cycle

3. PARTNERSHIP STATUS

- 3.1. The Partner has been granted Primary Partnership status.

4. COMMENCEMENT AND TERMINATION

- 4.1. This Agreement shall take effect on the Effective Date and shall continue until terminated in accordance with its provisions.
- 4.2. The parties agree and acknowledge that the Agreement shall carry on and extend beyond the Initial Term on a twelve (12) monthly rolling basis unless terminated by either party in accordance with this clause.
- 4.3. Each Partner agrees and acknowledges the following:
 - 4.3.1. that it shall be a KPSN Partner from the Effective Date;
 - 4.3.2. this Agreement is only binding as between the parties;
 - 4.3.3. termination of this Agreement will bring an end to the individual Partner's participation in the KPSN Partnership but will not affect the roles of all the remaining Partners).
- 4.4. In the event that any circumstances arise which causes any Partner to consider the termination of this Agreement, the Partner undertakes to consult with the

others and the KPSN Executive Board prior to exercising any right it has to terminate.

- 4.5. The Partner may terminate this Agreement:
 - 4.5.1 before the requested Service is provided, as described in Schedule 1, if following the request for Service the Partner is notified of exceptional costs or other Charges being levied that are considered by the Partner to be unacceptable and provided such notice of termination is made within five Working Days of such notice. The Partner is liable for reasonable costs incurred in the Change Control Procedure at the discretion of the Council;
 - 4.5.2 For any other reason by giving not less than 12 months written notice prior of the anniversary of this agreement plus the remainder of the current year (i.e. any notice prior to April will mean the remainder of that year plus 12 months e.g. if notice was given in December 2018 then the 12 months' notice period would commence April 2019) to the KPSN Strategic Development & Relationship Manager, and subject to meeting the period of notice and any liabilities for the KPSN Services commissioned through the KPSN Partnership including any Charges and Funding Contributions in accordance with the KPSN Charging Process as described within this Agreement;
- 4.6 The Council reserves the right to terminate this Agreement:
 - 4.6.1 immediately if there is a failure to pay a sum due under this Agreement within three months of issue of the relevant undisputed invoice;
 - 4.6.2 immediately upon notice if the Partner is suspended or prohibited from receiving the Service by any Regulatory Bodies or statutory agency or organisation;
 - 4.6.3 immediately where the Partner is in material breach of terms and conditions set out in this Agreement (where the breach is incapable of remedy) or in the appended Service Description or if there is a Change in Law;
 - 4.6.4 not less than 12 months prior of the anniversary of this agreement plus the remainder of the current year (i.e. any notice prior to April will mean the remainder of that year plus 12 months e.g. if notice was given in October 2017 then the 12 months' notice period would commence April 2018) for any other reason.

For the avoidance of doubt the Council's right to terminate this Agreement shall always be balanced against the public safety test if the Partner is required to comply with its statutory duties to save lives by providing emergency services to members of the public. As a result, the Partner requires sufficient time to procure a replacement service provider.

- 4.7 If a Force Majeure Event prevents, hinders or delays performing an obligation under this Agreement for a period exceeding three months, either party may terminate this Agreement by giving not less than one month's notice and provided the Force Majeure Event has not ceased prior to expiry of the notice this Agreement shall terminate.
- 4.8 If a valid Default Notice is served on the Partner and the Partner has not remedied the breach within the reasonable period specified for remedy in the

Default Notice, then the Council may immediately upon giving notice and at its sole discretion refuse to accept any further Change Control Notices ('CCN') and reserves the right to either suspend or terminate the Service. The Partner agrees to pay the charges for the Service suspended or terminated in accordance with Clause 16.6 if this Agreement is terminated or the Service suspended under this clause 4.8.

- 4.9 The Council may suspend all or any part of the Service if so directed by a Regulatory Body or statutory agency or organisation. The Council shall re-instate the Service as soon as practicable on receipt of a notice from that same agency that ends such suspension.
- 4.10 The Council may suspend the Service as shall be reasonable under the circumstances on notice of an emergency. The Council will provide as much notice as is reasonably practicable and will restore Service as soon as possible after the emergency has ceased.
- 4.11 Either party may terminate this Agreement, or the Service provided under it immediately, on notice, if the other:
 - 4.11.1 commits a material breach of this Agreement, which is capable of remedy, and fails to remedy that breach within a 30-day remediation period; or
 - 4.11.2 commits a material breach of this Agreement which cannot be remedied; or
 - 4.11.3 is repeatedly in material breach of this Agreement (including without limitation repeatedly late in paying sums due under this Agreement); or
 - 4.11.4 is abolished through Act of Parliament or other Statutory Instrument or insolvency proceedings brought against it; or
 - 4.11.5 or an administrative receiver or administrator is appointed over any of its assets; or
 - 4.11.6 ceases business.
- 4.12 The Partner shall be responsible for terminating all Tail Circuits and Catalogue Services used by it directly as a User under the KPSN Contract. Any termination fees incurred from terminating the Agreement and that are due, will be payable by the Partner within twenty (20) days of receipt of an invoice of such fees. Such termination fees would include KPSN Supplier costs to terminate any Services, any outstanding rental left on an initial term agreed with a KPSN Supplier;
- 4.13 The Partner will remain liable for its apportioned cost of the Core Charges until the end of the financial year in which its notice of Termination expires, subject to the KPSN Executive Board determining otherwise. In this latter eventuality, the KPSN Executive Board will act to balance appropriately the financial interests of the Partner against those of the rest of the KPSN Partnership.
- 4.14 The Partner will remain liable for its Tail Circuits costs in accordance with Clause 16.
- 4.15 A Partner may also be removed from the KPSN Partnership with immediate effect by notice in writing served where it has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of solvent amalgamation or reconstruction) or makes an arrangement with its creditors or is the subject of documents prepared or presented at court

for an administration order or has a receiver, administrator, administrative receiver or manager appointed over any of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

- 4.16 In the event of expiry of termination of the KPSN Contract, the Council agrees to cooperate with the Partner to assist in the transition to a replacement service provider.
- 4.17 Termination of this Agreement shall be without prejudice to the rights, duties and liabilities of either party accrued prior to termination.
- 4.18 In the event that a Partner party to this Agreement merges with another organisation that is also prior to the merger a Partner and party to this Agreement and the merger results in the formation of a new legal entity and the original Partners do not retain their independent legal identities, and the new legal entity is itself eligible to be a Partner, the new legal entity may, subject to approval by the Executive Board, become a Partner by novating the Agreements of the original Partners involved in the merger. The Executive Board may require the new legal entity to undertake some parts of the on boarding process. The original Partners cannot remain parties to the Agreement following the novation but may transfer to a different Partnership level as part of the process.

In the event that an original Partner remains an independent legal entity following a merger and in the view of the Executive Board continues to be eligible for Partnership status it will not be required to withdraw from this Agreement.

For avoidance of doubt, the Executive Board may oppose a new legal entity becoming a Partner via a novation and may require it to undertake a full boarding process. The application will then be considered on its merits as with any other new application. The Executive Board may also recommend that an Agreement with an original Partner is discontinued following a merger if it considers the Partner no longer meets the eligibility criteria.

4A. Termination for Breach under The Public Contracts Regulations 2015

- 4A.1 The Council may terminate this Agreement with immediate effect by the service of written notice on the KPSN Supplier (s) under the following circumstances:
 - 4A1.1 if a KPSN Contract has been subject to a substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Regulations; or
 - 4A1.1.2 if the KPSN Supplier has, at the time of the KPSN Contract's award, been in one of the situations referred to in regulation 57(1) to (3) of the Regulations and should therefore have been excluded from the procurement procedure; or
 - 4A.1.4 if the KPSN Contract should not have been awarded to the KPSN Supplier(s) in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure pursuant to Article 258 of the Functioning of the European Union (TFEU).

- 4A.2 The Council shall procure that the KPSN Supplier(s) shall not appoint a subcontractor if there are compulsory grounds for excluding the subcontractor under regulation 57 of the Regulations.

5 PROVISION OF THE SERVICE

- 5.1 The Partner agrees to co-operate with the Council and / or the KPSN Supplier, and to provide information and assistance as reasonably requested.
- 5.2 The parties agree and acknowledge that the Council has procured that the Partner may, acting on behalf of the Council, place orders and / or require the provision of Services under a KPSN Contract to it and / or a User. The Partner will be liable for all Charges that it incurs through any orders placed for Services.
- 5.3 Such orders shall be placed through the Change Control Procedure in accordance with Schedule 2 of this Agreement.
- 5.4 The Partner placing an order/requesting Services under the KPSN Contract on behalf of and for the benefit of a User shall be responsible for the User and any charges arising and shall ensure compliance by the User with any KPSN policies.
- 5.5 The Council agrees to:
- 5.5.1 provide the Partner with the Service as described in the Service Description on the terms of this Agreement; and
 - 5.5.2 exercise reasonable skill and care in determining how best to provide the Service; and
 - 5.5.3 grant the Partner and its Users a non-transferable right to use the Service; and
 - 5.5.4 use its reasonable endeavours to provide the Service in accordance with the service levels set out in Schedule 1 on the basis that all dates are estimates and the Council has no liability for failure to meet any date other than where this is an explicit condition of Service as described in the Service Description.
- 5.6 It is technically impracticable to provide a fault free Service and the Council does not undertake to do so. The Council will use reasonable endeavours to repair any faults in accordance with the relevant Service Level Agreement.

6 ACCEPTABLE USE

- 6.1 The Council's fair and acceptable usage policy is designed to make sure that the Services provided to the Partner are good value, fast and reliable. Schedule 4 – Acceptable Usage Policy ('AUP') details all the uses of the Services that the Council consider unfair or unacceptable. The Partner must ensure that any use of the Services, by the Partner or its Users, complies with the AUP.
- 6.2 Where any condition of Service in Clause 6.1 and Schedule 4 is not met, then the Partner may be issued with a Default Notice by the Council and provided with an opportunity to remedy the breach within a specified period.

7 SERVICE MANAGEMENT

- 7.1 The Council may:
- 7.1.1 Occasionally and for operational reasons, change or withdraw Service features, introduce process changes that improve the quality of the

Service, or change the technical specification of the Service, in each case upon giving not less than ten Working Days' prior written notice, provided that any such changes do not have a materially adverse effect on the performance or provision of the Service;

- 7.1.2 Interrupt the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency. The Council agrees to restore the interrupted Service as quickly as possible. The Council will give the Partner as much notice as possible and aims to give the Partner at least ten Working Days prior written notice of any planned interruption to the Service for operational reasons. Where practicable, the Council will agree with the Partner when the Service will be interrupted. If there has been an interruption to the Service for operational or emergency reasons, the Council will inform the Partner that there has been an interruption as soon as reasonably practicable;
- 7.1.3 The Council will take into account where practicable public safety.
- 7.2 The Council shall give affected Partner (s) notice of a scheduled outage not less than
 - 7.2.1 Major changes – ten Working Days from the planned outage date
 - 7.2.2 Interim changes – ten Working Days from the outage date
- 7.3 In an Emergency, the Council shall give the Partner notice of an Outage as soon as reasonably practical.
- 7.4 For the avoidance of doubt and pursuant to the provisions of Clauses 7.2 and 7.3 the Council's planned outage shall always be balanced against the Partner's requirements to provide public safety against any planned outages. In addition to the above the partner is required to comply with its statutory duties to save lives by providing emergency services to members of the public.
- 7.5 If the Partner reports a fault in the Service, the Council agrees to respond in line with the relevant Service Level Agreement.
- 7.6 The KPSN central management team will provide the following service on behalf of partners:
 - 7.6.1 A monitoring service that covers:
 - 7.6.1.1 Management of Change
 - 7.6.1.2 Orders placed via the DUCL / KPSN Portal
 - 7.6.1.3 Provide regular reports and progression
 - 7.6.2 Take forward issues raised by partners with appropriate organisations
 - 7.6.3 Propose remedial actions for approval by partners
 - 7.6.4 If appropriate, add entries to the KPSN Risk Register for formal monitoring / progression / escalation

8 DATA PROTECTION AND INFORMATION GOVERNANCE

- 8.1 The Partner shall comply with all its obligations under the Data Protection Legislation.

9 INFORMATION SECURITY

- 9.1 The Partner must report any incidents that have, or could potentially, impact the Service using the approved Incident Management Process as described in Schedule 3
- 9.2 The Partner must fully engage with any incident investigation / resolution activity that the Council deems necessary.
- 9.3 The Partner must adhere to the KPSN Security Policy as described in Schedule 5.
- 9.4 The Council may serve a Default Notice on the Partner in the event of an information security incident. This may specify remedial actions to be remedied within a specified period.

10 NETWORK SECURITY

- 10.1 The Council is subject to compliance with government standards for network security. In order to meet this obligation, the Council reserve the right to commission independent assurance tests by suitably qualified individuals (CLAS, or as agreed by the Council in advance) in providing the Service.
- 10.2 Where applicable to the Service provided, the Partner must ensure that technical and organisation measures are in place to protect other parties with whom they share network resources from inadvertent or malicious threats.
- 10.3 Where applicable to the Service provided, network vulnerabilities discovered by the Partner must be communicated to the Council as soon as practicable.
- 10.4 Where applicable to the Service provided, the Partner must provide the contact details of an appropriate network security contact.
- 10.5 The Partner must take effective measures to protect against security breaches and are obliged to implement security measures reasonably recommended by the Council within a reasonable period.
- 10.6 The Partner must take measures to prevent connection to the Service by unauthorised devices.
- 10.7 Where applicable to the Service provided, the Council and / or the KPSN Supplier reserves the right to monitor the use of the network in response to information about specific threats, and that this will only be performed within applicable laws and regulations.
- 10.8 Where applicable to the Service provided, the Council and / or the KPSN Supplier reserves the right to implement such technical measures as are required to protect the Network or its Partners against breaches of security or other incidents that may damage the Networks service or reputation.

11 ACCESS CONTROLS

- 11.1 The Partner is responsible for maintaining appropriate access controls and for ensuring that only authorised Users are able to connect to the Service.
- 11.2 The Partner will only be provided with access to the Service in a way that is commensurate with their status, and will only have access to the Services to which they are authorised to connect.
- 11.3 The Partner shall not re-sell any Service provided without explicit consent in writing from the Council or its authorised representative.

12 EQUIPMENT

- 12.1 Equipment provided by the Council or its sub-contractors to deliver the required Service remains the property of the Council or its nominated sub-contractor(s) at all times.
- 12.2 The Partner must take reasonable steps to ensure:
- 12.2.1 that any site at which the Service is to be provided, or at which any work including integration, installation or connection) will be conducted by the Council or its sub-contractors in connection with the Services, is suitable, with connection points and electricity for the Council equipment in accordance with the Council's reasonable instructions; and
 - 12.2.2 any third-party premises or land on which the Partner's site is situated has available all necessary consents, e.g. consents for any necessary alterations to buildings, permission to cross other people's land or permission to put equipment on their property.
- 12.3 The Partner agrees to take reasonable steps to ensure that nobody (other than someone authorised by the Council) adds to, modifies or in any way interferes with the Council's or its sub-contractors' equipment.
- 12.4 The Partner will be liable to the Council for any loss of or damage to the Council's or its sub-contractors' equipment, except where such loss or damage is due to fair wear and tear or is caused by the Council, or anyone acting on the Council's behalf. The Partner's liability, under this Clause 12.4, is limited to the replacement value of such equipment together with any associated costs of replacement.

13 CONNECTION OF EQUIPMENT TO THE SERVICE

- 13.1 Active and passive equipment connected to the Service must be:
- 13.1.1 technically compatible with the Service and not harm the network, the Service or the Council's or its sub-contractors' equipment or another Partner's network or equipment;
 - 13.1.2 connected and used in line with any relevant instructions or laws; and
 - 13.1.3 connected and used in line with any relevant standards including any standards set out in relevant instructions.
- 13.2 The Partner agrees to connect equipment to the Service only by using the interface provided by the Council with the Service.
- 13.3 The Council reserve the right to disconnect equipment at the Partner's expense upon becoming aware that it does not meet the relevant instructions, standards or laws and prior written notice of at least 7 Working Days will be provided to the Partner before the disconnection is affected.
- 13.4 The Partner must immediately disconnect any equipment deemed technically incompatible with the Service when asked to do so by the Council. The Council reserve the right to disconnect at the Partner's expense if the Partner is unable or unwilling to comply.
- 13.5 If the Partner asks the Council to test the equipment to ensure technical compatibility, the Partner agrees to pay the Council reasonable applicable charges.

- 13.6 The Council will not be liable for failure to meet any Service Level or other obligations under this Agreement where that the failure is caused by equipment found to be connected otherwise than in accordance with this Clause 13.

14 ACCESS AND SITE REGULATIONS

- 14.1 The Council's and KPSN Supplier's normal working hours for site visits are 08:00–17:00 on Working Days. If the Partner requests (and the Council and / or KPSN Supplier agrees) to work outside of these hours, the Partner may be liable to pay Out Of Hours ('OOH') Charges.
- 14.2 The Partner shall, at all reasonable times, by prior notice ensure that the authorised personnel of the Council and / or KPSN Supplier(s) have access to its premises (and that of a User where relevant and appropriate) as may be necessary for the provision of services to the Partner.
- 14.3 The Partner may, by acting reasonably, refuse admittance to, or order the removal from its premises, any KPSN Supplier personnel who in the reasonable opinion of the Partner, is not a fit and proper person to be on its premises subject to the Partner providing to the Council its reasons in writing for taking such action.
- 14.4 The Council and / or KPSN Supplier(s) will observe the Partner's reasonable site safety and security requirements provided they are made known and brought to the attention of the Council and / or KPSN Supplier(s) personnel at the site.
- 14.5 The Partner will take reasonable steps to provide a suitable and safe working environment for the Council employees and / or KPSN Supplier(s) and their Sub-contractors.
- 14.6 The Partner will indemnify the Council against all loss, damages, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Council by a third party in connection with the Partner's breach of its obligations under this Clause 14.
- 14.7 Any liability arising out of this Clause which is for property damage by the KPSN Supplier is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in the 12 calendar months immediately preceding either the relevant event (single or unconnected) or in the case of a series of connected events, the first event.

15 USE OF THE SERVICE

- 15.1 The Partner must have in place its own policies and procedures that minimises the risk of the Service being used:
- 15.1.1 unlawfully or fraudulently or in breach of any legislation; or
 - 15.1.2 to send, knowingly receive, upload, download, use or re-use material which is offensive, indecent, defamatory, obscene or menacing, harmful or malicious code; or
 - 15.1.3 contrary to any reasonable instructions given by the Council.
- 15.2 The Partner must ensure that they have the correct and up to date accreditations should the Partner wish to connect to any gateways such as PSN etc.
- 15.3 If the Council notifies the Partner or if the Partner is aware of that a User has used the Service in breach of Clause 15.1 and or 15.2 then the Partner will take

all reasonable steps to co-operate with the Council in disciplining or applying appropriate sanctions to the User.

- 15.4 If the Partner uses the Service in breach of Clause 15.1 and or 15.2, the Council may on notice where reasonably practicable suspend the Service, in so far as it is reasonable in the circumstances, without prejudice to the Council's rights of termination under this Agreement. Provided that where reasonably practicable, the Council shall warn the Partner that it is in breach of Clause 15.1 and or 15.2 and that the Council may suspend the Service.
- 15.5 The Partner agrees to indemnify the Council against all loss, damages, costs, liabilities and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Council by a third party if the Service is used in breach of Clauses 15.1, 15.2, 15.3 and 15.4 above.

16 CHARGES

- 16.1 The Partner acknowledges that the Council is obliged to pay the KPSN Supplier all charges arising under the KPSN Contract, including charges arising from Services provided to all KPSN Partners and each Partner therefore agrees and acknowledges that it shall be responsible for payment for all Services provided to it as a user under the KPSN Contract which sums shall be calculated in accordance with the KPSN Charging Process, and that:
- 16.1.1 it shall, following receipt of an invoice from the Council, reimburse the Council within 20 days of receipt, all charges incurred in respect of Services provided to the Partner, and
- 16.1.2 it shall reimburse the Council its proportion of Funding Contributions in respect of the Core Services and management of the KPSN Network within 20 days of receipt of an invoice.
- 16.1.3 Charging Process, more details are provided within the Schedule 6
- 16.2 The Core Charges due from the Partner shall be determined by the KPSN Management Board.
- 16.3 The parties shall annually, or as otherwise agree, together and in good faith agree any adjustments to the Core Charges that they consider necessary to ensure that each Partner's contribution to the overall cost of the KPSN Network remains proportionate to its use of the overall resources of the KPSN Network.
- 16.4 The Charges will be invoiced:
- 16.4.1 annually for the next 12 months of already installed Services and then
- 16.4.2 quarterly in arrears for any additional Services as and when they are procured to the Partner
- 16.5 The Partner agrees to pay all undisputed Charges within 20 days of receipt of the relevant invoice.
- 16.6 If the Partner receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- 16.6.1 the Partner shall notify the Council in writing within the invoice payment period giving its reasons. The Partner is not entitled to withhold payment of any amount that is not disputed;
- 16.6.2 the Partner's failure to pay the disputed Charges shall not be deemed to be a breach of this Agreement;

- 16.6.3 the Partner shall pay the balance of the invoice which is not in dispute by the due date;
- 16.6.4 to the extent that the Partner is obliged, following resolution of the dispute, to pay an amount, then the Council may charge interest in accordance with Clause 16.9 from the original due date until the date of payment;
- 16.6.5 to the extent that the Council is obliged to refund an amount to the Partner, interest shall be added to that amount in accordance with Clause 16.8; and
- 16.6.6 once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within 15 Working Days and, where the Council is required to issue a credit note, it shall do so within 15 Working Days.
- 16.7 If the Partner requests termination or cessation of a Service or Tail Circuit, or if the Council terminates the Agreement for the Client's breach or if the Council suspends the Services, the Partner is liable for any Charges as set out in clauses 4.12, 4.13 and 4.14 above:
 - 16.7.1 until the end of the financial year in which the termination or suspension takes effect; and;
 - 16.7.2 until the end of the agreed contracted period for any Tail Circuits and;
 - 16.7.3 for the Council's reasonable direct and documented costs which have been incurred in relation to the Service, such as unrecovered charges and termination costs payable to third party suppliers.
- 16.8 Interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 16.9 The Partner acknowledges that it may be subject to the Council's credit control procedures.
- 16.10 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.
- 16.11 All sums payable by either party under this Agreement shall be paid in sterling.
- 16.12 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Partner following delivery of a valid VAT invoice.
- 16.13 This Clause 16 shall continue in force after the termination or expiry of this Agreement.

17 PARTNER'S OBLIGATIONS

- 17.1 Where as part of the provision of the Services, the KPSN Supplier's property is located on the Partner's premises and left or kept in the Partner's care, the Partner shall be responsible for any loss of or damage to the property arising from the Partner's negligent act or omission relating to the property which has been left in its care.

- 17.2 The Partner shall not:
- 17.2.1 permit any third party (other than their contractors and Users) to use or otherwise have access to or benefit from a KPSN Supplier's software, documentation or other proprietary works or contents;
 - 17.2.2 copy a KPSN Supplier's software, documentation or other proprietary works or content other than in order to make an archival or back-up copy; nor
 - 17.2.3 decompile, disassemble, reverse engineer, translate or modify a KPSN Supplier's software.

- 17.3 The Partner shall (and shall ensure that its Users where appropriate and relevant) comply with the terms of any third-party licence terms relating to the use of any third-party software.

18 LIMITATION OF LIABILITY

- 18.1 Neither party excludes or limits its liability for:
- 18.1.1 death or personal injury caused by its own negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency; or
 - 18.1.2 for fraud or fraudulent misrepresentation;
 - 18.1.3 in relation to any matter to the extent to which such liability may not lawfully be excluded or limited;
- 18.2 Subject to express terms and conditions of this Agreement (and in particular Clause 18.1), neither party shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any direct loss which may arise out of or in relation to this Agreement (whether the party concerned was advised in advance of the possibility of such loss or damage) for:
- 18.2.1 time;
 - 18.2.2 wasted expenditure;
 - 18.2.3 anticipated savings;
 - 18.2.4 opportunity;
 - 18.2.5 data;
 - 18.2.6 revenue.
- 18.3 Subject to Clause 18.1 and 2.9, neither party shall be liable to the other in contract, tort (including negligence), breach of statutory duty, by reason of misrepresentation or otherwise for indirect or consequential loss whatsoever.
- 18.4 Subject to Clause 18.1 and 2.9, in relation to any liability arising out of or in relation to this Agreement either party's liability to the other in contract, tort (including negligence), breach of statutory duty or otherwise for direct loss or damage howsoever arising is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in the twelve (12) months immediately preceding either the relevant event (single or unconnected) or in the case of a series of events, the first event.
- 18.5 This Clause 18 shall continue in force after the termination or expiry of this Agreement.

19 FORCE MAJEURE

- 19.1 To the extent a party is delayed in meeting or fails to perform an obligation under this Agreement because of a Force Majeure Event, the party affected shall have no liability to the other for such delay or failure to perform.
- 19.2 If as a result of a Force Majeure Event, the affected party is prevented or delayed in performing its obligations under this Agreement, it shall continue performing those obligations under this Agreement that are not affected by a Force Majeure event and in performing those obligations shall deploy its resources so that (when taken with obligations to third parties) there is no undue discrimination against the other part.
- 19.3 If the affected party is prevented from or delayed in performing its obligations under this Agreement as a result of a Force Majeure Event, then the other party shall be released to the equivalent extent from its obligation in relation thereto for the duration of such Force Majeure Event (subject to the parties' termination rights set out in Clause 4.7).
- 19.4 A party cannot claim relief if the Force Majeure event is attributable to that parties' wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event.

20 ESCALATION AND DISPUTE RESOLUTION

- 20.1 Each party shall use its reasonable endeavours to resolve disputes with the other.
- 20.2 If a dispute arises in relation to this Agreement and cannot be resolved by the parties' representatives, either party may deal with such dispute according to the provisions of this Clause 20.
- 20.3 It is agreed and acknowledged that it is not the intention of either party to resort to legal proceedings. All avenues of approach will be undertaken, to exhaustion, to reach resolution. Should the parties' representatives be unable to resolve the matter in question, then in the first instance it shall be referred to the KPSN Management Board. Should the KPSN Management Board not resolve the matter, it will be escalated to KPSN Executive Board.
- 20.4 If the meetings referred to in Clause 20.3 do not resolve the matter in question then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (in this Clause 20, "CEDR") Model Mediation Procedure. To initiate mediation a party may give notice in writing (in this Clause 20.4, a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. No party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply. Neither party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute.
- 20.5 The parties will co-operate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

21 CHANGES TO THE AGREEMENT

- 21.1 The Council may change the Charges payable under this Agreement at any time by giving at least 3 months' prior written notice to the Partner where practicable.
- 21.2 the Council may change this Agreement at any time by giving as much notice as practicable before the change takes effect in order to:
 - 21.2.1 comply with any legal or regulatory obligation; or
 - 21.2.2 introduce or withdraw service features taking into account public safety; or
 - 21.2.3 introduce improved Service Levels; or
 - 21.2.4 maintain the integrity or security of the Service; or
 - 21.2.5 introduce process changes to improve the quality of the Service; or
 - 21.2.6 improve clarity, or make corrections to typographical errors providing that the changes in Clauses 21.2.2 to 21.2.6 inclusive shall not unreasonably affect the Service.

22 ASSIGNMENT

- 22.1 The Partner shall not assign, novate or otherwise dispose of any or all its rights and obligations under this Agreement without the prior written consent of the Council (which consent shall not be unreasonably withheld or delayed).
- 22.2 The Council may assign, novate or otherwise dispose of any or all its rights and obligations under this Agreement and any associated third-party licences to any person, organisation or entity without consent. The Partner reserves the right to terminate this Agreement in accordance with Clause 4, if it forms the view that the provision of the Services will be adversely affected (or not provided in accordance with this Agreement) as a result of the Council invoking the provisions of this Clause 22.2

23 ENTIRE AGREEMENT

- 23.1 This Agreement (together with the KPSN Partner Agreement between the parties, if any) contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 23.2 The parties acknowledge and agree that:
 - 23.2.1 they have not been induced to enter into this Agreement by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it; and
 - 23.2.2 in connection with this Agreement the only rights and remedies of the parties in relation to any statement, representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded.
- 23.3 Nothing contained in sub-clauses 23.1 and 23.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.
- 23.4 A person who is not a party to this Agreement has no right under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

- 23.5 If there is any inconsistency between this Agreement and any other document, agreement or understanding between the Council and the Partner which relates to the subject matter of this Agreement, the terms of this Agreement shall prevail.
- 23.6 Nothing in this Agreement shall create, or be construed as creating, a formal Partnership between the parties or the Partners in accordance with the Partnership Act 1890 or any amendments thereto. No Partner shall conduct itself as if such a Partnership exists.
- 23.7 Each Partner acknowledges that, in entering into this Agreement and the documents referred to in it or annexed to it, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

24 NOTICES

- 24.1 All notices given under this Agreement must be in writing and may be delivered by hand, e-mail or first-class post to the following:
- 24.1.1 for all other matters, in the case of notices from the Partner, to the KPSN Strategic Development & Relationship Manager and the KPSN Commercial Contracts Manager;
- 24.1.2 for all other matters, in the case of notices from the Council, to the Partner's registered office address or any alternative address or fax number or e-mail address which the Partner notifies to the Council.
- 24.2 A notice is duly served:
- 24.2.1 if delivered by hand, at the time of delivery;
- 24.2.2 if sent by first class post, three Working Days after the date of posting;
- 24.2.3 if sent by email, at the time of transmission.

25 WAIVER

- 25.1 Any variation of this Agreement must be in writing and signed by or on behalf of both parties.
- 25.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and in the circumstances for which it is given. No waiver will be implied by taking or failing to take any other action.

26 SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any extent to be invalid, the Partner and the Council shall immediately commence good faith negotiations to remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.

27 CONFIDENTIALITY

- 27.1 Except to the extent set out in this Clause 27, or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
- 27.1.1 treat the other party's Confidential Information as confidential;

- 27.1.2 not use the other party's Confidential Information for any purposes other than the performance of its obligations and exercise of its rights under this Agreement; and
- 27.1.3 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 27.2 Clause 27.1 shall not apply to the extent that:
 - 27.2.1 such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
 - 27.2.2 such information was obtained from a third party without obligation of confidentiality; or
 - 27.2.3 such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or
 - 27.2.4 such information was independently developed without access to the other party's Confidential Information.
- 27.3 The Council may only disclose the Partner's Confidential Information to the Council's (or the KPSN Supplier(s), or its or their subcontractors') personnel who are directly involved in the provision of the Services and who need to know the information. The Council shall ensure (and procure that KPSN Suppliers) that such personnel are aware of, and comply with, these confidentiality obligations.
- 27.4 The Council undertakes (except as may be required by law or in order to instruct professional advisers in connection with this Agreement) not to:
 - 27.4.1 disclose or permit disclosure of any details of this Agreement to the news media or any third party other than its sub-contractors without the prior written consent of the Partner; or
 - 27.4.2 disclose that the Partner is a Partner or client of the Council without the prior written consent of the Partner; or
 - 27.4.3 use the Partner's name or brand in any promotion or marketing or announcement without the prior written consent of the Partner.
- 27.5 At the written request of the Partner, the Council shall procure that each member of the Council's personnel identified in the Partner's request signs a confidentiality undertaking prior to commencing any work in connection with this Agreement.
- 27.6 Nothing in this Clause 27 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR's.

28 FREEDOM OF INFORMATION

- 28.1 The Partner acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with these Information disclosure requirements.
- 28.2 The Partner shall and shall procure that its Users shall:

- 28.2.1 transfer any Request for Information in relation to KSPN to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - 28.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 28.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- 28.3 In no event shall the Partner respond directly to a Request for Information unless:
- 28.3.1 expressly authorised to do so by the Council or.
 - 28.3.2 where the Partner has a statutory responsibility to response directly to the Request for Information
- 28.4 The Partner acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA, or the Environmental Information Regulations to disclose Information and in this case, shall consult with the Partner and/or applicable Users (but shall not be obliged to act on the basis of any views received)

29 PARTNERS INDEMNITY

Subject to Clauses 18 and 19 above, the parties shall indemnify and keep indemnified the other against all costs, losses, claims, demands and expenses suffered by the indemnified party, arising from a default or breach of this Agreement by the indemnifying party, which results in a breach or default under the KPSN Contract by the indemnified party and a consequent liability on the part of the indemnified party.

The Parties agree that before any claim is made under this Clause 29, they will follow the process for Escalation and Dispute Resolution set out in Clause 20 to determine whether a claim under this Clause 29 is required and the amount payable under such a claim.

30 THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

31 VARIATION

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

32 LAW

This Agreement shall be governed by and construed in accordance with the laws of England. Each party agrees to submit to the exclusive jurisdiction of the courts of England.

This Agreement has been entered into on the date stated at the beginning of it by the following:

for and on behalf of The Kent County Council

Signed by

[Redacted]

[Redacted]

Authorised Signatory

[Redacted]

For and on behalf of [NAME OF PARTNER]

Signed by [Name]

[Redacted]

[Title]

[Redacted]

Authorised Signatory

[Redacted]

SCHEDULE 1 – KPSN SERVICES, DESCRIPTIONS AND SERVICE LEVELS

The Council provides a range of network connectivity (via the KPSN network) and related services to the Partners. A full and detailed range of the Services provided are available upon request, the reference document: Schedule 1 Service Descriptions and Service Levels provide a high-level overview of the Services.

The Council provides a range of network connectivity Services via the KPSN Network, from NGA to email relay to the KPSN Partners. A full and detailed range of the Services provided are available upon request, the reference document: Schedule 1 Service Descriptions and Service Levels provide a high-level overview of the Services.

From the range of Services provided by the Council via the KPSN Supplier(s) the Partner has elected to receive the Services detailed in Appendix 3 from the Council.

Should the Partner wish to receive any other Services from the Council it should follow the Change Control Process in Schedule 2 of this Agreement.

Descriptions of the Services can be found in the KPSN Supplier Service Catalogue. The latest version of the Service Catalogue will be issued to the Partner upon signature of this Agreement.

SERVICE LEVELS

All Service Levels and Credits are calculated in arrears on a quarterly basis, with Credits calculated based on the Council's performance against Service Levels during the preceding quarter.

All Service Credits incurred by the KPSN Supplier are retained by the Council for improvements to the Service.

Any third-party compensation from suppliers such as BT, Virgin etc. will be passed directly back to the Partner when the Council has received the payment from the relevant KPSN Supplier.

SCHEDULE 2 - CHANGE CONTROL PROCEDURE

1. DEFINITION

1.1 The words and expressions in this Schedule shall, unless specifically stated or the context otherwise requires, have the same meanings as given to them in the agreement. In this Schedule:

- | | | |
|-----|-----------------------------|--|
| (a) | ‘Authorised Approver(s)’ | List of nominated officers authorised to approve a Change; |
| (b) | ‘Authorised Requestor(s)’ | List of nominated officers authorised to make a Change; |
| (c) | ‘Change Control Request’ | A request (made by either party) to initiate a Change; |
| (d) | ‘Change Control Note (CCN)’ | The written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure; |
| (e) | ‘Emergency Change’ | Any change request deemed by the Partner to be actioned as an emergency change; |
| (f) | ‘Incident’ | An event that causes any degradation in an agreed Service; |
| (g) | ‘Standard Change’ | Any change requested by the Partner that is a change to any existing service element, that is low risk and does not require Change Approval Board (CAB) authorisation e.g. (Moves, Additions and Changes (MAC’s) such as a planned or non-urgent security service rule change; |
| (h) | ‘Service Creditable’ | This means the procedure will be subject to agreed service levels and will have financial recompense for failure to achieve these levels; |
| (i) | ‘Normal Change’ | Any change requested by a KPSN Partner or the Supplier that requires assessment and authorisation via the CAB prior to implementation. Any change that is neither a Standard Change or an Emergency Change shall be regarded as a Normal Change. |

2. SCOPE

2.1 Where either party sees a need to change this Agreement, the Partner may at any time request, and the Council and or KPSN Supplier may at any time recommend, such Change only in accordance with this Change Control Procedure set out in this Schedule 2.

2.2 The Change Control Procedure shall be the mechanism by which the Partner can place an order/request for Services under this Agreement.

- 2.3 Until such time as a Change is made in accordance with the Change Control Procedure, and the KPSN Supplier and / or the Council and the Partner shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.
- 2.4 Any discussions which may take place between the KPSN Supplier and the Partner in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 2.5 Any work undertaken by the KPSN Supplier and the KPSN Supplier's personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 2, shall be undertaken entirely at the expense and liability of the KPSN Supplier.
- 2.6 Subject to the parties agreeing to any applicable Charges or amendment to the Charges, the KPSN Supplier shall not refuse to accept any Changes required by the Partner pursuant to this Change Control Procedure unless such proposed Change shall place the KPSN Supplier in breach of any Law or otherwise it is not within the technical competence of the KPSN Supplier to provide.
- 2.7 A Change may be requested by the Partner via email and shall be processed and tracked for approval in accordance with the procedure at this Schedule 2 unless the parties otherwise agree or in an Emergency Change, where the Change can be requested by telephone

3. PROCEDURES

- 3.1 Discussion between the KPSN Supplier and the Partner concerning a Change shall result in any one of the following:
- (a) no further action being taken; or
 - (b) a request to change this Agreement by the Partner; or
 - (c) a recommendation to change this Agreement by the Council / and or KPSN Supplier.
- 3.2 The Change Control Procedure shall represent three models of operation. These models will reflect the different procedures required to satisfy the needs of the different types of change. The models are:
- Standard
 - Normal
 - Emergency
- 3.3 Where the parties are agreed, Changes may be raised as part of the resolution of Incidents or problems.

4. STANDARD & NORMAL CHANGES

- 4.1 It is recognised that the procedure may not suit every requirement and any need to change the procedure may be undertaken by mutual agreement between the parties.
- 4.2 Any such mutual agreement must be undertaken within the time allotted by the appropriate service level and the service levels will not change unless any newly agreed process makes the service level unattainable. Any change in process must be documented as part of the Change Control audit trail.

5. EMERGENCY CHANGES

- 5.1 An Emergency Change may only be initiated by:
- (a) An Authorised Requestor, and/or
 - (b) The KPSN Supplier as a direct result of any network monitoring or other activity that indicates that a fault has occurred or has a risk of occurring.
- 5.2 Emergency Changes may be made prior to the Change Control Procedure being carried out in order to maintain quality of service but such changes must be only the minimum required changes.
- 5.3 Emergency Changes may lead to subsequent changes also being required such changes will be treated as non-urgent changes unless otherwise specified by an Authorised Requestor and shall be re-submitted through the Change Control Procedure.

6. IMPLEMENTATION OF A CHANGE

- 6.1 Once agreed a Change will be subject to service levels relating to the agreed timeframe in which the change should take place and be accepted as complete.
- 6.2 The KPSN Supplier shall not effect a Change without prior acceptance by the Partner (and or the Council where appropriate).
- 6.3 An audit trail of each Change Request will be kept by the KPSN Supplier.

7. PAPER BASED APPROACH

- 7.1 Where a written request for an amendment is received from the Partner, the KPSN Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the KPSN Supplier to the Partner within three weeks of the date of the request.
- 7.2 A recommendation to amend this Agreement by the KPSN Supplier shall be submitted directly to the Partner in the form of two copies of a Change Control Note signed by the KPSN Supplier at the time of such recommendation. The Partner shall give its response to the Change Control Note within three weeks.
- 7.3 Each Change Control Note shall contain:
- (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;
 - (f) a timetable for implementation, together with any proposals for acceptance of the Change;
 - (g) a schedule of payments if appropriate;
 - (h) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
 - (i) the timetable for the provision of the Change;

- (ii) the personnel to be provided;
- (iii) the Charges;
- (iv) the Documentation to be provided;
- (v) the training to be provided;
- (vi) working arrangements;
- (vii) other contractual issues;
- (viii) the date of expiry of validity of the Change Control Note; and
- (ix) provision for signature by the Council and the KPSN Supplier.

7.4 For each Change Control Note submitted by the Partner the KPSN Supplier shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information; or
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the KPSN Supplier and return one of the copies to the Partner; or
 - (iii) notify the Partner of the rejection of the Change Control Note.

7.5 A Change Control Note signed by authorised signatories of the KPSN Supplier and by the Partner shall constitute an amendment to the relevant KPSN Supplier Agreement.

7.6 Any Changes that constitute a value of more than £50,000 will need to be approved by the KPSN Strategic Development & Relationships Manager in addition to the Partner.

8. RAISING A CHANGE ON THE PORTAL

Raising a strategic change on the KPSN Supplier Portal

- 8.1 The Partner requests a quote using either the bespoke quotation or the quotation area on the KPSN Supplier Portal.
- 8.2 The KPSN Supplier quotations team validate standard quotes, and price ad-hoc quotes involving the Solutions Architects (SA), where required, to meet the Partner's requirements.
- 8.3 The quotations team will follow the Service Levels agreed in Schedule 1.
- 8.4 Once the quote has been approved by an authorised approver, the order is passed to the KPSN Supplier PMO Team to implement. The change will be subject to agreed Service Levels in Schedule 1 relating to the agreed timeframe in which the change should take place and be accepted as complete.
- 8.5 Wherever possible, changes and implementation work of a nature that is unfamiliar or has not been previously tested shall be tested in a lab environment which is not part of the active KPSN solution. Where this would result in additional cost relating to testing activities the parties will assess the risks involved and agree whether the expense is justified prior to commencing the work.

SCHEDULE 3 - INCIDENT MANAGEMENT PROCESS

The Partner can log all Incident Management and Service Requests directly with the KPSN Supplier. The process will be detailed within each KPSN Suppliers' Operational Process Document (OPD). As the OPD is a 'living' document and as such the latest versions will be issued to the Partner as and when it is made available either via the KPSN Suppliers' portal, the KPSN Portal or via email.

SCHEDULE 4 – ACCEPTABLE USAGE POLICY

Background

1. KPSN was created to provide a common network infrastructure available to all Kent Communities, authorities and public-sector organisations. The KPSN Acceptable Use Policy ('AUP') does not determine the eligibility of any particular organisation to have a connection to or use of the KPSN.
2. The KPSN AUP is an integral part of this Agreement. There are a number of explanatory notes at the end of this Schedule which are referred to in this AUP. Each note is an integral part of the AUP.
3. The KPSN AUP applies to all KPSN Partners and the Partner and to any organisation authorised to use the KPSN. It applies also to use of the KPSN by Partners' Users. While connected to the Services, the Partner and its Users must comply with the law and the KPSN AUP.
4. It is therefore recommended that the Partner establishes its own statement of acceptable use within the context of the Services provided to its Users, and in a form that is compatible with the conditions expressed in the KPSN AUP.
5. Any Partner using the KPSN Services must also take into account and comply with the provisions of the KPSN Security Policy.

The Service must not be used for:

- 5.1 Creating, transmitting, or causing the transmission of any offensive, obscene or indecent images, data or other material, or any data capable of being resolved into obscene or indecent images or materials.
- 5.2 Creating or transmitting material with the intent to cause annoyance, inconvenience or needless anxiety.
- 5.3 Creating or transmitting material with the intent to defraud.
- 5.4 Creating or transmitting material that infringes copyright.
- 5.5 Creating or transmitting unsolicited bulk or marketing material other than through a subscription service approved by the Council and included in the Service Description.
- 5.6 Attempting or committing deliberate unauthorised access to services or networks.
- 5.7 Attempting or committing deliberate acts that affect other parties by:
 - 5.7.1 Consuming their human or network resources;
 - 5.7.2 Corrupting or destroying their data;
 - 5.7.3 Violating their privacy;
 - 5.7.4 Disrupting their work;
 - 5.7.5 Denying a service;
 - 5.7.6 Refusing to disconnect disruptive hardware or software on request;
 - 5.7.7 Introducing virus or malware;

Where any condition of Service in this Schedule 4 is not met, the Partner may be issued with a Default Notice and provided with an opportunity to remedy the breach within a specified period.

Acceptable Use

6. The Partner and any of its Users may use the Services for the purposes of delivering any and all Services purchased under this Agreement. All use of the Services is subject to the provisions of this Agreement.
7. Subject to paragraph 10 below, the Services may be used by the Partner and its Users for any lawful activity that is in the furtherance of the aims and policies of the Partner.
8. It is the responsibility of the Partner to ensure that its Users use the Services in accordance with this KPSN AUP. [Note 1]

Unacceptable Use

9. The Services may not be used by the Partner or its Users or Partners for any activity that may reasonably be regarded as unlawful or potentially so. This includes, but is not limited to, any of the following activities: [Note 2]
 - 9.1. knowingly ordering any Service under this Agreement that causes any other Partner to be disadvantaged in any way without prior consultation with that Partner and without the consent of the KPSN Management Board; [Note 3],
 - 9.2. creating, downloading or transmitting, or causing the transmission of, any offensive, obscene or indecent images, data or other material, or any data capable of being resolved into obscene or indecent images or material; [Note 4]
 - 9.3. infringing on the rights of others, including the right of privacy and copyright (an example would be sharing without permission of the copyright owner protected material such as a music or video file);
 - 9.4. creating and issuing emails which has forged header information, nor should the Partner and its Users attempt to impersonate any other individual or organisation;
 - 9.5. using expressions that are offensive to others on grounds of gender, race colour, religion or other similar categories, or for trolling purposes
 - 9.6. using the Services to incite disorder or publish any material which constitutes instructions to commit illegal activities;
 - 9.7. using the Service to publish the personal details of others without their consent e.g. the Partner and its Users must comply with Data Protection Legislation or General Data Protection Regulation (GDPR);
 - 9.8. creating, downloading or transmitting material with the intent to cause annoyance, inconvenience or needless anxiety;
 - 9.9. creating, downloading or transmitting material with the intent to defraud;
 - 9.10. creating, downloading or transmitting defamatory material;
 - 9.11. creating, downloading or transmitting material such that this infringes the copyright or another person;

- 9.12 creating, downloading or transmitting unsolicited bulk or marketing material to users of networked facilities or services, save where that material is embedded within, or is otherwise part of, a service to which the Partner or its Users and Partners has chosen to subscribe.
- 9.13. attempting or committing deliberate unauthorised access to networked facilities or services; [Note 5]
- 9.14 attempting or committing deliberate activities having, with reasonable likelihood, any of the following characteristics:
- wasting staff effort or networked resources, including time on end systems and the effort of staff involved in the support of those systems;
 - corrupting or destroying the data of another Partner;
 - violating the privacy of another Partner;
 - disrupting the work of another Partner;
 - denying service to another Partner (for example, by deliberate or reckless overloading of access links or of switching equipment);
 - continuing to use an item of networking software or hardware after the Council and or the KPSN Supplier has requested that use cease because it is causing disruption to the correct functioning of KPSN;
 - other misuse of the Services or networked resources, such as the introduction of 'viruses' or other harmful software via the KPSN.

Many of these activities could result in legal action, a fine or a term of imprisonment or both. If the Partner is in any doubt as to the legality of anything, it should take independent legal advice before proceeding.

Access to Other Networks via the KPSN

10. Where the Services are being used to access another network, any breach of the acceptable use policy of that network will be regarded as unacceptable use of the Service. Any deliberate activity as described in paragraph 10 above, and where applied to a User of that network, will also be regarded as unacceptable use of the Services.

Compliance

11. It is the responsibility of the Partner to ensure its Users and Partner's compliance with the conditions set out in this KPSN AUP Schedule, and to ensure that unacceptable use of the KPSN is dealt with promptly and effectively should it occur. The discharge of this responsibility includes informing all Users and Partners of the Partner with access to the Services of their obligations in this respect.
12. Where necessary, Service may be withdrawn from the Partner in accordance with the KPSN Contract terms and conditions, or according to the process for achieving an emergency suspension as set out in Schedule 5, under the Process for Emergency Disconnection provisions.
13. Where non-compliance or breach of this AUP by the Partner or its Users result in the Council's breach of the KPSN Contract, the Partner shall be liable for and indemnify the Council against all direct costs and losses that arise therefrom.

Explanatory Notes

1. It is preferable for misuse to be prevented by a combination of responsible attitudes by the Partner to the use of KPSN resources and appropriate disciplinary measures applied to their Users or Partners.
2. The list of unacceptable activities in this paragraph 10 is not exhaustive. In accordance with paragraph 8, the use of the Services for any activity which may be regarded as unlawful is not permitted.
3. If the Partner wishes to order or cease a service from the KPSN Service Catalogue that has an adverse effect on any other Partner then the decision to proceed with the order must be made in conjunction with the other Partner. This will be facilitated by the KPSN Management Board. This is a key requirement for the use of the Services and must be adhered to at all times.
4. It may be permissible for such material to be received, created or transmitted where this is for properly supervised and lawful purposes.
5. Where the Partner wishes to commission or itself perform a test for vulnerabilities in its IT systems (for example, via penetration testing) this, as an action authorised by the Partner, will not be a breach of paragraph 10.8. However, the Partner should inform the Council and the KPSN Supplier, in advance of the test, of the source, nature and timing of the test.

SCHEDULE 5 - KPSN SECURITY POLICY

Background

1. It is the policy of the KPSN Partnership that the provision of Services would be most effective if it places as few technical restrictions as possible on the development and use of new applications and Services. The imposition of mandatory access control or monitoring systems is likely to cause problems for the Partner as well as limiting future developments, and should only be considered where there is a clear benefit. Filtered or restricted network access may be offered as optional services that the Partner can join, however the core KPSN Service should provide as open a network as is possible while meeting operational and legal requirements.
2. A presumption of openness brings associated risks that security incidents or misuse will seriously damage the effectiveness of the network. The impact of incidents may rapidly spread beyond an individual Partner where they originate. These risks must be managed if the network is to fulfil its purpose. The KPSN Partnership has therefore adopted this KPSN Security Policy to protect the network and the Partners who use it. Compliance with this KPSN Security Policy is an essential requirement for all Partners connected to the KPSN. The KPSN Security Policy also places responsibilities on the Partner of the KPSN and the responsibility for ensuring User's compliance with this Security Policy, shall be that of the Partner authorising the User's use of the KPSN. The authority of the KPSN Partnership to protect the operation of the network is established in this Agreement.
3. The goals of the KPSN Security Policy are:
 - To ensure that appropriate local policies exist to protect the KPSN, the networks connected to the KPSN and the resources using the KPSN from abuse (whether defined in this policy or other KPSN policies);
 - To ensure that mechanisms exist to aid prevention and identification of abuse of the Services;
 - To ensure an effective response to complaints and queries about real or perceived abuses of the Services;
 - To ensure that the reputation of the KPSN is protected and that the network can meet its legal and ethical responsibilities with regard to its connectivity to other Services.

Responsibilities

4. This Agreement places responsibilities on the Partner to protect the network against security breaches. In particular:
 - The Partner shall ensure that all use of the KPSN by those Users, individuals and parties to whom it provides network access complies with this KPSN Security Policy and the KPSN Acceptable Use Policy. The Partner must also ensure that information about security issues can be communicated rapidly within the KPSN Partnership and that problems are resolved promptly;
 - The Partner, including its Users and other parties, must ensure that its actions and those of the users for which it is responsible are safe for themselves and do not present a threat to others;
 - Each User of the Services must behave in accordance with this KPSN Security Policy and with any policies and procedures locally to the Partner.

5. The KPSN Management Board will ensure that the operation of the Services are appropriately monitored, that the response to security problems is coordinated, and that temporary or permanent measures are implemented, up to and including disconnection, where necessary to protect the service or to comply with the law.

Points of Contact at the Partner

6. The successful prevention of security incidents and prompt resolution of those that do occur both depend critically on the rapid and accurate transfer of information between Partners and the KPSN Service Management Team. To this end the Partner must provide the KPSN Service Management Team with up-to-date details of one or more persons who will act as security contact(s) for the Partner and any other organisation that the Partner provides access to the Services.
7. The Partner's security contact(s) have roles in both the prevention and resolution of security incidents:
 - To disseminate warnings of general risks and precautions to appropriate people within the organisations for which they are responsible, and to ensure that appropriate preventative measures are taken promptly;
 - To ensure that any particular security breach or risk that has been reported to the security contact(s) as affecting an organisation for which they are responsible is investigated and resolved promptly, and to inform the KPSN Service Management Team that this has been done.

Responsible Action by the Partner

8. The Partner shall act responsibly to protect the KPSN. This duty includes:
 - 8.1. taking effective measures to ensure that there is no security threat to the Services or other Partners from insecure devices connected to the organisation's network;
 - 8.2. taking effective measures to protect against security breaches, in particular ensuring that security measures recommended by the KPSN Service Management Team are implemented;
 - 8.3. taking effective measures to ensure that security breaches can be investigated, and those other users of the Services are protected from the consequences of breaches;
 - 8.4. assisting in the investigation and repair of any breach of security;
 - 8.5. implementing appropriate measures for giving, controlling and accounting for access to the KPSN, backed by regular assessments of the risks associated with the measures chosen;
 - 8.6. promoting local policies in support of this KPSN Security Policy, backed by adequate disciplinary and other procedures for enforcement. This includes ensuring its users act responsibly and in compliance with the KPSN Security Policy and the KPSN Acceptable Use Policy, and taking reasonable measures to ensure that they are enabled to do so through the Partner's systems, procedures and training that support good security practice.

Monitoring and Enforcement by the Council / KPSN Supplier

9. This Agreement authorises the Council and / or the KPSN Supplier to require the Partner to comply with this KPSN Security Policy, to monitor the network where it

has reason to believe there has been a breach of the KPSN Security Policy or other threat, and to take such actions as are necessary to protect the operation of the Services and the security services provided to KPSN Partnership. In particular the Council / KPSN Supplier is authorised to:

- 9.1. monitor use of the network, in accordance with applicable privacy regulations and national law, either in response to information about a specific threat or generally because of the perceived situation;
- 9.2. implement such temporary technical measures as are required to protect the network or its Partners against breaches of security or other incidents that may damage the network's service or reputation;
- 9.3. reasonably require the Partner, to fulfil its responsibilities under any of the KPSN Policies;
- 9.4. where the Partner is unable or unwilling to co-operate for whatever reason, to initiate the process for achieving an emergency disconnection set out in paragraph 10 below;
- 9.5. to the extent permitted or required by law, assist law enforcement authorities in their investigations concerning the Services.

Process for Emergency Disconnection

10. The Council and / or the KPSN Supplier may withdraw the Services delivered over a connection to the Partner temporarily and in whole or in part if and for so long as the Council and / or the KPSN Supplier reasonably taking into account public safety:
 - 10.1. needs (acting through the KPSN Supplier) to carry out emergency works on the KPSN or such emergency works are required by an upstream service provider; or
 - 10.2. believes that any Service (or any Partner's use of it) causes or appears likely to cause death of or personal injury to any person, or material damage to property; or
 - 10.3. believes that the Partner is in breach of a KPSN Policy and that the Partner has failed to remedy this in a timely manner; or
 - 10.4. believes that the Partner's use of the Services does not comply with any law or regulation, or infringes any intellectual property rights or other rights, or causes disruption or damage to KPSN, or has a material adverse effect on other Services available to other users of the KPSN, or if the Council and / or the KPSN Supplier reasonably believes that any of the above situations appear likely.
11. The Council's KPSN Technical Operations Service Delivery Manager is authorised by the Council, within the process defined here and after consultation where possible with the KPSN Management Board, to suspend all or part of the Services to the Partner.
12. Other than in the case of paragraph 10.1 above, prior to withdrawal of any Service the KPSN Technical Operations Service Delivery Manager will notify the Partner of the reasons for its belief, and the Partner will be given the opportunity within a reasonable period of time to use all reasonable endeavours to ensure that such breach or other non-compliance is remedied. The KPSN Technical Operations Service Delivery Manager will to the extent reasonably practical

assist the Partner in taking such actions as are necessary to avoid the need for suspension.

- 13.** In the event that the KPSN Technical Operations Service Delivery Manager does suspend any part of the Services, they will, whenever reasonably practicable, give reasonable prior written notice of such suspension to the Partner which notice will state the grounds of such suspension and its expected duration.
- 14.** Where any such suspension is made, the KPSN Technical Operations Service Delivery Manager will use their reasonable endeavours to minimise the effect of and the duration of any such suspension. In particular they will, to the extent that it is technically and operationally feasible to do so, limit any suspension to the connection over which use by an individual Partner location has caused the suspension.
- 15.** On the reasonable request of the Partner, the KPSN Technical Operations Service Delivery Manager will suspend or withdraw the Services to an individual Partner site, provided that the Partner shall remain responsible for the payment of the applicable portion of any Charges and any other material costs reasonably incurred by the Council and / or the KPSN Supplier in fulfilling the Partner's request.

SCHEDULE 6 – CHARGING PROCESS

Definitions

1. In this Schedule, the following words will have the following meanings. All other words and expressions shall have the same meanings as given to them in the main body of this Agreement.

‘Core Charges’ and ‘Funding Contribution(s)’ the cost of Core Services;

‘County-Wide Partner’ a Partner having a requirement to deliver Services across more than one geographical area (corresponding to a District, Borough, or Unitary boundary within a county), or whose bandwidth requirement within a single geographical area exceeds 50% of the total bandwidth required within that area;

‘Core Services’ the following Services as defined in the KPSN Contract cost model plus any of the following shared Services used to manage the Service:

- core equipment and circuits;
- core points of presence hosting;
- project management office (PMO);
- service desk;
- server management;
- network management (NOC);
- remote management
- managed firewalls;
- KPSN staffing.

‘Partner Charging Model’ The model maintained by the KPSN Service Management Team on behalf of the KPSN Management Board as set out in paragraph 4 of this Schedule and of which there is an example of in Appendix 2.

Principles

2. The KPSN Charging Process is administered and managed by the KPSN Management Board. The KPSN Service Management Team maintains on a day-to-day basis a detailed understanding of the KPSN Charging Process and makes recommendations to the KPSN Management Board accordingly.
3. The Partner may place orders / request Services via the Change Control Process set out in Schedule 2 of this Agreement. Any change request made by the Partner under the Change Control Process shall constitute a legally-binding order, placed by the Partner, for new or amended Services subject to the terms of the Change Control Process in Schedule 2 of this Agreement.

Core Charges

4. For each financial year unless otherwise agreed by the KPSN Executive Board, the allocation of Core Charges will be split across all Partners. The allocation of these charges will be in accordance with the Partner Charging Model. This links the number of a Partner’s sites and the bandwidth requirements of each with the proportion of core and other charges to be allocated to that Partner. The Partner Charging Model is documented and stored in the private area of the KPSN Partner’s Portal.

5. Any change to the Partner Charging Model will be approved by the KPSN Management Board and ratified by the KPSN Executive Board by no later than the end of August of the year preceding the financial year during which the change is to come into effect. All Partners shall be notified of any decisions made under this paragraph 5 within 10 Working Days of the decision being taken.

Other Charges

6. The Partner will be responsible for the cost of its Tail Circuits and other Catalogue Services consumed. These charges will be set and invoiced by the Council annually in accordance with Clause 16, or as otherwise agreed with the Partner.
7. Where several Partners use a single Tail Circuit ('Clustering') then the cost of that Tail Circuit will be charged in a fair and equitable way agreed to by the Partners using the Tail Circuit.
8. The KPSN Partnership budget does not cover a Partner's local activity such as its help-desk, survey and LAN integration, the costs of these activities shall be covered by the Partner's own resources.
9. A surcharge (currently set and agreed at 3%, but subject to review and potentially change on an annual basis) will be added to the cost of all Services to meet the costs of renewal of the KPSN Contract(s).

Invoicing

10. A separate KPSN cost code has been set-up within the Council to manage the KPSN Charging Process.
11. All invoicing will be in accordance with Clause 16 of this Agreement.

Price Management

12. The Council will pass on any fall or increase in pricing for any element of the Services to Partners as soon as the pricing becomes available to the Council.

SCHEDULE 7 – KPSN PARTNERSHIP OBJECTIVES

- 1.** The purpose of the KPSN Partnership is to:
 - 1.1. co-operate together in good faith with a view to achieving the objectives of the KPSN Partnership
 - 1.2. provide each other with information if requested,
 - 1.3. attend meetings if reasonably required,
 - 1.4. comply with the principles of operation set out within this KPSN Partnership Services Agreement;
 - 1.5. record the intent to establish collaborative working between the Partners;
 - 1.6. establish the way that the Partners will work together to use and develop the KPSN to promote the effective planning and delivery of ICT services within the county of Kent and elsewhere as may be agreed between the Partners from time to time; and
 - 1.7. clarify and record the responsibilities of the Partners in respect of this Agreement individually and collectively, including to each other.
- 2.** The Partners have (by signing this Agreement) individually and collectively agreed to comply with the terms and spirit of the Agreement. They will not be obliged to undertake participation or expenditure without that being agreed by them as individual Partners.
- 3.** The KPSN Partnership can be extended by agreement between the current Partners.
- 4.** The Partners agree and acknowledge that the Council has entered into KPSN Contracts and accepted obligations on behalf of the KPSN Partnership.
- 5.** This Agreement sets out the mechanism and the terms under which a Partner may place orders / receive Services under KPSN Contracts (as a user under those KPSN Contracts rather than as a party to those Contracts) and their obligations in respect of the same.

OBJECTIVES OF THE KPSN PARTNERSHIP

- 6.** To deliver high – quality network services to Kent’s communities, authorities and public service providers as they meet the challenges facing government, education and health in the 21st century.
- 7.** To create a single public service network for Kent that:
 - 7.1. Maximises value for money and sustainability
 - 7.2. Ensures technical and commercial flexibility
 - 7.3. Supports collaboration across Partners
 - 7.4. Responds to changing business requirements, and
 - 7.5. Improves Kent’s communications infrastructure.
- 8.** To provide a common network infrastructure available to all public-sector organisations in Kent to facilitate the transformation of government services within the county.
- 9.** To enable the Partners to work together to develop and maintain the KPSN Services in the most efficient, effective, economical and sustainable manner.

10. To maximise value from the KPSN Services for the benefit of all Partners.
11. To promote the development and use of the KPSN Services in collaboration with other statutory agencies, non-governmental organisations, and voluntary organisations.
12. To develop a long-term vision and influence the long-term planning for the KPSN and the KPSN Services.

STATUS OF THIS AGREEMENT

13. Nothing in this Agreement is intended to, or shall be deemed to, establish any legal partnership or joint venture between the Partners, constitute any Partner as the agent of another Partner, nor authorise any Partner to make or enter into any commitments for or on behalf of another Partner.
14. Accession to this Agreement is by signature of an authorised representative of the Partner and counter-signature by the chair of the KPSN Strategic Development & Relationship Manager on behalf of the KPSN Partnership.
15. This Agreement replaces any previous KPSN Partnership Agreement or Memorandum of Understanding signed between the Partner and the KPSN Partnership.

GOVERNANCE

16. Governance arrangements shall be maintained and reviewed by the KPSN Executive Board and in accordance with Schedule 8.
17. Current governance is described in Schedule 8 where details of the composition and terms of reference of the various governance bodies are set out. This governance establishes:
 - 17.1. a KPSN Executive Board which defines the strategic direction of the KPSN and is the highest-level body of the KPSN Partnership. It is accountable to the Partners collectively; and
 - 17.2. a KPSN Management Board which manages the service and delivery strategies for the KPSN Partnership. It is accountable to the KPSN Executive Board.

PRINCIPLES OF OPERATION

18. The Partners, individually and collectively, agree the following principles to guide the operation of the KPSN Partnership:
 - 18.1. **TRANSPARENCY:**
 - 18.1.1. Each Partner is committed to ensuring that the development, co-funding and implementation of the KPSN Services are as transparent as possible to all and to each other.
 - 18.2. **CONSULTATION:**
 - 18.2.1. Each Partner recognises the importance of consultation and the need to consult as widely as possible with each other in developing the KPSN and the KPSN Services.
 - 18.2.2. To this end, all significant new initiatives and changes in working practices that impact on the way the KPSN Services are delivered shall be openly discussed between the Partners.
 - 18.3. **CO-OPERATION:**

- 18.3.1. All Partners shall work together in a spirit of mutual trust, support and respect, and to ensure that when difficulties or differences of opinion arise they are addressed quickly, honestly and openly.
- 18.3.2. Actions and decisions taken by the KPSN Partnership shall reflect what is in the best interests of the public good and the individual Partners, and shall take into account what is fair and equitable for each Partner.
- 18.3.3. All decisions of KPSN Partnership boards and working groups shall be reached by consensus wherever possible.
- 18.3.4. All Partners accept the need to work closely together to provide effective, efficient and financially sound services. The KPSN Partnership shall from time to time explore the development of joint initiatives between all or some of the Partners, with or without third parties.
- 18.3.5. Publicity and communication will be undertaken as a collaborative activity.
- 18.4. **INFORMATION SHARING:**
 - 18.4.1. All Partners agree to provide and share information necessary to monitor and measure the effectiveness of the KPSN Services subject to Clause 27 and any confidentiality obligations they may have.
- 18.5. **COMPLIANCE:**
 - 18.5.1. The KPSN Partnership shall establish and maintain the KPSN policies to which all Partners will comply.

ADMITTANCE OF NEW PARTNERS

- 19. Prospective Partners must accept and sign this KPSN Partnership Services Agreement in order to be a KPSN Partner.
- 20. New Partners shall be admitted in accordance with the process set out at Reference Document 3. KPSN On-boarding Process.
- 21. Where a New Partner seeks to become a KPSN Partner and therefore accedes to this Agreement, the Partners shall in good faith agree upon any appropriate adjustments to the Funding Contributions by reference to the funding to be provided by the New Partner. In any such discussion the parties shall ensure that the New Partner's contribution to the overall cost of the KPSN Network remains proportionate to its individual use of the overall resources of the KPSN Network.

SCHEDULE 8 – KPSN PARTNERSHIP GOVERNANCE MODEL

Available via the KPSN Portal.

SCHEDULE 9 – KPSN PARTNERSHIP LEVELS

There are a number of different Partner / Connection types within the KPSN Partnership:

- Primary;
- Affiliate; and
- Sponsored;

Definitions:

Primary Partnership is available to all public-sector organisations with a requirement for connectivity within the UK. This includes but is not limited to local authorities, parish councils, higher education institutions, further education colleges, schools, police, fire and rescue, ambulance and NHS establishments. Any other type of organisation may be provided with a Primary connection with the permission of the KPSN Executive Board only.

A Primary Partner will have a seat on the KPSN Management Board and will have access to workshop and user groups such as the TDA Forum and Technical Group and the full range of Services specified in both the KPSN Contract and the KPSN Services Agreement. A Primary Partner will have been required to enter into a KPSN Partnership Service Agreement with the Council in order to become a Primary Partner.

Affiliate Partnership is available to all private and public-sector organisations with a requirement for connectivity within the UK. An Affiliate Partner will be responsible for all its and its Users actions and Charges throughout the duration of the Agreement. An Affiliate Partner will not have a seat on the KPSN Management Board and all that it entails.

Sponsored Partnership can be granted to any organisation by means of a Primary Partner and subject to the approval of the KPSN Management Board. Primary Partners will be responsible for the Sponsored Partner and will make payments for the Charges on the Sponsored Partners behalf. Wherever possible the Primary Partner shall use reasonable endeavours to flow down the terms and conditions of this Agreement and the KPSN Services Agreement, where appropriate to Sponsored Partners. A Sponsored connection is provided to that organisation for its own use and where that use is compatible with the overall purpose of the KPSN.

A Sponsored Partner will not have a seat on the KPSN Management Board and its Primary Partner will need to represent the Secondary Partners requirements. In effect the Primary Partner has 'sold on' KPSN Services to the Sponsored Partner and the Primary Partner is responsible for its actions. A Sponsored Partner may not itself provide Sponsored connections or connections to third parties.

In the case of a Sponsored Partner there will be no contractual relationship between the recipient of the connection and the KPSN Supplier. Any such relationship will be between Sponsored Partner, the organisation holding the Primary connection involved.

Any New Partners will follow the KPSN On-Boarding Process following approval from the relevant KPSN Board.

APPENDIX 1 ON-BOARDING COMMUNICATIONS AND CONTACT LIST

KPSN On-boarding Communications List

Please complete the following On-boarding Communications List (if more than one person is required per role, please add additional rows detailing which Role it is applicable for).

Role	Title	Name (first, Last)	Email	Phone Number(s)	Address
Budget Holder	█	██████████	██████████	██████████	Southgate House, Pans Lane, Devizes, SN10 5EQ
Security Network Manager	█	██████████	██████████	██████████	Omega House, 112 Southampton Road, Eastleigh, SO50 5PB
Management Board Representative	█	██████████	██████████	██████████	Southgate House, Pans Lane, Devizes, SN10 5EQ
Service Delivery Group (SDG) Representative	█	██████████	██████████	██████████	Building 003, Fort Southwick, James Callaghan Drive, Fareham, PO176AR
KPSN Communications List					
Service Desk Contact	█	██████████	██████████	██████████	Nest@Mallard, Express Park, Bridgwater, Somerset, TA6 4RN
Finance Contact	█	██████████	██████████	██████████	Omega House, 112 Southampton Road, Eastleigh, SO50 5PB
Approvers and amounts	█ █	██████████	██████████	██████████	Up to £100k Up to £200k

Service Desk Contact List

Please complete the following On-boarding Service Desk List (if more than one person is required per role, please add additional rows detailing which Role it is applicable for).

Role	Title	Name (first, Last)	Email	Phone Number(s)	Address
Operational Contact 1	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Nest@Mallard, Express Park, Bridgwater, Somerset, TA6 4RN
Operational Contact 2	■	■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Nest@Mallard, Express Park, Bridgwater, Somerset, TA6 4RN
Operational Contact 3					
Operational Contact 4					
Escalation Contact 1 <i>(to be used if Operational Contacts cannot be reached)</i>	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Nest@Mallard, Express Park, Bridgwater, Somerset, TA6 4RN
Escalation Contact 2 <i>(to be used if Operational Contacts cannot be reached)</i>	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Nest@Mallard, Express Park, Bridgwater, Somerset, TA6 4RN
Escalation Contact 3 <i>(to be used if Operational Contacts cannot be reached)</i>	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Building 003, Fort Southwick, James Callaghan Drive, Fareham, PO176AR
Major Incident Contact 1	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Three Six Zero, Marlborough Street, Bristol BS1 3NX
Major Incident Contact 2	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	Building 003, Fort Southwick, James Callaghan Drive, Fareham, PO176AR
Out of Hours Contact					

KPSN Change Management List

Please complete the following On-boarding Change Management List (if more than one person is required per role, please add additional rows detailing which Role it is applicable for).

Role	Title	Name (first, Last)	Email	Phone Number(s)	Address
Change Requestor 1	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■	360 Bristol - Three Six Zero Bristol Avon BS1 3NX
Change Requestor 2	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■	360 Bristol - Three Six Zero Bristol Avon BS1 3NX
Change Requestor 3	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■	Sackville House, Brooks Close Lewes East Sussex BN7 2FZ
Change Requestor 4					
Change Requestor 5					

Change Authoriser 1	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■	360 Bristol - Three Six Zero Bristol Avon BS1 3NX
Change Authoriser 2	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■	360 Bristol - Three Six Zero Bristol Avon BS1 3NX
Change Authoriser 3	■	■■■■■■■■	■■■■■■■■■■■■■■■■■■■■	■■■■■■■■	Sackville House, Brooks Close Lewes East Sussex BN7 2FZ

Change Authoriser 4					
Change Authoriser 5					

APPENDIX 2 CORE COST MODEL

Available via the KPSN Portal

APPENDIX 3 SERVICES PROVIDED

Agreed KPSN Statements document the services provided by KPSN to respective Partners. This will be the definitive list of services and be correct at the time of the latest agreed statement issued

REFERENCE DOCUMENTS

These are separate documents that are reviewed annually in accordance with the main, core, contract.

- | | | |
|----|---|-------------------------------|
| 1. | OPD | Available via the DUCL Portal |
| 2. | KPSN Service Catalogue | Available via the KPSN Portal |
| 3. | KPSN On-boarding | Available via the KPSN Portal |
| 4. | Service Descriptions and Service Levels | Available via the KPSN Portal |