

FVGIS REPORT
BACKGROUND PAPER NO 1

APPENDIX 1

Number: A.5.2-01

AGREEMENT FOR THE SUPPLY OF SERVICES

Between

THE STIRLING COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994 and having its headquarters at Viewforth, Stirling ("Stirling Council") (acting on behalf of itself, THE FALKIRK COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994 and having its headquarters at Municipal Buildings, Falkirk ("Falkirk Council") and THE CLACKMANNANSHIRE COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994 and having its headquarters at Greenfield, Alloa ("Clackmannanshire Council") operating jointly and severally, as FORTH VALLEY GEOGRAPHIC INFORMATION SERVICES ("FVGIS"))

and

The Central Scotland Valuation Joint Board, incorporated under the Local Government etc (Scotland) Act 1994 and having its registered office at Hillside House, Laurelhill, Stirling, ("Assessor for Central Scotland") (the "Customer")

WHEREAS:

- (a) Stirling Council, Falkirk Council and Clackmannanshire Council operate in terms of a joint working arrangement as FVGIS, under which Stirling Council is authorised to contract on behalf of itself, Falkirk Council and Clackmannanshire Council operating as FVGIS; and
- (b) The Customer requires FVGIS to provide the Services hereinafter specified and that on the terms of this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

Definitions used in this Agreement are specified in Clause 1 of the general terms and conditions which form Part 1 of the Schedule to this Agreement (the "General Terms and Conditions").

2. Schedule

Parts 1 (General Terms and Conditions), 2 (Agreed Form Addendum) and 3 (Services and Charges etc) of the Schedule are hereby incorporated herein and form an integral part of this Agreement.

3. Commencement and Duration

This Agreement shall commence on the Commencement Date notwithstanding the date or dates of execution hereof and shall continue in force until the Completion Date unless extended or terminated in accordance with the General Terms and Conditions (the "Term").

4. Supply of Services

During the Term and in accordance with the provisions of this Agreement, FVGIS shall provide to the Customer the Services specified in Part 3 of the Schedule and any Addendum from time to time in force.

IN WITNESS WHEREOF these presents consisting of this page and the Schedule annexed hereto are executed as follows:

Signed for and on behalf of FVGIS

at STIRLING

Authorised Signatory

Print Name: ELIZABETH MARY DUNCAN

Address: VIEWFORTH, STIRLING

Date: 18 July 2003

Signed for and on behalf of the Customer

at _____

Authorised Signatory

Print Name: ELIZABETH S. MASON

Address: MUNICIPAL BUILDINGS, FALKIRK

Date: 18 July 2003

Witness

Print Name: ANDREW CUNNINGHAM REE

Address: VIEWFORTH, STIRLING

Date: _____

Witness

Print Name: DAVID TONGH

Address: MUNICIPAL BUILDINGS, FALKIRK

Date: 16 July 2003

This is the Schedule referred to in the foregoing Agreement Number A.5.2-01 for the Supply of Services between FVGIS and the Customer

Schedule
Part I
General Terms and Conditions

1. Definitions and Interpretation
- 1.1 Terms used in this Agreement shall have the meanings set out below unless the context otherwise requires.
- Addendum an addition to this Agreement in the form set out in Part 3 of the Schedule;
- Carry Over Days the number of days specified as the carry over days pertaining to each Resource Management Period in Part 3 of the Schedule;
- Change as defined in Clause 7.1;
- Changes the changes (including, where applicable, the rates) specified in Part 3 of the Schedule and any other sums payable by the Customer under this Agreement for the Services;
- Commencement Date the date specified as the commencement date in Part 3 of the Schedule;
- Completion Date the date specified as the completion date in Part 3 of the Schedule (if applicable);
- Confidential Information all information of a confidential nature disclosed (whether verbally or in writing) by either party to the other whether before or after the Commencement Date, including any information relating to each party's business, personnel, equipment, processes, operations, methodologies, processes, developments, know-how and business affairs;
- Duration as defined in Clause 7.2.3;
- Intellectual Property Rights any copyright, patent, trade mark or trade name, design rights, database rights, know-how or other similar right of whatever nature, registered or unregistered, present or future, together with any application for any of the foregoing and any process or extension thereof anywhere in the world;
- Materials all software applications, reports, presentations, maps, spreadsheets, workshop agendas and proceedings, data files, training books, workbooks, handouts, manuals and all other documents (in whatever format) provided by FVGIS in connection with the delivery of the Services;
- Purpose the purpose specified in Part 3 of the Schedule;
- Relevant Invoicing Period the period specified as the relevant invoicing period in Part 3 of the Schedule;
- Resource Management Period the period specified as the resource management period in Part 3 of the Schedule;
- Schedule the schedule to this Agreement in three parts;
- Service Days the number of days specified as the service days in each Resource Management Period in Part 3 of the Schedule;
- Service Period the period specified as the service period in Part 3 of the Schedule;
- Services the services specified in Part 3 of the Schedule; and
- Total Service Days the number of days specified as the total service days in Part 3 of the Schedule.
- 1.2 In interpreting this Agreement
- 1.2.1 headings are for ease of reference only and shall not affect the construction of this Agreement; a reference to a Clause is to a clause of these General Terms and Conditions and a reference to a Part of a Schedule is to a part of the schedule to this Agreement and the Schedule forms part of and shall be construed as one with this Agreement;
- 1.2.2 the words "including" and "in particular" shall be construed as being by way of illustration or example only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words; and
- 1.2.3 where reference is made to a statutory provision this includes any statutory provision which amends, amends, consolidates or replaces the same or which has been amended, amended, consolidated or replaced by the same and any order, regulation or other statutory or subordinate legislation made from time to time under it.

2. Services
- 2.1 FVGIS shall provide the Services to the Customer in accordance with the provisions of this Agreement and with reasonable skill, care and diligence.
- 2.2 FVGIS shall provide the Services to the Customer with appropriately qualified, experienced and trained personnel.
- 2.3 The Customer shall be deemed to have accepted the Services and/or the Materials for the

use may be) or any part thereof if it has not been to FVGIS a notice in writing stating otherwise within 14 days of delivery (or re-delivery, as the case may be) of the Services and/or the Materials (as the case may be) or any part thereof, providing that the Customer shall, in all circumstances, act reasonably and bona fide in taking such a notice.

2.4 The Completion Date or any delivery date specified in Part 3 of the Schedule or otherwise agreed by the parties in accordance with this Agreement constitutes an obligation on FVGIS to use reasonable endeavours to meet such delivery date or Completion Date. Where FVGIS takes any remedial action in respect of the Services and/or the Materials pursuant to a notice issued by the Customer under Clause 2.3 above and such remedial action results in any failure to meet such delivery date or Completion Date, FVGIS shall be entitled to a reasonable extension thereof without incurring any liability for such failure.

3. Charges and Payment

- 3.1 The Customer shall pay the Charges to FVGIS which are invoiced to the Customer by FVGIS from time to time in accordance with Clause 3.4.
- 3.2 The Customer shall pay all travel and subsistence costs and expenses reasonably incurred by FVGIS employees, agents and sub-contractors in the provision of the Services.
- 3.3 Unless otherwise stated in writing, all quotations and charges (including the Charges) shall be exclusive of VAT, which shall be payable in addition by the Customer at the rate and in the manner being prescribed by law from time to time. For the avoidance of doubt any duty rate specified in the Charges is the rate payable by the Customer for FVGIS providing any part of the Services for seven (7) hours and shall apply, or continue to apply, pro rata to any period FVGIS provides any part of the Services for less than, or in excess of, seven (7) hours in any day.
- 3.4 FVGIS will invoice the Customer for the Charges for each Relevant Invoicing Period in arrears and the Customer shall pay in full the amount shown on the invoice within twenty eight (28) days of the invoice date unless otherwise specified in Part 3 of the Schedule.
- 3.5 If the Customer fails to make payment of an invoice in accordance with Clause 3.4, FVGIS reserves the right to suspend provision of all or any of the Services and the Materials until such payment has been made in full; and
- 3.5.1 charges incurred at the rate of 4 per cent per annum above the base rate from (a) the date of breach; and (b) calculated on a daily basis on all outstanding amounts from the date until the actual date of payment, whether before or after judgment provided that this interest shall not apply where the Customer has, in FVGIS' sole opinion, bona fide disputed the invoice.
- 3.6 Payment shall be made in (i) Sterling in such manner as FVGIS shall require from time to time. All payments made by the Customer under this Agreement shall be made without any deduction, set-off, retention, withholding or counterclaim of any kind, except as is the case required by law.
- 3.7 FVGIS reserves the right, by giving notice to the Customer at any time, to increase the Charges to reflect any delay and/or increased costs incurred by FVGIS as a result of the Customer's failure (including default or delay by the Customer to give FVGIS adequate and accurate information or adequate access, assistance or information) to comply with this Agreement.
- 3.8 Without prejudice to Clause 3.7, if the Term exceeds or is likely to exceed one year, FVGIS shall be entitled to review the Charges once in any year prior to each anniversary of the Commencement Date (or as soon as reasonably practicable thereafter), such review taking into account such factors as FVGIS shall consider appropriate and relevant, including factors such as the Retail Prices Index (RPI). FVGIS shall give the Customer not less than one month's written notice of the variation to the Charges following such review and the Customer shall not unreasonably withhold or delay its agreement to such variation. Such variation to the Charges shall take effect from the relevant anniversary of the Commencement Date (or such later date as is specified in such notice).

4. The Customer's Obligations

- 4.1 The Customer shall
- 4.1.1 use the Materials only for the Purpose;
- 4.1.2 provide all reasonable assistance required by FVGIS to enable FVGIS to provide the Services, including providing all such equipment, appropriately qualified, experienced and trained personnel, information, data, manuals, and such means to produce, working space, normal office amenities and systems at such times as may be required by FVGIS; and

4.1.3 provide all licenses of third party software (including, where necessary for the provision of the Services, the right for FVOIS to use such software) as set out to FVOIS.

4.2.1 During the Term, the Customer agrees to engage FVOIS to provide the Services for the Total Service Days. Subject to the following provisions of this Clause 4.2, during each Resource Management Period the Customer shall engage FVOIS for the Service Days for that Resource Management Period. For the avoidance of doubt, in each Resource Management Period FVOIS shall not be obliged to provide the Services for a number of days exceeding the Service Days for that Resource Management Period.

4.2.2 If in any Resource Management Period the Customer fails to engage FVOIS to provide the Services for the Service Days for that Resource Management Period, the Customer shall be entitled to carry over into the next Resource Management Period, the number of said Service Days for which the Customer has failed to engage FVOIS in that Resource Management Period, up to the maximum of the Carry Over Days pertaining to that Resource Management Period and FVOIS shall provide the Services in the next Resource Management Period for the number of days carried over in accordance with this Clause 4.2.2. If such a carry over occurs, the Service Days for the next Resource Management Period shall be determined by the number of Service Days carried over in accordance with this Clause 4.2.2. For the avoidance of doubt the Customer shall only be entitled to carry over the Carry Over Days pertaining to a Resource Management Period to the Resource Management Period immediately following and so on.

4.2.3 Notwithstanding Clause 4.2.2, during each Service Period, the Customer may request, and subject to FVOIS' resources being available and at the discretion of FVOIS, FVOIS may agree to allow, that some or all of the Service Days from one Resource Management Period are carried over into any other Resource Management Period in the same Service Period. If so agreed in accordance with this Agreement, the Service Days for the relevant Resource Management Periods shall be adjusted by the number of Service Days carried over in accordance with this Clause 4.2.3.

4.2.4 If, at the end of each Service Period during the Term, the Customer has failed to engage FVOIS on all or any of the Service Days in any Resource Management Period during the relevant Service Period ("Unused Days"), the Customer hereby agrees that FVOIS shall be entitled to invoice and the Customer shall be obliged to pay fifty per cent (50%) of the Charges in respect of the Services for the Unused Days for that Service Period, notwithstanding that such Services have not been delivered, and the Customer shall pay such invoice in accordance with Clause 7.4. The Customer acknowledges and agrees that this Clause 4.2.4 is reasonable in the circumstances and reflects the requirement of FVOIS to organize and prioritize the resources available to it and that it represents a realistic estimate of the loss and/or damage which FVOIS would suffer or bear by reason of the failure by the Customer to engage FVOIS to provide the Total Service Days. For the avoidance of doubt if FVOIS exercises its right under this Clause 4.2.4, to invoice the Customer for the Charges in respect of any Unused Days, FVOIS shall not be obliged to provide the Services for such Unused Days.

4.3 The Customer shall comply (and shall ensure that all employees provided by it to FVOIS shall comply with all applicable laws and legal requirements, including health and safety legislation and regulations) and shall notify FVOIS' employees, agents and sub-contractors attending to premises of all applicable health and safety procedures.

4.4 The Customer shall not, and shall ensure that its employees, sub-contractors and agents shall not:

4.4.1 in attempting to secure the execution or obtaining of this Agreement, offer, give, accept or give any kind of inducement or reward to any employee, sub-contractor or agent of FVOIS; or

4.4.2 show favour or disfavour to any person in relation to this Agreement.

4.5 The Customer declares that neither it nor any of its employees, sub-contractors or agents has committed or given and shall not, and shall ensure that its employees, sub-contractors and agents shall not commit or give, any offences under the Prevention of Corruption Acts 1918 to 1919, or any law or revised the receipt for which is an offence under Section 61 of the Local Government (Scotland) Act 1975 (respectively).

5. Contract Managers

Each party shall appoint and publish a Contract Manager during the Term. The FVOIS Contract Manager and the Customer Contract Manager (or its deputy if the respective Contract Manager is unavailable) shall hold regular review meetings (which shall take place at least once in every month from the Commencement Date unless otherwise specified in Part 3 of the Schedule or otherwise agreed by the parties in accordance with this Agreement) and at any time reasonably requested by either party during the Term.

6. Complaints and Disputes

6.1 Any complaints by the Customer which arise under or in connection with this Agreement, shall be notified in writing to the FVOIS Contract Manager.

6.2 Any dispute which arises under or in connection with this Agreement shall be referred to the Head of FVOIS and a senior Customer representative of equivalent position in the first instance who shall use all reasonable endeavours to resolve the dispute.

6.3 If the dispute cannot be resolved in accordance with Clause 6.2, the parties may, by agreement, submit the dispute to arbitration before an arbitrator selected and agreed upon by the parties and failing such agreement, by the President or the Vice-President for the time being of the Law Society of Scotland and such arbitration shall be conducted in accordance with the arbitration rules of the Law Society of Scotland current at the date of appointment of the arbitrator. The provisions of this Clause 6.3 shall be without prejudice to the rights of either party to bring proceedings in any competent court of law (subject to Clause 16.10).

7. Change

7.1 Either party may request in writing a change to the timing, nature or extent of the Services ("Change") but the other party shall not be obliged to accept (in the case of the Customer) or provide or implement (in the case of FVOIS) the same. Any Change which is agreed in writing and signed by duly authorized representatives of each of the parties shall be subject to the provisions of this Agreement.

7.2 The parties agree that any request for Change by the Customer shall be conducted in accordance with the following procedure:

7.2.1 the Customer shall obtain from the FVOIS Contract Manager FVOIS' standard change request form and shall submit the completed change request form to FVOIS;

7.2.2 FVOIS will evaluate the change request form within a reasonable period of receipt and will notify the Customer in writing of the expected effect on the Services, the likely timetable for implementation, any expected benefits in the Charges and of any other matter which FVOIS considers relevant to the Change ("Evaluation");

7.2.3 the Customer shall, within 14 days of receipt of the Evaluation, notify FVOIS in writing of its intention to proceed with or abandon the Change. If the Customer elects to proceed with the Change, FVOIS and the Customer will confirm in writing the changes to the Services and to this Agreement as a result of the Change by completing and executing an Addendum; and

7.2.4 FVOIS shall be entitled to invoice, and the Customer hereby agrees to pay, a reasonable proportion of the costs and expenses reasonably incurred by FVOIS in preparing the Evaluation.

7.3 The parties agree that any request for Change by FVOIS shall be conducted in accordance with the following procedure:

7.3.1 FVOIS shall submit details of the Change to the Customer in writing;

7.3.2 the Customer will consider FVOIS' proposal for Change and shall notify FVOIS in writing of its acceptance of the Change or the Customer's counter proposal within a reasonable period of receipt of such details;

7.3.3 if the Customer issues a counter proposal under Clause 7.3.2, the parties shall seek to agree the Change as soon as reasonably practicable thereafter; and

7.3.4 if FVOIS elects to proceed with the Change, FVOIS and the Customer will confirm in writing the changes to the Services and to this Agreement as a result of the Change by completing and executing an Addendum.

7.4 Each Addendum completed and executed by the parties in accordance with this Agreement will supersede (and, to the extent of any conflict, take precedence over) Part 3 of the Schedule and any previous Addenda (unless otherwise agreed by the parties in accordance with this Agreement).

7.5 Notwithstanding any provision of this Agreement, neither party shall be obliged to do anything which is unlawful or illegal.

8. Intellectual Property

The Customer acknowledges and agrees that all Intellectual Property Rights in and to the Materials are and shall be owned by FVOIS and FVOIS hereby grants to the Customer a non-exclusive, royalty-free, non-transferable, perpetual license to use the Materials for the Purpose. The Customer shall not, and shall ensure that none of its employees, sub-contractors or agents shall copy or otherwise reproduce (save to the extent and for the purposes permitted by law) or in any other way use any part of the Materials whether electronically or otherwise without the prior written consent of FVOIS.

9. Confidentiality

9.1 FVOIS and the Customer will each ensure that their respective employees, sub-contractors and agents shall ensure, as soon as confidential all Confidential Information. Each party will ensure that it shall not, and will ensure that its respective employees, sub-contractors and agents shall not, at any time for any reason (save as may be necessary for proper performance of the Services) disclose or permit the disclosure of Confidential Information to be disclosed.

9.2.1 Class B.I shall not prevent the disclosure or use by either party of any Confidential Information while it is in use into the public domain or disclosure by breach of this Agreement.

9.2.2 either party receives from an independent third party having the right to disclose the same.

9.2.3 either party can show (in the reasonable satisfaction of the other) was in its possession by being recorded in its files or records prior to the date of receipt from the other party; or

9.2.4 either party is required by law to disclose to any court or other competent authority, provided that the other party is provided with reasonable prior notice of the same so that it shall have the opportunity to make any representations to such court or other competent authority.

10. Liability

10.1 Without prejudice to Clause 9, the Services and/or Materials are provided solely to enable the Customer to fulfil the Purpose and the Customer agrees with and acknowledges to FVOIS that it shall not put the Services and/or Materials to any other use or use the Services and/or Materials for any other purpose whatsoever. The Customer agrees that it is the Customer's responsibility to ensure that any Services and/or Materials provided are suitable for the Purpose.

10.2 Subject to Clauses 10.1 and 10.4, except as regards payment obligations under Clause 3 and Clause 4.2 in respect of which no limit of liability applies, in respect of any claim by one party against the other under or in connection with this Agreement, in no event shall the aggregate liability of either party to the other under this Agreement for any liability or claim of whatever kind (whether contractual or otherwise) exceed the aggregate Charges involved to and paid by the Customer in the twelve (12) month period immediately prior to the date on which the facts and circumstances giving rise to the claim arose (or, in the event of a product or continuing breach, in the twelve (12) month period immediately prior to the date of first occurrence of the product or continuing breach) or, only in the case of claims arising in the first twelve (12) months of this Agreement, the aggregate Charges involved to and paid by the Customer in such twelve (12) month period.

10.3 Notwithstanding Clause 10.2, in respect of any claim by the Customer under or in connection with this Agreement, FVOIS shall have no liability whatsoever for any loss or damage of whatever kind:

10.3.1 for any consequential or indirect loss or damage;

10.3.2 for loss of profits, business, revenue, goodwill and/or anticipated savings;

10.3.3 in respect of any delay in or non-performance (either in whole or in part) of the Services or any obligations under this Agreement where such delay, non-performance or breach of obligation is caused by any act, omission, fault or delay of the Customer or its employees, sub-contractors or agents;

10.3.4 to the extent that any claim is directly or indirectly caused or affected by any dishonest, fraudulent or criminal act of the Customer or any employee, sub-contractor or agent of the Customer;

10.3.5 which may arise out of or in connection with the transmission of any form of virus, worm, Trojan horse, or other file, code, instructions or other software defect or any other malware or will cause, modify, damage or delete any data files or other computer programs used by the Customer, any employee, sub-contractor or agent.

10.4 Nothing in this Agreement shall exclude or limit the liability of either party for death or personal injury resulting from its own negligence.

10.5 The Customer agrees to indemnify FVOIS on demand against any claims, actions, demands or proceedings brought against FVOIS by third parties or bodies, authorities, agencies, courts, charges and expenses suffered or incurred by FVOIS which in any way result from the Customer's misuse of the Services and/or Materials in the Customer's breach of this Agreement.

11. Warranty.

Each of the parties warrants and represents to the other that it has the full right, power and authority to enter into this Agreement.

12. Data Protection

12.1 Words and phrases which are defined in the Data Protection Act 1998 ("DPA") and used in this Clause 12 shall have the same meaning in this Clause 12.

12.2 The parties shall each comply with their obligations under the DPA in relation to the processing of Personal Data by each of them in connection with the Services.

12.3 In relation to the processing by FVOIS of Personal Data held by the Customer in the course of the performance of the Services, the Customer shall at all times maintain the role of Data Controller of such Personal Data and FVOIS shall maintain the role of Data Processor of such Personal Data.

12.4 FVOIS shall use reasonable endeavours to ensure that appropriate technical and

organisational security measures are taken against unauthorised or unlawful processing of, and against accidental loss, destruction of, or damage to, such Personal Data.

13. Termination

13.1 Either party may terminate this Agreement forthwith upon giving written notice to the other if:

13.1.1 the other commits a material breach of any term of this Agreement (including, in the case of the Customer, any failure to pay any sums due under this Agreement) and, in the case of any breach capable of being remedied shall have failed to remedy the breach within thirty (30) days after receipt of a request in writing from the other party to do so; or

13.1.2 either party becomes bankrupt or insolvent or has a receiver or administrator appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent reorganisation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if any party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business.

13.2 FVOIS may terminate this Agreement forthwith:

13.2.1 in the event of a breach of Clauses 4A or 4B; or

13.2.2 upon a Change of Control of the Customer, and for this purpose "Change of Control" means a substantial change of ownership of the Customer such that any person, entity or company, directly or indirectly or in concert with any other person, becomes the owner of 50% or more of the equity share capital of that company and/or acquires control of 50% or more of the voting rights of the Customer.

13.3 Either party may terminate this Agreement in the manner and circumstances referred to in Clause 13.2.

14. Consequences of Breach or Termination

14.1 Following expiry or termination of this Agreement for any reason:

14.1.1 each party will on request by the other return or supply to the other all documents, disks and other material in its possession (including any Confidential Information of the other, except, in the case of FVOIS, for Confidential Information created or compiled in the Materials, which FVOIS shall be entitled to retain subject to Clauses 5) and the Customer shall pay to FVOIS all amounts of Charges and Interest to the date of expiry or termination (as appropriate, if necessary, for any lesser period than that for which an invoice would be rendered in accordance with the provisions of this Agreement);

14.2 Expiry or termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising out of this Agreement as at the date of expiry or termination and, in particular, the right to recover damages from the other, and the right of FVOIS to recover any Charges due from the Customer nor shall expiry or termination affect the continuance in force of any provision contained within this Agreement which is expressly or by implication intended to survive its termination or expiry or termination including Clauses 8, 9, 10, 11 and 16 and this Clause 14 which shall survive termination and/or expiry of this Agreement and shall remain in full force and effect.

15. Force Majeure

15.1 Neither party shall be liable to the other for any total or partial failure, interruption or delay in performance of its respective duties or obligations under this Agreement (excepting obligations to pay money) resulting from causes constituting Force Majeure. For the purposes of this Agreement, "Force Majeure" shall be deemed to be any cause arising from or attributable to war, events or conditions beyond the reasonable control of the party claiming Force Majeure, including nuclear, chemical or biological contamination (unless the source or cause of the contamination is a result of activities of the party claiming Force Majeure), war, acts of war, civil war, armed conflict or terrorism, pressure waves caused by direct travelling at supersonic speeds, acts of governmental departments, Acts of God, flood, fire, explosion or earthquake, strike, lock-out, industrial dispute, or the injury, sickness or death of any person employed or engaged to deliver the Services who cannot reasonably be replaced or substituted.

15.2 If a Force Majeure situation arises, the party whose performance is most immediately affected shall promptly give notice to the other and in any event no later than two (2) days after becoming aware of the Force Majeure situation arising, and shall be excused performance of its obligations under this Agreement (except in the case of obligations to pay money, which shall not, under any circumstances, be subject to Force Majeure) in so far as the Force Majeure prevents such performance. In the event that a Force Majeure situation continues for a period of three months or more, then either party may terminate this Agreement by giving twenty eight (28) days' notice in writing to the other party.

16. Miscellaneous

16.1 Entire Agreement. This Agreement, constitutes the entire agreement between the parties

with respect to the subject matter contained in this Agreement to the exclusive (unless otherwise expressly agreed in writing) of any other forum of business or law and jurisdiction, including any stated or referred to in the Customer's order or any that the Customer may put forward at any time. Subject to the provisions of Clause 7.4, in the event of any conflict between the first four paragraphs of this Agreement, any Addenda completed and executed by the parties in terms of this Agreement, Part 3 of the Schedule and the Clauses of the General Terms and Conditions in Part 1 of the Schedule, the order of precedence shall be the order in which those parts are referred to in this clause. This Agreement represents and replaces any prior written or oral agreements, representations (including fraudulent or negligent misrepresentation) and undertakings between the parties. For the avoidance of doubt, the parties do not intend any term of this Agreement to be superseded by any third party.

16.2 **Warranty Exclusion** Each party acknowledges that in entering into this Agreement it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

16.3 **Assignment** The Customer shall not assign or transfer any of its obligations under this Agreement without the prior written consent of FVGIS. FVGIS shall be entitled to assign the benefits and obligations of this Agreement to any statutory successor.

16.4 **No Association** This Agreement constitutes an agreement for services and nothing contained in this Agreement shall constitute a partnership, joint venture, employment or agency between the parties herein and neither party shall hold itself out as an agent or

employee of the other party in connection with this Agreement.

16.5 **Waiver** Any failure or delay by FVGIS to enforce any of its rights shall not be construed as a waiver of such rights. Any such waiver of rights by FVGIS in relation to the Customer's breach of any of its obligations under this Agreement shall be in writing and shall not be construed as a waiver of such rights in relation to any other breach.

16.6 **Severance** Notwithstanding that any provision of this Agreement may prove to be illegal, or unenforceable in whole or in part, the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect.

16.7 **Validation** No variation to this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

16.8 **Non-Solicitation** Each of the parties hereby agrees that during the term of this Agreement and for a period of six months following its termination, it shall not directly solicit any employee of the other involved in the provision of the Services without the prior written consent of the party whose employee is being considered for employment.

16.9 **Notice** Any notice required to be given hereunder shall be in writing and shall be sent by pre-paid recorded delivery post to the address of the addressee specified in this Agreement or to any notified change thereof.

16.10 **Governing Law** This Agreement shall be construed in accordance with and governed in all respects by the law of Scotland and the parties hereby procure the exclusive jurisdiction of the Scottish courts.

Schedule

Part 2

Agreed Form Addendum

Addendum

Between

THE STIRLING COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994 and having its headquarters at Viewforth, Stirling ("Stirling Council") (acting on behalf of itself, THE FALKIRK COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994 and having its headquarters at Municipal Buildings, Falkirk ("Falkirk Council") and THE CLACKMANNANSHIRE COUNCIL, incorporated under the Local Government etc (Scotland) Act 1994 and having its headquarters at Greenfield, Alloa ("Clackmannanshire Council") operating jointly and severally as FORTH VALLEY GEOGRAPHIC INFORMATION SERVICES ("FVGIS") and CENTRAL SCOTLAND VALUATION JOINT BOARD (the "Customer")

WHEREAS:

An agreement with the abovenoted number was entered into on 1st July, 2003 between FVGIS and the Customer for the provision of services by FVGIS to the Customer ("Agreement"). The parties hereby agree that the Agreement shall be amended as follows:

Schedule

Part 3

Services and Charges

Services:	Intranet GIS Support & Development, Desktop GIS Support & Development, User Training, Bureau and Related Support Services, GIS Data Management, Business and Technical Consultancy
Purpose:	Provision of Corporate GIS Services to and for Central Scotland Valuation Joint Board
Commencement Date	1 July 2003
Completion Date	30 June 2005
Total Service Days	100
FVGIS Contract Manager	Richard Teed
Customer Contract Manager	Colin Campbell
Frequency of Contract Manager Meetings	Quarterly
Charges	Manager: £500 per day Analyst: £450 per day Support Officer: £400 per day. The Customer shall pay all travel and subsistence costs and expenses reasonably incurred by FVGIS' employees, agents and sub-contractors in the provision of the Services.
Relevant Invoicing Period	Quarterly

Service Period (Year 1) (1 July 2003 – 30 June 2004)				
	Resource Management Period 1 (1 July – 30 Sept. 2003)	Resource Management Period 2 (1 Oct. – 31 Dec. 2003)	Resource Management Period 3 (1 Jan. – 31 Mar. 2004)	Resource Management Period 4 (1 Apr. – 30 June 2004)
Service Days	12	13	12	13
Carry Over Days	6	7	6	

Service Period (Year 2) (1 July 2004 – 30 June 2005)				
	Resource Management Period 1 (1 July – 30 Sept. 2004)	Resource Management Period 2 (1 Oct. – 31 Dec. 2004)	Resource Management Period 3 (1 Jan. – 31 Mar. 2005)	Resource Management Period 4 (1 Apr. – 30 June 2005)
Service Days	12	13	12	13
Carry Over Days	6	7	6	

IN WITNESS WHEREOF these presents are executed as follows:

Signed for and on behalf of FVGIS

Signed for and on behalf of the Customer

Authorised Signatory_____
Authorised Signatory