

DATED

VENDING SERVICES

between

North Northamptonshire Council

and

Party 2

CONTENTS

CLAUSE

1. Definitions and Interpretation.....	3
2. Commencement and duration	10
3. Due diligence and Supplier's warranty.....	10
4. Supply of services	11
5. Charges [Charging arrangements TBC]	12
6. KPIs	12
7. Compliance and change in laws	12
8. Use of Authority Premises and Assets.....	13
9. Key personnel.....	14
10. Supplier Personnel.....	15
11. Review and monitoring.....	16
12. Variation.....	17
13. Dispute resolution.....	17
14. Sub-Contracting.....	17
15. Indemnities	17
16. Limitation of liability.....	17
17. Insurance	19
18. Freedom of information	19
19. Data processing.....	20
20. Intellectual property.....	22
21. Termination	23
22. Termination on notice	23
23. Force majeure.....	24
24. Prevention of bribery.....	24
25. Consequences of termination or expiry	25
26. Waiver	25
27. Rights and remedies.....	25
28. Severance	25
29. No partnership or agency.....	26
30. Third party rights.....	26
31. Assignment and other dealings.....	26

32. Publicity.....	26
33. Notices	26
34. Entire agreement.....	27
35. Variation.....	27
36. Counterparts	27
37. Governing law.....	28
38. Jurisdiction.....	28

SCHEDULE

Schedule 1	Specification	30
Schedule 2	Supplier's Tender	31
Schedule 3	Charges and payment	32
Schedule 4	Contract management	33
1.	Authorised representatives	33
2.	Key personnel.....	33
Schedule 5	Data processing.....	34
1.	Processing by the Supplier	34
2.	Types of Personal Data.....	34
3.	Categories of Data Subject.....	34

This agreement is dated [DATE]

Parties

- (1) NORTH NORTHAMPTONSHIRE COUNCIL of Sheerness House, 41 Meadow Road, Kettering, Northamptonshire NN16 8TL (**Authority**)
- (2) [FULL COMPANY NAME] incorporated and registered in [England and Wales] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

BACKGROUND

- (A) On Friday 19th August 2022, the Authority advertised on the UK e-notification service (reference [NNC00000055]), inviting prospective suppliers to submit proposals for the provision of the Services.].
- (B) On the basis of the Supplier's response to the advertisement and subsequent tender process, the Authority selected the Supplier to provide the services and the Supplier is willing and able to provide such services in accordance with the terms of this agreement.
- (C) Accordingly, the parties have agreed to enter into a contract for the provision of the Services (as defined below) on the terms and conditions of this agreement.

Agreed terms

1. Definitions and Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in **Schedule 4**.

Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services.

Authority Premises: the buildings and premises specified in this Agreement, or as otherwise agreed between the parties from time to time.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the Term, the pricing structure and any other relevant factors.

Change: any change to this agreement including to any of the Services.

Change in Law: any change in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

Charges: the charges which shall become due and payable to the Authority by the Supplier as set out in Schedule 3.

Commencement Date: 17th October 2022

Commercially Sensitive Information: the information listed in in this Agreement comprising the information of a commercially sensitive nature relating to the pricing of the Services, the Supplier's intellectual property rights or the Supplier's business operations which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) any Commercially Sensitive Information.

Consumer Prices Index: the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles such index.

Contracts Finder: the UK government's publishing portal for public sector procurement opportunities.

Contract Year: any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Controller: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].

Data Subject: as defined in the Data Protection Legislation.

Dispute Resolution Procedure: the procedure set out in clause 13.

Domestic law: the law of England and Wales.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in this Agreement.

FOIA: the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and

but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-Contractor's supply chain.

Health and Safety Policy: the health and safety policy of the Authority being one of the Mandatory Policies.

General Change in Law: a Change in Law where the change is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

Information: has, for the purposes of clause 18, the meaning given under section 84 of FOIA.

Initial Term: means the duration of the agreement starting at 00.01 am on the Commencement Date and ending on 31 August 2025 which may be further extended by a period of up to two years.

Insolvency Event: where:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a

company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party];

c) the Supplier applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];

e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company, partnership or limited liability partnership);

f) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

g) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;

i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive);

j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to

claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

KPIs: the key performance indicators for all and each part of the Services as specified in the Specification.

Key Personnel: those personnel identified **Schedule 4** for the roles attributed to such personnel, as modified pursuant to clause **9**.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Supplier is bound to comply.

Mandatory Policies: the Authority's policies as referred to in this agreement including the Specification, as amended by notification to the Supplier from time to time.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- c) committing any offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Remediation Notice: a written notice given by the Authority to the Supplier pursuant to this Agreement to initiate the Remediation Plan Process.

Remediation Plan: the plan agreed in accordance with this Agreement for the resolution of a Supplier's default in complying with its obligations under this agreement.

Remediation Plan Process: the process for resolving certain of the Supplier's defaults as set out in this Agreement.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Authority from time to time.

Representatives: means, in relation to party, its employees, officers, contractors, subcontractors, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in [Schedule 1](#).

Supplier Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Tender: the tender submitted by the Supplier and other associated documentation set out in [Schedule 2](#).

Sustainability report: the report to be submitted to the Authority by the Supplier in accordance with this Agreement.

Sub-Contract: any contract or agreement (or proposed contract or agreement) between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: a person with whom the Supplier enters into a Sub-Contract[, and any third party with whom that third party enters into a subcontract or its servants or agents].

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

- a) any extension pursuant to clause [2.2](#); or
- b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

Termination Notice: any notice to terminate this agreement which is given by either party in accordance with clause [21](#) or clause [22](#).

Termination Payment Default: is defined in [Schedule 3](#).

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

Working Hours: the period from 9.00am to 5.00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14 If there is any conflict or ambiguity between any of the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) the clauses of the agreement;

- (b) Schedule 1 to this agreement;
- (c) the remaining schedules to this agreement other than Schedule 2;
- (d) Schedule 2 to this agreement.

Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.

Commencement and duration

2. Commencement and duration

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Authority may, by giving the Supplier not less than one (1) months' written notice prior to expiry of the Initial Term, request the extension of this agreement in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period of up to two (2) years in one (1) year increments years from the day following expiry of the Initial Term.

3. Due diligence and Supplier's warranty

- 3.1 The Supplier acknowledges and confirms that:
 - (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
 - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 3.1(a);
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
 - (d) it has entered into this agreement in reliance on its own due diligence.
- 3.2 No representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3 The Supplier:

- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
 - (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 3.4 The Supplier shall not be entitled to recover any additional costs or charges from the Authority arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 3.3(b), save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided.

4. Supply of services

- 4.1 The Supplier shall provide the Services to the Authority with effect from the Commencement for the duration of the Term in accordance with the provisions of this agreement.
- 4.2 In providing the Services, the Supplier shall at all times:
 - (a) without prejudice to clause 6, provide the Services with reasonable care and skill and in accordance with Best Industry Practice;
 - (b) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - (c) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Authority).
 - (d) allocate sufficient resources to provide the Services in accordance with the terms of this agreement;
 - (e) ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Services shall, if required by the Authority, attend such meetings at the premises of the Authority or elsewhere as may be reasonably required by the Authority; and
 - (f) provide such reasonable co-operation and information in relation to the Services to such of the Authority's other suppliers as the Authority may reasonably require for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Authority.

5. Charges [Charging arrangements TBC]

6. KPIs

6.1 The Supplier shall provide the Services in accordance with the Specification and the service levels stated therewithin.

7. Compliance and change in laws

7.1 In performing its obligations under this agreement, the Supplier shall at all times comply with:

- (a) all applicable Law;
- (b) the Mandatory Policies.

The Supplier shall maintain such records as are necessary pursuant to the Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority (or its authorised representative).

7.2 Without limiting the generality of the obligation under clause 7.1, the Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Authority Premises.

7.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

7.4 Without limiting the general obligation set out in clause 7.1, the Supplier shall (and shall procure that the Supplier Personnel shall):

- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time;

- (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
 - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 7.5 The Supplier shall monitor and shall keep the Authority informed in writing of any changes in the Law which may impact the Services and shall provide the Authority with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 7.6 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.
- 8. Use of Authority Premises and Assets**
- 8.1 With effect from the Commencement Date, the Authority shall grant the Supplier a non-exclusive and revocable licence to enter the Authority Premises for the sole purpose of providing the Services to the Authority. The licence shall be subject to the conditions of this agreement, is personal to the Supplier and is not deemed to create a relationship of landlord and tenant between the parties. The licence is as limited and stipulated by the Authority from time to time and only during the operational opening hours of the relevant location which may be amended as the Authority sees fit.
- 8.2 The licence granted pursuant to clause 8.1 shall terminate immediately on the Termination Date.
- 8.3 The Supplier shall ensure that visiting or using the Authority Premises, the Supplier Personnel shall:
 - (a) keep the Authority Premises clean, tidy and properly secure;
 - (b) co-operate as far as may be reasonably necessary with the Authority's employees;
 - (c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Authority; and
 - (d) comply with all the rules and regulations that the Authority notifies to the Supplier from time to time relating to the use and security of the Authority Premises.
- 8.4 The Supplier shall ensure that the Supplier Personnel shall not:
 - (a) obstruct access to the Authority Premises, or any part of them; or

- (b) do or permit to be done on the Authority's Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Authority or the occupiers of or visitors to the Authority Premises.

8.5 The Supplier shall ensure that any Authority Assets are:

- (a) used with all reasonable care and skill and in accordance any manufacturer guidelines or instructions;
- (b) kept properly secure; and
- (c) not removed from the Authority Premises unless expressly permitted under this agreement or agreed in writing with by the Authority's Authorised Representative.

8.6 The Authority shall maintain and repair the Authority Assets but where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier Personnel (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.

8.7 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier Personnel to any property of the Authority or other recipient of the Services, or to any of the Authority Premises in the course of providing the Services. The Supplier shall be responsible for the reasonable costs of repair or replacement and, without prejudice to its other rights and remedies under this agreement or otherwise, the Authority shall be entitled to set off such reasonable costs of repair or replacement against sums owing to the Supplier under this agreement.

8.8 Subject to the requirements of clause 25 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

Staff

9. Key personnel

9.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to

act on behalf of their respective party on the matters for which they are expressed to be responsible.

9.2 The Supplier shall not remove or replace any of the Key Personnel unless:

- (a) required to do so by the Authority in accordance with clause 10.2 or clause 10.3;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Authority.

9.3 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 20 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

9.4 If the Supplier replaces the Key Personnel as a consequence of this clause 9, the cost of effecting such replacement shall be borne by the Supplier.

10. Supplier Personnel

10.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier Personnel comply with the Mandatory Policies.

10.2 The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any of the Mandatory Policies, or if they otherwise present a security threat.

10.3 The Supplier shall replace any of the Supplier Personnel whom the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 10.4 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier Personnel. The Supplier shall ensure that the Supplier Personnel cannot be individually identified from the information so provided.

Contract management

11. Review and monitoring

- 11.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf. The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services.
- 11.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.
- 11.3 The Authorised Representatives shall meet as may be required by the Authority from time to time to monitor and review the performance of this agreement, including the achievement of the Target KPIs. Such meetings shall be minuted by the Authority's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.
- 11.4 Without prejudice to any other reports required under this agreement, in advance of each meeting to be held in accordance with clause 11.3:
- (a) the Supplier shall provide the Authority with a monthly written report detailing its sales data; and
 - (b) the Authority shall notify the Supplier of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- 11.5 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in this Agreement shall apply. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 11.6 A review meeting to assess the Supplier's performance of its obligations under this agreement shall be held at [six-monthly] intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Authorised Representatives.
- 11.7 The Authority may increase the extent to which it monitors the performance of the Services if the Supplier fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Authority shall give the Supplier prior notification of its intention to increase the

level of its monitoring. The Supplier shall bear its own costs in complying with such enhanced monitoring as is conducted by the Authority pursuant to this clause 11.7.

- 11.8 The Supplier shall submit any other management reports to the Authority in the form and at the interval specified in Schedule 4, or as specified elsewhere in this agreement.

12. Variation

- 12.1 No variation to this agreement shall take effect unless expressly agreed in writing and signed by the parties or their representatives.

13. Dispute resolution

- 13.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the Authorised Representatives shall attempt in good faith to resolve the Dispute with 30 Working Days of any referral to the Authorised Representatives. If the Authorised Representatives are unable to resolve the dispute within 30 Working Days, the Dispute shall be referred to the Authority's [senior officer] and the Supplier's [senior officer] who shall attempt in good faith to resolve it.

14. Sub-Contracting

- 14.1 Notwithstanding clause 31, the Supplier shall not be entitled to subcontract the Services without the prior written approval of the Authority.

Liability

15. Indemnities

- 15.1 Subject to anything to the contrary in this Agreement, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
 - (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;
 - (c) the enforcement of this agreement.

16. Limitation of liability

- 16.1 The Supplier has obtained insurance cover in respect of certain aspects its own legal liability for individual claims not exceeding £10,000,000 per claim. The limits and exclusions in this clause

reflect the insurance cover the Supplier has been able to arrange and the Authority is responsible for making its own arrangements for the insurance of any excess liability.

- 16.2 References to liability in this clause 16 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 16.3 Nothing in this clause 16 shall limit any liability under:
- (a) clause 20 (*IPR indemnity*)
 - (b) breach of clause 24 (*Bribery*)
- 16.4 Nothing in this agreement limits any liability which cannot legally be limited, including for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 16.5 Subject to the terms of this agreement, the Supplier's total aggregate liability to the Authority:
- (a) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 19 shall not exceed £10 million;
 - (b) in respect of physical damage to the Authority's (or third party's) property caused or arising by reason of any act or omission of the Supplier or Supplier Personnel, shall not exceed £10 million any one event or series of connected events; and
 - (c) in respect of all other claims, losses or damages arising in each Contract Year, shall not exceed £10 million.
- 16.6 The Authority's total aggregate liability in respect of all claims arising out of or in connection with this agreement shall not exceed £10,000 in the aggregate.
- 16.7 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.2 and clause 6. In view of these commitments, the terms implied by sections 3 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

16.8

17. Insurance

17.1 The Supplier shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of at least £10 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of at least £5 million per claim **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) product liability insurance with a limit of at least £5 million in relation to any one claim or series of claims,

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

17.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

17.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

17.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

17.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following expiry or earlier termination of the agreement.

Information

18. Freedom of information

18.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

- (b) transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

18.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.

18.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that the Authority considers is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

18.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

19. Data processing

19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. Schedule 5 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

19.3 Without prejudice to the generality of clause 19.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

19.4 Without prejudice to the generality of clause 19.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Authority which are set out in Schedule 5, unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;

- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - (f) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (g) notify the Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
 - (h) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
 - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the Authority or the Authority's designated auditor pursuant this Agreement and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 19.5 The Supplier's liability for losses arising from breaches of this clause is as set out in clause 16.5(a).
- 19.6 Where the Supplier wishes to appoint a subprocessor to process any Personal Data relating to this agreement, such subprocessor shall constitute a Sub-Contractor and the Supplier shall:
- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent from the Authority;
 - (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 19.

20. Intellectual property

- 20.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:
- (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
- shall vest in the Authority on creation.
- 20.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages

arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

Termination

21. Termination

21.1 Without affecting any other right or remedy available to it, and subject to the terms of this Agreement, the Authority may terminate this agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Supplier if one or more of the following circumstances occurs or exists:

- (a) if the Supplier is in material breach of this agreement, which is irremediable;
- (b) the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
- (c) the Supplier fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
- (d) the circumstances referred to in this Agreement occur;
- (e) a Consistent Failure has occurred;
- (f) a Catastrophic Failure has occurred;
- (g) if there is an Insolvency Event;
- (h) if the Authority elects to terminate pursuant to the terms of this Agreement;
- (i) the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

21.2 Either party may, during the continuance of a Force Majeure Event, terminate this agreement if the circumstances in clause 23.3 arise.

21.3 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

22. Termination on notice

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving one months' written notice to the Supplier.

23. Force majeure

- 23.1 Subject to the remaining provisions of this clause 23 , if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 23.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 23.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' notice to the Affected Party.

24. Prevention of bribery

- 24.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:
- (a) has committed a Prohibited Act;
 - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 24.2 The Supplier shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 24.1 at the relevant time.
- 24.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Term:
- (a) not commit a Prohibited Act;
 - (b) not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
 - (d) notify the Authority (in writing) if it becomes aware of any breach of clause 24.3(a) or clause 24.3(b), or has reason to believe that it or any person associated with it has

received a request or demand for any undue financial or other advantage [in connection with performance of this agreement.

- 24.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this agreement and the steps taken to comply with its obligations under clause 24.3.

25. Consequences of termination or expiry

- 25.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, (provision of records), clause 15 (Indemnities), clause 16 (Limitation of Liability), clause 17 (Insurance), clause 18 (Freedom of Information), clause 19 (Data Processing), (Confidentiality), Audit) and this clause 25 (Consequences of termination), shall remain in full force and effect.
- 25.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

General provisions

26. Waiver

- 26.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 26.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

27. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. Severance

- 28.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 28.2 If any provision or part-provision of this agreement is deemed deleted under clause 28.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. No partnership or agency

- 29.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 29.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

30. Third party rights

- 30.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

31. Assignment and other dealings

- 31.1 The Authority may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Supplier.
- 31.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

32. Publicity

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way;
or
- (b) use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

33. Notices

- 33.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

- (i) Party 1: LodgePark@northnorthants.gov.uk

- (ii) Party 2: [ADDRESS].]

33.2 Any notice shall be deemed to have been received:

- (a) If delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
- (c) if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.

33.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

34. Entire agreement

34.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

34.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall not remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

34.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

35. Variation

Subject to the terms of this Agreement, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

36. Counterparts

36.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.

36.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed

"wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

37. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

38. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
AUTHORITY]

.....
Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
SUPPLIER]

.....
Director

Schedule 1 Specification

Schedule 2 Supplier's Tender

Schedule 3 Charges and payment

Schedule 4 Contract management

1. Authorised representatives

1.1 The Authority's initial Authorised Representative: [INSERT DETAILS]

1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

2. Key personnel

[INSERT DETAILS]

Schedule 5 Data processing

- 1. Processing by the Supplier**
 - 1.1 Scope**
 - 1.2 Nature**
 - 1.3 Purpose of processing**
 - 1.4 Duration of processing**
- 2. Types of Personal Data**
- 3. Categories of Data Subject**