

**TERMS AND CONDITIONS**

DATED: 28.12.2022

COMPETITION AND MARKETS AUTHORITY (CMA)

and

*EPOKAY LIMITED (PROFESSOR NEIL D. LAWRENCE)*

**AGREEMENT**

**FOR PROVISION OF**

**EXPERT SERVICES**

AGREEMENT REFERENCE

***PROC 444-I-2022***

## AGREEMENT FOR THE PROVISION OF EXPERT SERVICES

DATE: 28.12.2022

### PARTIES

- (1) **Competitions and Markets Authority ("CMA")** The Cabot, 25 Cabot Square, London E14 4QZ.
- (2) **Epokay Limited** (Professor Neil D Lawrence) (the "**Expert**") [REDACTED]

### RECITALS

- (A) *CMA advised on its requirement on 22<sup>nd</sup> August 2022 and set out its requirement for Services in an invitation to tender ("**ITT**") reference PROC 444-2022.*
- (B) *The Expert submitted its proposal ("**Expert's Proposal**") in response to the CMA's PROC 444-2022 ITT on 26<sup>th</sup> September 2022.*
- (C) *On the basis of CMA's ITT and the Expert's Proposal, the CMA awarded a contract to the Expert to supply services in relation to Specialism 3, on the terms and conditions set out below.*

### NOW IT IS AGREED AS FOLLOWS:

#### 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words and expressions shall have the following meanings save where the context provides otherwise:

<b>Agreement</b>	means these terms and conditions, the Schedules attached to it [ <i>and the Award Letter (including any Annexes)</i> ]
<b>Annex</b>	means an annex to the Award Letter
<b>Applicable Laws</b>	means, if applicable, all national, supranational, foreign or local laws (including case law), legislation, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, enforceable right within the meaning of Section 2 of the European Communities Act 1972, European regulations, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time
<b>Award Letter</b>	means the letter sent to the Expert on 28 <sup>th</sup> December 2022 forming part of the Agreement
<b>Bribe</b>	means the receiving or offering of any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office and incline him to act contrary to the known rules of honesty and integrity
<b>CMA</b>	means the Competition and Markets Authority (" <b>CMA</b> ")

<b>Contract Manager</b>	means [REDACTED] or other personnel as required from time to time.
<b>Commencement Date</b>	means 13 <sup>th</sup> February 2023
<b>Confidential Information</b>	<p>means any information which has been designated as confidential by either the CMA or the Digital Expert in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including any information provided by any person to the CMA under the Enterprise Act 2002, or any other statute in accordance with its functions as regulator or information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either the CMA or the Digital Expert and all Personal Data within the meaning of the UK GDPR and the Data Protection Act 2018. The obligations of confidentiality do not extend to any Confidential Information which the party that wishes to disclose or use can show:</p> <ul style="list-style-type: none"> <li>(a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under this Agreement;</li> <li>(b) was in its written records without restriction as to its disclosure, before receiving it from the other party;</li> <li>(c) it received such information from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>(d) is independently developed without access to the Confidential Information</li> </ul>
<b>Conflict of Interest</b>	Shall have the meaning given in the CMA's Conflicts of Interest policy: <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67444/Appendix_F_Conflicts_of_interest_policy.pdf">Appendix F: Conflicts of interest policy - GOV.UK (www.gov.uk)</a>
<b>Controller</b>	shall have the meaning given in the UK GDPR
<b>Data Protection Legislation</b>	means (i) the UK GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all Applicable Laws about the Processing of Personal Data and privacy
<b>Data Subject</b>	shall have the meaning given in the UK GDPR
<b>Digital Expert</b>	shall mean, where applicable, the Digital Expert and the Key Personnel
<b>DPA 2018</b>	means the Data Protection Act 2018
<b>Fees</b>	shall have the meaning given to it in Clause 5.1
<b>UK GDPR or GDPR</b>	means the retained UK law version of the General Data Protection Regulation (Regulation (EU) 2016/679)

<b>Insurance Policies</b>	means commercial general liability insurance cover, professional indemnity insurance cover, employer's liability insurance cover and public liability insurance cover
<b>Intellectual Property Rights</b>	means patents, rights to inventions, copyright and related rights, moral rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world
<b>Joint Controller</b>	means where two or more Controllers jointly determine the purpose and meaning of processing (as defined the UK GDPR)
<b>Key Personnel</b>	means the Digital Expert's personnel appointed to provide the effective delivery of the Services as named at Clause 14
<b>LED</b>	means Law Enforcement Directive (Directive (EU) 2016/680)
<b>Personal Data</b>	shall have the meaning given in the UK GDPR
<b>Premises</b>	means The Cabot, 25 Cabot Square, London E14 4QZ or any other Premises that the CMA shall occupy as notified to the Digital Expert from time to time
<b>Purchase Order Number</b>	means the purchase order number which is required to be included on any invoice which the Digital Expert provides the CMA
<b>Reimbursable Expenses</b>	means those expenses as listed in Schedule 2 (Payment Schedule)
<b>Services</b>	means the services to be provided by the Digital Expert to the CMA under this Agreement as more particularly described in the Schedule 1 (Description of the Services) together with any other services which the Digital Expert provides or agrees to provide the CMA
<b>Term</b>	means the term of this Agreement as described in Clause 2.2
<b>Termination Date</b>	has the meaning set out in Clause 2.2
<b>Travel Expense Policy</b>	means the CMA's policy on travel expenses as updated from time to time
<b>Working Days</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

## 1.2 Drafting Conventions

- (a) The headings to Clauses and Schedules are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- (b) Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person includes an individual, company, body corporate, unincorporated association, corporation, firm, partnership or other legal entity.
- (c) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- (d) References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification), whether made before or after the date of this Agreement.
- (e) All references in this Agreement to Clauses and Schedules are to the clauses and schedules to this Agreement unless stated otherwise.

- 1.3 Any reference to 'Digital Expert' in this Agreement shall mean, where applicable, the 'Digital Expert and the Key Personnel'.

## 2 PRE-CONTRACTUAL CHECKS AND APPOINTMENT OF DIGITAL EXPERT

- 2.1 The Digital Expert warrants that prior to the execution of this Agreement, it has provided the following personal documentation for information to the CMA in respect of the Key Personnel:

- (a) Full name, home address, email address and telephone numbers;
- (b) Proof of identification in the form of a copy of the Passport or Driving Licence;
- (c) Accurate, complete and up-to-date curriculum vitae;
- (d) A copy of visa/work permits if required;
- (e) If requested by the Authority, a Baseline Personnel Security Standard (BPSS) check at enhanced level or an equivalent national check, will be required, dated within the past 12 months. If no certificate of this check is available, the Digital Expert agrees to obtain such a certificate at its own expense.

- 2.2 This Agreement shall come into force on the Commencement Date and shall (subject to the provisions for earlier termination set out in this Agreement) terminate automatically 12<sup>th</sup> February 2025 ("**Termination Date**"). This Agreement shall not be extended without agreement in writing signed by both the CMA and the Digital Expert. The Initial Term is two years. This Agreement has provision as stated within Clause 2.2 to be extended for an additional term of 1 year after the initial term.

- 2.3 The CMA hereby confirms the appointment of the Digital Expert from the Commencement Date upon the terms and conditions contained in this Agreement. The Digital Expert shall appoint Key Personnel to provide the Services under this Agreement in accordance with Clause 14.

- 2.4 The Digital Expert agrees that the Key Personnel shall not be entitled to any pension, bonus, holiday, sickness or other fringe benefit from the CMA during the Term of this Agreement.

- 2.5 The relationship of the Digital Expert to the CMA will be that of independent Expert and at no time will the Digital Expert or its employees hold itself out as being an employee of the CMA.

- 2.6 Nothing in this Agreement shall prevent the Digital Expert from being engaged, concerned or having a financial interest in any capacity in any other business, trade, profession or occupation during the Term of this Agreement provided that such activity does not cause a breach of any of the Digital Expert obligations under this Agreement.

- 2.7 The Digital Expert acknowledges that the ability of the CMA to use the services of the Digital Expert depends on the requirements of the CMA. The purchase of the Services by the CMA is non-exclusive and nothing in this Agreement will place a requirement on the CMA to order Services from the Digital Expert or prevent it from purchasing similar services from any other person or organisation. Unless otherwise expressly agreed by the CMA in this Agreement, the CMA is not subject to any minimum volume or minimum purchase commitment when engaging the Services of the Digital Expert from time to time.
- 2.8 The CMA shall not provide any equipment for the Digital Expert to carry out the Services. When the CMA makes a request for Services, it shall confirm whether the Digital Expert is required to supply the Key Personnel with any equipment to carry out the Services.

### **3 DIGITAL EXPERT'S OBLIGATIONS**

- 3.1 In consideration of the due payment of the Rates (as defined in Clause 5) by the CMA, the Digital Expert warrants that it will and (where appropriate) will ensure that the Key Personnel shall:
- (a) use its best endeavours to perform and observe all its obligations under this Agreement;
  - (b) provide the Services with reasonable skill and care and to ensure that the Services shall be delivered by appropriately experienced, trained and/or qualified personnel; and
  - (c) use all endeavours to meet its obligations specified in Schedule 1 (Description of the Services).
  - (d) comply with any obligations imposed on it pursuant to the Annexes attached to the Award Letter;
  - (e) report to the CMA's Contract Manager, or such other person nominated by the CMA, and agree with this person the precise timing of the delivery of the Services;
  - (f) remain available to undertake the Services for the duration of the Agreement;
  - (g) promptly give to the CMA all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the business of the CMA.
- 3.2 The Digital Expert will not assign or sub-contract such Services to any other person, firm, company or organisation, without the prior written consent of the CMA.
- 3.3 The Digital Expert will not have the authority to commit the CMA to any legally binding agreements, will not incur expenditure in the name or for the account of the CMA, nor sign any document, bring any proceedings nor make and promise on behalf of the CMA, nor hold itself out as having the authority to bind the CMA.
- 3.4 Where the Digital Expert is obligated to provide computer equipment for the provision of the Services, it is a condition of this Agreement that (i) such computer equipment is free of any virus and malware; and (ii) the Digital Expert will make such equipment available for audit by the CMA.
- 3.5 The Digital Expert shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement at no cost to the CMA and the Digital Expert shall notify the CMA in any such event within 7 days of such change.

### **4 CMA OBLIGATIONS**

- 4.1 The CMA shall:
- (a) co-operate with the Digital Expert in matters relating to the Services and appoint a Contract Manager in relation to the Services, who shall have the authority to contractually bind the CMA on matters relating to the Services;

- (b) provide, for the Digital Expert, and its subcontractors if applicable, in a timely manner access to the CMA's Premises, office accommodation, data and other facilities.
- (c) be responsible for preparing and maintaining the Premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its Premises in accordance with all Applicable Laws, before and during the supply of the Services at those Premises, and informing the Digital Expert of all the CMA's obligations under this Clause 4.1(c).
- (d) Inform the Digital Expert of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the CMA's Premises.

## **5 FEES & PAYMENT**

- 5.1 In consideration of the Services to be rendered by the Digital Expert under this Agreement, the CMA will pay the Digital Expert the Fees which will be based on a *daily or hourly* rate (the "**Rate**") as set out in Schedule 2 (Payment Schedule) and will pay for any agreed Reimbursable Expenses as set out in Schedule 2. For the avoidance of doubt, the CMA will not pay more than [REDACTED] per day for the provision of the Services. Any Reimbursable Expense in relation to travel claimed under this Agreement must be consistent with the allowances and restrictions set out in the CMA's Travel Expense Policy.
- 5.2 The Rates are not subject to alteration for the duration of the contract inclusive of any options to extend the contract.
- 5.3 The Digital Expert shall submit electronic itemised invoices on a monthly basis by the last Working Day of each month in arrears setting out:
  - (a) the name of the Contract Manager;
  - (b) all work satisfactorily completed as reviewed by the Contract Manager;
  - (c) the Fees and, if applicable, Reimbursable Expenses for such work as detailed in Clause 5.3(b) above;
  - (d) the relevant Purchase Order Number and Agreement reference number (if applicable).

Electronic invoices must be sent to the CMA Accounts Payable at the following e:mail address: [invoices@cma.gov.uk](mailto:invoices@cma.gov.uk). In the event of a query regarding an outstanding payment the Digital Expert should contact CMA's Finance Team either by email to: [Finance.Team@cma.gov.uk](mailto:Finance.Team@cma.gov.uk) or by telephone on 0203 738 6144/6617.

- 5.4 The Digital Expert will, on the same Working Day that the electronic invoice is submitted to the CMA, provide to the CMA, by email to [REDACTED] all relevant documentation to allow the CMA to certify and approve any agreed Reimbursable Expense.
- 5.5 The CMA will pay all undisputed invoices within 30 days of receipt. All payments shall be in Pound Sterling to such bank account as the Expert may from time to time notify the CMA with any applicable charges on such payments being at the Digital Expert's expense.
- 5.6 The Fees will be exclusive of any VAT which may be payable in connection with the supply of the Services by the Digital Expert and the Digital Expert will, if applicable, notify the CMA of its registration for VAT and provide VAT invoices in respect of the Services.
- 5.7 The Digital Expert will not be entitled to any other fees or payments save as expressly stated in Clauses 5.1 to 5.6 above.
- 5.8 If the Digital Expert does not for any reason carry out the Services it has agreed to carry out in accordance with Schedule 1, no fee shall be payable by the CMA in respect of those Services.
- 5.9 Wherever under this Agreement any sum of money is recoverable from or payable by the Digital Expert, that sum may be deducted from any sum then due, or which at any later time may become due, to the Digital Expert under this Agreement or under any other agreement or contract with the CMA. If sufficient monies are not due to the Digital Expert then the Digital Expert will make good the deficit within 30 Working Days of notice being given.

- 5.10 If any sum due from the CMA to the Digital Expert under the Agreement is not paid on or before the due date for payment then all sums then owing by the CMA to the Digital Expert shall become due and payable immediately and, without prejudice to any other right or remedy available to the Digital Expert, the Digital Expert shall be entitled to charge the CMA interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the rate of two per cent (2%) per annum above the base lending rate of the Bank of England prevailing from time to time until payment is made in full.

## **6 TAX STATUS AND LIABILITIES**

- 6.1 Nothing in this Agreement shall create the relationship of employer and employee nor any partnership between the CMA and the Key Personnel.
- 6.2 The Digital Expert shall procure that the Key Personnel at no time falsely holds him or herself out as being an officer, employee or partner of the CMA.
- 6.3 The Digital Expert shall be responsible for paying any relevant remuneration or fees to the Key Personnel and for the deduction any payment of all income tax liabilities and national insurance contributions or other similar contributions in respect of the Key Personnel as required by law, including any interest, penalties or costs in respect thereof.
- 6.4 By entering into this Agreement, the Digital Expert provides assurance to the CMA that it has made appropriate and legitimate arrangements with Her Majesty's Revenue and Customs (HMRC) for dealing with income tax and national insurance contribution obligations of its employees. Furthermore, the Digital Expert agrees, as a condition of this Agreement to:
- (a) provide documentary evidence to this effect should the CMA request it; and
  - (b) provide this evidence to the CMA within three Working Days of the request being made

If the Digital Expert fails to provide this evidence, the CMA may terminate this Agreement with immediate effect. Furthermore, the CMA reserves the right to pass relevant information to HMRC or other public bodies about payments under this Agreement.

- 6.5 The Digital Expert shall indemnify and hold the CMA harmless against:
- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services by the Key Personnel, where the recovery is not prohibited by law. The Digital Expert shall further indemnify the CMA against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the CMA in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
  - (b) any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Key Personnel against the CMA arising out of or in connection with the provision of the Services.
- 6.6 Save as expressly specified in writing, the Digital Expert shall not hold itself out as the agent of the CMA and shall not have any authority to conclude any contracts on behalf of the CMA or to enter into any legally binding commitment on its or their behalf.

## **7 INSURANCE AND LIABILITY**

- 7.1 Except in relation to death or personal injury caused by either the CMA's or the Digital Expert's negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation, or any matter for which it would be illegal for such to exclude or attempt to exclude its liability, the amount of each party's liability arising from this Agreement shall be limited to £1,000,000 under this Agreement.
- 7.2 The Digital Expert will maintain in force at all times during the Term of this Agreement and for a period of 12 Months after the termination or expiry of this Agreement full and comprehensive Insurance Policies.



- 7.3 The Digital Expert will provide to the CMA prior to commencement of this Agreement confirmation of his Insurance Policies and will ensure that on each renewal date of such Insurance Policies the CMA is provided with up to date copies of such documentation.

## **8 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**

- 8.1 Subject to Clause 8.2, the CMA and the Digital Expert shall procure that the Key Personnel shall:
- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and
  - (b) not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 8.2 Notwithstanding Clause 8.1, a party may disclose Confidential Information which it receives from the other party:
- (a) where disclosure is required by Applicable Law or by a court of competent jurisdiction; to its auditors or for the purposes of regulatory requirements;
  - (b) on a confidential basis, to its professional advisers;
  - (c) to the Serious Fraud Office where the party has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
  - (d) where the receiving party is the Digital Expert, to its employees on a need to know basis to enable performance of the Digital Expert's obligations under the Agreement provided that the Digital Expert shall procure that any employee to whom it discloses Confidential Information pursuant to this Clause 8.2(d) shall observe the Digital Expert's confidentiality obligations under the Agreement; and
  - (e) where the receiving party is the CMA:
    - (i) on a confidential basis to the employees, agents, Digital Expert and contractors of the CMA;
    - (ii) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the CMA transfers or proposes to transfer all or any part of its business; or
    - (iii) to the extent that the CMA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
    - (iv) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the CMA under this Clause 8.
- 8.3 The Digital Expert shall not and shall procure that the Key Personnel shall not at any time during the continuance of this Agreement make any notes, summaries or memoranda or take any copies of any document or information stored on any hard or portable disk or other information-storing medium relating to any matter within the scope of the CMA's business, dealings or affairs otherwise than for the benefit of the CMA ("CMA Information"). All such CMA Information shall remain at all times the property of the CMA and shall be returned to the CMA on demand by the CMA and, in any event, on the termination of this Agreement.
- 8.4 Without prejudice to the generality of Clauses 8.1 and 8.3 above, any document (whether in paper, hard disk, portable disk or other format) created by the Digital Expert or the Key Personnel in connection with the provision of the Services shall be the property of the CMA and shall be treated as CMA information under Clause 8.3 above.
- 8.5 The CMA and the Digital Expert acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Digital Expert hereby gives its consent for the CMA to publish this Agreement in its entirety to the general public (but with any information that is

exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The CMA may consult with the Digital Expert to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 8.6 The Digital Expert shall not, and shall take all necessary steps to ensure that its employees shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the CMA.

## **9 CONFLICTS OF INTEREST**

- 9.1 The Digital Expert shall take appropriate steps to ensure that it is not placed in a position where, in the opinion of the CMA, there is or may be a conflict of interest, between the financial or non-financial interests of the Digital Expert and the duties owed to the CMA under the provisions of the Agreement. The Digital Expert will disclose to the CMA full particulars of any such conflict of interest which may arise within 7 Days of becoming aware of such conflict.
- 9.2 Where the CMA is of the opinion that the conflict of interest notified to it under Clause 9.1 above is capable of being avoided or removed, the CMA may require the Expert to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and if the Expert fails to comply with the CMA's requirements in this respect, or if, in the opinion of the CMA compliance does not avoid or remove the conflict, the CMA may terminate the Agreement and recover from the Expert the amount of any loss resulting from such termination.
- 9.3 Where the CMA is of the reasonable opinion that the conflict of interest which existed at the time of the award of the Agreement could have been discovered with the application by the Expert of due diligence and ought to have been disclosed as required prior to the Commencement Date, the CMA may determine the Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Expert the amount of any loss resulting from such determination.
- 9.4 Notwithstanding the above, the CMA reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the CMA, there is or may be an conflict of interest between the financial and non-financial interests of the Digital Expert and the duties owed to the CMA under the provisions of the Agreement. The actions of the CMA pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the CMA.

## **10 TERMINATION**

- 10.1 Notwithstanding any other provision in this Agreement, the CMA will be entitled to terminate this Agreement with immediate effect if the Digital Expert:
- (a) commits a serious breach of any of the provisions of this Agreement or failing for whatever reason to perform the Services adequately or at all; or
  - (b) is guilty of conduct tending to bring itself or the CMA into disrepute; or
  - (c) suspends or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
  - (d) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
  - (e) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
  - (f) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;

- (g) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or
  - (h) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or
  - (i) has any distress, execution or sequestration or other such process levied or enforced on any of its assets;
  - (j) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in Clause 10.1(c) to 10.1(i) above; or
  - (k) ceases, or appears in the reasonable opinion of the CMA likely or is threatening to cease, to carry on all or a substantial part of its business; or
  - (l) ceases to be available to discharge its obligations under this Agreement for any reason for a period of 30 days or more; or
- 10.2 The CMA shall have the right to terminate this Agreement at any time by giving 1 month's written notice to the Digital Expert.
- 10.3 The Digital Expert will be entitled to terminate this Agreement with immediate effect if the CMA is in material breach of its obligations under this Agreement and does not rectify such breach within 30 Working Days.

## **11 CONSEQUENCES OF TERMINATION**

- 11.1 Upon termination of this Agreement howsoever arising:
- (a) the Digital Expert will immediately deliver to the CMA all letters, publications, papers, discs, tapes, reports, documents, memoranda, computer peripherals, data files software or electronic documents and other items which may have been prepared by the Digital Expert or come into the possession of the Digital Expert by virtue of this Agreement and/or the performance of the Services and all copies thereof and will not keep possession of copies of any such items or property or other items on which any Confidential Information is recorded or stored. In respect of any such items or information held on any computer software data files or other equipment belonging to the Digital Expert, it hereby undertakes to delete any such items and information and all copies immediately on termination of this Agreement.
  - (b) the Digital Expert will not have any claims for damages or compensation of any nature whatsoever. Provided termination of the Agreement is triggered in accordance with Clause 10.2, the Expert will be entitled to any outstanding Fees due to the Digital Expert up to the Termination Date.
  - (c) any Fees paid to the Digital Expert in advance, if applicable, will be calculated on a pro rata basis and any sum representing any period after the Termination Date will be repaid to the CMA by the Digital Expert or deducted by the CMA from any fees or other payments due or owing by the CMA to the Digital Expert.
  - (d) the relationship of the CMA and the Digital Expert shall cease and any rights or licences granted under or pursuant to this Agreement (or part of this Agreement) shall cease to have effect save as (and to the extent) expressly provided.
  - (e) The Digital Expert may enter the CMA's Premises upon 10 Working Days' notice and take possession of any documents, equipment and other property which the Digital Expert owns.
  - (f) The accrued rights and remedies of the CMA and the Digital Expert as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry;
  - (g) The provisions on any Clause which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect.

## **12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Subject to any pre-existing rights of third parties and of the Digital Expert, the Intellectual Property Rights in all reports, documents and other materials which are generated or acquired by the Digital Expert (or any of its sub-contractors or agents) (the "Deliverables") in the performance of the Services shall belong to and be vested automatically in the CMA and the CMA hereby grants to the Digital Expert a non-exclusive licence to such Intellectual Property Rights in the Deliverables solely for the purposes of the use of the Services.
- 12.2 The Digital Expert waives all moral rights relating to the Deliverables.
- 12.3 If either party during the Term of this Agreement uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, sub-contractor or third party a non-exclusive, licence for, or, if such party is itself a licensee of those Intellectual Property Rights, it shall grant a non-exclusive sub-licence to, the other party to use the materials solely for the purposes of the use of the Services under this Agreement. Such licence or sub-licence shall be granted at no cost to the other party.
- 12.4 Nothing in this Agreement or done under this Agreement shall be taken to diminish any copyright, patent rights or any other Intellectual Property Rights which would, apart from this Agreement, vest in the CMA.
- 12.5 The Digital Expert shall ensure that all royalties, licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with this Agreement have been paid and are included in the Rates.
- 12.6 The Digital Expert will, at the Digital Expert's expense, at any time either during or after the Term of this Agreement, give all assistance and do all acts and things as may be in the opinion of the CMA necessary or desirable to give the full benefit of Clause 12.1 of this Agreement to the CMA.
- 12.7 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, databases, patents, patterns, models, designs or other material (furnished to or made available to the Digital Expert by or on behalf of the CMA) shall remain the property of the CMA.
- 12.8 The Digital Expert warrants that it will not in the course of providing the Service infringe the Intellectual Property Rights of any other person.
- 12.9 The Digital Expert will indemnify and keep indemnified and hold harmless the CMA from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the CMA as a result of or in connection with any action, demand or claim that any of the Intellectual Property Rights (including the Deliverables) provided under this Agreement infringe the Intellectual Property Rights of any third party.

## **13 MISTAKES IN INFORMATION**

- 13.1 The Digital Expert shall be responsible for the accuracy of all documentation and information provided to the CMA by the Digital Expert in connection with the provision of the Services and the CMA shall have no liability for any extra costs occasioned by any discrepancies, errors or omissions therein.

## **14 KEY PERSONNEL AND RIGHT TO PROVIDE A SUBSTITUTE**

- 14.1 The Digital Expert acknowledges that [Notes: name 1] and [Notes: name 2] are essential to the proper provision of the Services to the CMA and will perform the Services as detailed in this Agreement.
- 14.2 The Digital Expert may at any time, with the prior written approval of the CMA, appoint a substitute with equivalent skill and expertise to perform the Services instead of the Key Personnel (the "Substitute"). The Digital Expert will be required to produce to the CMA

evidence of undertakings between the Substitute, including with regard to confidentiality in accordance with Clause 8 of this Agreement before the Substitute may be approved. If the CMA accepts the Substitute, the Digital Expert will provide an overlap period of up to 10 Working Days during which time the Key Personnel will ensure that the Substitute fully understands the requirements of the CMA and the work involved in the provision of the Services. The Digital Expert will not charge the CMA any extra sum for this overlap period. The Digital Expert will continue to invoice the CMA in accordance with the provisions in this Agreement and will be responsible for the remuneration of the Substitute. Any reference in this Agreement to the Key Personnel will include any Substitute appointed in accordance with this Clause, except where stated to the contrary.

- 14.3 The Digital Expert shall take the steps reasonably required by the CMA to prevent unauthorised persons being admitted to the CMA's Premises. If the CMA gives the Digital Expert notice that any person is not to be admitted to or is to be removed from its Premises or is not to become involved in or is to be removed from involvement in the performance of this Agreement, the Digital Expert shall take all reasonable steps to comply with such notice.
- 14.4 The Key Personnel, engaged within the boundaries of the CMA's Premises, shall comply with such rules, regulations, requirements and advisory notices (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the CMA's Premises. Details of such rules, regulations, requirements and advisory notices shall be provided, on request, by the CMA.
- 14.5 The Digital Expert shall ensure that while on any of the CMA's Premises or while performing the Services that all of the Key Personnel carry out their duties and behave in an orderly and appropriate manner, having regard to the nature of their duties.
- 14.6 If the Digital Expert fails to comply with its obligations under this Clause and the CMA decides that such failure is prejudicial to its interests, the CMA may immediately terminate this Agreement by notice in writing to the Digital Expert, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the CMA.

## **15 DISCLOSURE REQUESTS**

- 15.1 The Expert acknowledges the CMA's responsibilities under the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with the CMA to ensure it complies with its information disclosure obligations. The Expert shall assist the CMA at no additional charge in meeting any requests for information in relation to the Agreement which are made to the CMA in connection with the FOIA/EIR and/or any statutory modification or re-enactment thereof or any related guidelines or codes or practice.

## **16 DATA PROTECTION**

- 16.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the CMA is the Controller and the Service Provider is the Processor. The only processing that the Processor is authorised to do is listed in the PROC 444-2022 ITT, Appendix H, Annex A (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor.

The Digital Expert shall:

- (a) Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
- (b) Assist the CMA in complying with all applicable requirements of the Data Protection Legislation and shall not respond to any request made by a Data Subject without the prior written approval of the CMA;

- (c) Only use the Personal Data to perform the Services and shall not share the Personal Data with any other third party;
- (d) At termination of this Agreement for any reason, or at the written direction of the other party, delete or return the Personal Data and copies thereof to the CMA unless it is required by an Applicable Law to retain the Personal Data, in which case the Expert shall notify the CMA of the reason for retaining the Personal Data; and
- (e) Notify the CMA without undue delay if the Digital Expert becomes aware of a breach of the Data Protection Legislation in relation to the Personal Data and/or it becomes aware of a breach of the provisions of this Clause.

## **17 RESTRICTIONS ON THE DIGITAL EXPERT**

- 17.1 The Digital Expert shall not at any time during the course of this Agreement and for a period of 12 months after termination of this Agreement:
- (a) offer employment to, enter into a contract for the services of, or attempt to entice away from the CMA, any individual who is at the time of the offer or attempt an employee holding an executive or managerial position with the CMA, or a person who provided services to the CMA at the same time and location as the Key Personnel; or
  - (b) procure or facilitate the making of any such offer or attempt by any other person.
- 17.2 The undertakings in this Clause apply to actions carried out by the Digital Expert in any capacity and whether directly or indirectly, on its own behalf, on behalf of any other person or jointly with any other person.
- 17.3 Each of the covenants in this Clause are considered fair and reasonable by the parties.

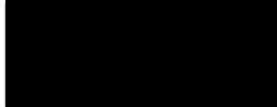
## **18 MISCELLANEOUS**

- 18.1 This Agreement constitutes the entire agreement between the CMA and the Digital Expert with respect to its subject matter and shall have effect to the exclusion of any other memorandum, agreement or understanding of any kind between the CMA and the Digital Expert preceding the date of this Agreement relating to the provision of the Digital Expert's time or services in whatever manner.
- 18.2 This Agreement may only be varied or any of its terms and conditions waived by written instrument signed by the CMA and the Digital Expert or, in the case of waiver, of the party waiving compliance.
- 18.3 The failure or the delay on the part of any party to exercise or enforce any right, power or privilege under this Agreement will not operate as a waiver, nor will the single or partial exercise of any right, power or privilege preclude any other or further exercise of that or any other right, power or privilege. If any party expressly waives any breach, such waiver will not operate as a waiver of a similar breach on another occasion or as a waiver of any other breach.
- 18.4 The CMA and the Digital Expert will each pay their own legal, professional and other costs in connection with the preparation and completion of this Agreement.
- 18.5 This Agreement will be governed and construed in accordance with the laws of England and the CMA and the Digital Expert submit to the exclusive jurisdiction of the English Courts.
- 18.6 The Bribery Act 2010 consolidates existing offences of offering or receiving a Bribe, bribery of foreign public officials and introduces a new corporate offence of failure by a commercial organisation to prevent a bribe being paid or received on its behalf. The Digital Expert shall
- (a) comply with all Applicable Laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2, 6 or 7 of the Bribery Act 2010;
  - (c) have and shall maintain in place throughout the Term of this Agreement its own policies and procedures, including, but not limited to, adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements and Clause 18.6(c), and will enforce them where appropriate;
  - (d) promptly report to the CMA's Head of Commercial any request or demand for any undue financial or other advantage of any kind received by the Digital Expert in connection with the performance of this Agreement.
- 18.7 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, sending of an email, or sending it by pre-paid recorded delivery or registered post to the relevant party at its address for the time being at The Cabot, 25 Cabot Square, London, E14 4QZ, and in the case of the Digital Expert, [REDACTED] or at any other address which either party notifies the other from time to time. Any such notice shall be deemed to have been received:
- (a) if delivered personally, at the time of delivery; or
  - (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting.
- In proving such service it shall be sufficient to prove that the envelope containing the notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.
- 18.8 Except as expressly provided elsewhere in this Agreement a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 18.9 The rights of the CMA and the Digital Expert to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.
- 18.10 This Agreement may be executed in any number of counterparts, each of which, when executed, shall be an original, and all the counterparts together shall constitute one and the same instrument.
- 18.11 The CMA may assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement at any time.
- 18.12 Neither the CMA nor the Digital Expert may pledge the credit of the other party nor represent itself as being the other party nor an agent, partner, employee or representative of the other party and neither the CMA nor the Digital Expert may hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other. Nothing in this Agreement and no action taken by the CMA or the Digital Expert pursuant to this Agreement creates, or is deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the CMA and the Digital Expert.
- 18.13 If at any time any part of this Agreement (including any one or more of the Clauses of this Agreement or any sub-Clauses or paragraph or any part of one or more of these Clauses) is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

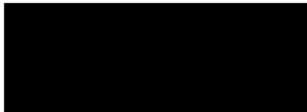
**THIS AGREEMENT** has been entered into on the date of the signature of the Terms and Conditions reference PROC 444-I- 2022 by the Digital Expert.

SIGNED by



Name: Erik Wilson CBE, Chief Operating Officer  
for and on behalf of  
CMA

SIGNED by



Name: Professor Neil D Lawrence, Director, EPOKAY LTD  
for and on behalf of  
Digital Expert



**SCHEDULE 1****Description of the Services**

1. Digital Experts will be required to deliver services in accordance with the requirements specified within the PROC 444-2022 Invitation To Tender and the deliverables detailed below.

Deliverables	Date/Duration
1. Digital Expert to attend CMA premises or provide services remotely, as agreed in advance of providing advice.	For Duration of Contract
2. Provision of technical and/or policy advice to CMA staff and leadership in relation to digital issues, as required to support its work and, where appropriate, internal decision-making.	For Duration of Contract
3. When relevant, provide expert advice on CMA or third party analysis.	For Duration of Contract
4. When relevant, present witness testimony in a legal setting (any requests will be discussed and agreed with the Digital Expert, with the option for them to decline).	For Duration of Contract

**SCHEDULE 2**

**Payment Schedule**

The Fees shall be calculated in accordance with this Schedule:

- [REDACTED]
- [REDACTED]

Reimbursable Expenses

As specified in PROC 444-2022 Invitation To Tender.

**SCHEDULE 3**

This schedule has been left intentionally blank  
The essence of this relationship shall be published.

**END**