

## 1. INTERPRETATION AND DEFINITIONS

- 1.1. The interpretation and construction of this Agreement shall be subject to the following rules, except where the context makes it clear that a rule is not intended to apply:
  - 1.1.1. reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - 1.1.2. the words "include" or "including" shall be construed without limiting the generality of any preceding words;
  - 1.1.3. the headings in this Agreement are for reference purposes only and shall not affect the interpretation or construction of this Agreement;
  - 1.1.4. in the event of conflict, the provisions of this Agreement are to be read in the following order of precedence in relation to that conflict:
    - (a) the Terms and Conditions;
    - (b) the Statement(s) of Work; and
    - (c) any document incorporated into this Agreement by reference;
  - 1.1.5. the Consultant acknowledges and accepts that the Services and any Deliverables are or may (in each case, at the direction of Crown Commercial Service) be used by or applied for the purposes or benefit of any member of the Crown Commercial Service Affiliate and by authorised third parties of any Crown Commercial Service Affiliate; and
  - 1.1.6. where Crown Commercial Service has any obligation under this Agreement, performance of that obligations (in whole or in part) by any other Crown Commercial Service Affiliate shall be deemed to be performance by Crown Commercial Service.
- 1.2. The following words and expressions shall have the following meanings unless the context otherwise requires:

**"Charges"** means the charges for the Services and Deliverables to be supplied under the Statement(s) of Work to this Agreement;

**"Confidential Information"** means any non-public, commercially sensitive information or materials belonging to, concerning or in the possession or control of a party and/or its affiliates which: (i) is provided, disclosed or otherwise made available to the other party, regardless whether directly or through entities or persons acting on such other party's behalf; and (ii) is either marked or identified in writing as confidential, proprietary or secret or with another designation sufficient to give notice of its sensitive nature; or (iii) is of a type that a reasonable person would recognize it to be of a confidential nature; or (iv) pertains to Crown Commercial Service's policyholders, beneficiaries, employees, contracting parties or any other persons.

**"Data Protection Legislation"** means the following Acts of the United Kingdom: Data Protection Act 1998 ("DPA"), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the EU Data Protection Directive 95/46/EC, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (21 2003/2426) and all other applicable laws and regulations relating to processing of personal data and privacy from time to time, including where applicable the guidance and codes of practice issued by the Information Commissioner;

**"Deliverable"** means the works, materials, data, designs, products, processes, methods, formulas or programs set out in the Statement(s) of Work;

**"Designated Person"** shall have the meaning given to it in the Terrorist Asset Freezing etc Act 2010;

**"Duration"** means the period of this Agreement as set out in the Statement(s) of Work;

**"Event of Force Majeure"** means any of the following circumstances which occur and which are beyond the reasonable control of a party and directly prevent that party from performing its obligation

under this Agreement, being war, civil commotion, armed conflict, riot, act of terrorism, fire, flood or other act of God;

**"Intellectual Property Rights"** means any patents, trademarks, service marks, rights in semi-conductor chip topographies, design rights, registered designs, applications for any of the foregoing, copyright, database rights, know-how and other similar rights or obligations whether registrable or not in any country;

**"Key Personnel"** means such employees or officers of Netcompany UK Limited.

**"Milestone Date"** means the dates, if any, set out on the Statement(s) of Work;

**"Personnel"** means all personnel involved in performing the Consultant's obligations under this Agreement from time to time (including its employees, staff, temporary staff, other workers, agents, consultants and directors and those of its sub-contractors);

**"Regulator"** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority or Other Contracting Body or the Supplier or its Parent Company;

**"Services"** means the services to be provided by the Consultant as set out in the Statement(s) of Work to this Agreement, including (where the context so admits) the creation and delivery of Deliverables;

**"Crown Commercial Service Affiliate"** means and shall include Crown Commercial Service and any existing or future entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Crown Commercial Service, whereas "control" or "controlled" or "controlling" means and shall be deemed to exist if a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other entity, either through contract, or by owning a controlling interest of the voting rights or of the equity capital or

of other ownership interests of such other entity, or otherwise possesses or is able to exert a controlling influence over such other entity by virtue of (i) having the ability to elect a majority of its board of directors, (ii) having the ability to appoint its management, (iii) having a contract to manage it (including reciprocal or inter-insurance exchanges and mutual insurer), (iv) having the power to direct its day-to-day business or affairs, (v) being appointed to act as its attorney-in-fact, or (vi) control through other comparable means (including conforming to the local definition of control, if any); and

## 2. SERVICES

As set out in the Statement(s) of Work, the Consultant shall:

- 2.1. provide the Services to Crown Commercial Service within the agreed timescales and meet the Milestone Dates (if applicable);
- 2.2. devote such of its time and attention and its Key Personnel's time and attention to the provision of the Services as shall be necessary for the proper discharge of its responsibilities under this Agreement;
- 2.3. in performing the Services, conduct itself properly at all times and shall comply with the Crown Commercial Service Information Security Policies and Standards and such other policies, procedures, rules and regulations (including those in relation to health and safety and corporate responsibility) which have been notified to the Consultant (and its Key Personnel) prior to or during the performance of the Services;
- 2.4. take out and maintain at its own cost adequate and reasonable insurance cover with a reputable insurer acceptable to Crown Commercial Service in relation to the Consultant's risks under this Agreement including professional indemnity insurance and public liability (third party) insurance to a minimum value of £2 million per claim. The Consultant shall at Crown Commercial Service's request provide all such evidence to demonstrate compliance with its obligations;

- 2.5. comply with the reasonable requests and instructions of Crown Commercial Service provided that the Consultant shall not be subject to the direction of Crown Commercial Service as to the manner in which the Services are to be provided;
- 2.6. be exclusively responsible for the payment of income tax, national insurance contributions, Value Added Tax and other taxes, duties, fees and other impositions levied by any governmental authority or otherwise in respect of any payment to be made in connection with the provision of Services under this Agreement or due to the Consultant or the Key Personnel;
- 2.7. ensure that, during the term of this Agreement it will not engage in, consent to or connive in any activity, practice or conduct in any part of the world which would constitute an offence under the Bribery Act 2010, and will put in place, maintain and comply with adequate procedures to prevent any person associated with it (in accordance with section 8 of the Bribery Act) from committing an offence under that Act.
- 2.8. assign an adequate number of Personnel to perform the Services who are properly entitled, educated, trained and fully qualified for the Services they are assigned to perform;
- 2.9. be solely responsible for the conduct of its Personnel. The Consultant shall make suitable checks of all prospective employees, sub-contractors and agents including, subject to any restrictions imposed by applicable law:
- 2.9.1. verifying that the Personnel hold the appropriate qualifications and experience; vetting all Personnel who shall or may be involved in the performance of the Consultant's obligations under this Agreement in respect of any criminal convictions that might be relevant to Crown Commercial Service,
- prior to carrying out any Services or other obligations arising out of or in connection with this Agreement to assess the adequacy of their knowledge, skills and suitability to carry out such Services or other obligations;
- 2.10. without prejudice to Clause 2.11, warrant that no Designated Person is or will be directly or indirectly engaged to act for the Consultant, or on its behalf in connection with this Agreement; and
- 2.11. notify Crown Commercial Service immediately in the event that it suspects that it has been approached by or is dealing with a Designated Person in connection with this Agreement, Such notification shall be accompanied by full particulars of the events giving rise to the notification and the Consultant shall fully co-operate with Crown Commercial Service in relation to any reasonable requests Crown Commercial Service may make arising from such notification.
- 3. PERFORMANCE MONITORING**
- 3.1. The Consultant shall monitor closely the performance of its obligations under this Agreement and the financial and creative progress of the Services. The Consultant shall notify Crown Commercial Service immediately of:
- 3.1.1. any possible change to the Charges;
- 3.1.2. any potential delay in the delivery of any Deliverable or the completion of the Services; and
- 3.1.3. any constraints (whether of resources, skills or otherwise) that might have an adverse impact on the Consultant's ability to perform Services of the nature and quantity placed by Crown Commercial Service prior to the date in question.
- 4. INTELLECTUAL PROPERTY RIGHTS**
- 4.1. All Intellectual Property Rights owned by Crown Commercial Service, Crown

Commercial Service Affiliates and/ or their licensors, excluding Created IPR ("Background IPR") shall continue to be owned by Crown Commercial Service, Crown Commercial Service Affiliates and / or their licensors and this Agreement shall not transfer the ownership of such Background IPR to the Consultant.

4.2. Subject to Clause 4.3, the Intellectual Property Rights in any Deliverables and all Intellectual Property Rights created in the performance of the Services ("Created IPR") shall vest in Crown Commercial Service or, at Crown Commercial Service's option, to a Crown Commercial Service Affiliate as notified by Crown Commercial Service from time to time (with full title guarantee).

4.3. The Consultant shall clearly identify any third party rights contained in any Deliverables which shall not transfer to Crown Commercial Service pursuant to Clause 4.2. The Consultant shall grant or shall arrange for the grant of an irrevocable royalty free licence in the relevant materials to Crown Commercial Service and Crown Commercial Service Affiliates as shall be necessary for the use of the Deliverables without infringing such third party rights.

4.4. The Consultant shall procure the irrevocable and unconditional waiver of all moral rights (or similar rights) in the Created IPR.

4.5. The Consultant may only use the Background IPR and the Created IPR as strictly necessary to provide the Services to Crown Commercial Service in accordance with this Agreement.

## **5. CONFLICTS OF INTEREST**

5.1. The Consultant shall immediately notify Crown Commercial Service of any conflict of interest which arises or may arise in relation to the provision of the Services as a result of any present or future engagement, employment or other concern.

## **6. PAYMENT**

6.1. Crown Commercial Service shall pay the Charges for the Services within thirty (30) days or sooner from the date of receipt of an invoice, provided the invoice is correct and complete in all material respects and not in dispute and that it constitutes a proper Value Added Tax invoice.

6.2. The Consultant shall submit invoices in respect of the Services performed by the Consultant in accordance with the Statement(s) of Work.

6.3. The Charges shall be the only compensation to which the Consultant shall be entitled for the performance of the Services and Crown Commercial Service shall have no liability for paying any salary, pension, bonus, sick pay, holiday pay or other fringe benefits to the Consultant in connection with this Agreement.

6.4. The Consultant agrees to the submission of all invoices either including details of the purchase order or Statement(s) of Work number(s) (as advised by Crown Commercial Service).

## **7. PREMISES**

7.1. Crown Commercial Service shall allow the Consultant and the Key Personnel access to its premises during normal working hours and out of hours as agreed solely for the purpose of performing the Services provided that Crown Commercial Service may refuse to admit, or may order the removal of, any person who in its reasonable opinion is not fit to be on its premises. The Consultant shall co-operate fully with Crown Commercial Service and take all necessary steps to assist in the maintenance of security at Crown Commercial Service's premises. The Consultant shall take reasonable care to ensure that, in the performance of the Services, the Consultant does not interfere with the operations of Crown Commercial Service or its employees or any other

contractor working on Crown Commercial Service's premises. As mutually agreed the Consultant may be responsible for the provision of all plant, equipment, tools, materials and other items necessary for the performance of the Services and for their removal from Crown Commercial Service premises. At the end of each visit to Crown Commercial Service's premises, the Consultant shall leave the Crown Commercial Service's premises in a safe, clean and tidy condition.

## **8. TERM AND TERMINATION**

8.1. This Agreement shall continue for the Duration unless otherwise terminated pursuant to this Agreement.

8.2. Crown Commercial Service may terminate the Agreement on written notice with immediate effect in the event that:

- 8.2.1. if the Consultant commits any material or persistent default of this Agreement, and (if capable of remedy) fails to remedy such default within seven (7) days of receipt of written notice requiring the default to be remedied; and/or
- 8.2.2. the Consultant or any Key Personnel has a bankruptcy order made against him, applies for an interim order under the Insolvency Act 1986 (of the United Kingdom), proposes any arrangement with or for the benefit of its creditors (including but not limited to an individual voluntary arrangement under the Insolvency Act 1986) or has a County Court administration order made against him under the County Court Act 1984; and/or
- 8.2.3. the Consultant, being a company, shall pass a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction where the resulting entity is at least as credit-worthy as the Consultant and assumes all of the obligations of the Consultant under the Agreement) or a court shall make an order to that effect.

8.3. Upon termination of this Agreement for whatever reason:

- 8.3.1. the accrued Charges shall be paid in respect of Services satisfactorily provided by the Consultant up to the date of termination;
  - 8.3.2. the Consultant shall return any documents, materials, correspondence, papers, information (including any and all Confidential Information such as customer lists) or data provided by Crown Commercial Service (on whatever media and wherever located) as part of the Services and destroy the Consultant's copies of such data in so far as permitted by law.
- 8.4. Termination shall be without prejudice to any rights or liabilities accrued by either party up to the date of termination. The rights and duties created by Clauses 2.4, 4, 9, 13, 14 and 15 shall survive.

## **9. CONFIDENTIALITY, RECORDS AND PUBLICITY**

- 9.1. The Consultant agrees to treat as secret and confidential and may not at any time whether during the term of the Agreement or after its termination for any reason disclose or permit to be disclosed to any third party or otherwise make use of or permit to be made use of, without Crown Commercial Service's written permission or in the normal course of the Services or unless required by law, any Confidential Information.
- 9.2. The Consultant shall make no announcement or publicity concerning the Agreement or the Services without the prior written consent of Crown Commercial Service.
- 9.3. The Consultant shall keep and maintain all financial and operational records relating to the Agreement for at least seven (7) years or as otherwise required by law.

## **10. FORCE MAJEURE**

- 10.1. Neither party shall be liable for any delays or failures attributable to its being affected by

an Event of Force Majeure, but the party so affected shall use best endeavours to resume performance as quickly as possible and shall promptly give the other party full particulars of the failure or delay and consult with the other party concerning the failure or delay from time to time as appropriate.

## **11. WARRANTIES AND INDEMNITIES**

11.1. The Consultant warrants that:

11.1.1. it shall, and shall continue to, hold all permissions required to perform the Services under this Agreement and that it shall comply with all requirements and conditions imposed by UK or EC law applicable to or which affect the Services, including the legal right to work in the UK;

11.1.2. the Consultant and the Key Personnel are suitably qualified, trained and experienced to perform the Services, with due care, skill and diligence and to such high standard of quality as it is reasonable for Crown Commercial Service to expect in all the circumstances, in accordance with best industry practice at all times;

11.1.3. it shall do or procure to be done all such further acts and execute and or procure for Crown Commercial Service all rights, licences, consents and permits that Crown Commercial Service may require in order to use and enjoy the Services and Deliverables in accordance with this Agreement;

11.1.4. it shall ensure that the Deliverables are of satisfactory quality and reasonably fit for the purpose for which they are supplied;

11.1.5. it shall comply (and shall procure that all Key Personnel comply) with all applicable laws and other governmental, statutory and/or regulatory requirements, codes of practice and guidance which may from time to time be applicable to the provision of the Services and Deliverables; and

11.1.6. it shall ensure, and shall procure that the Key Personnel shall ensure, that any software or

data introduced by the Consultant or the Key Personnel into Crown Commercial Service's or any Crown Commercial Service Affiliate's computer equipment or systems will be free from any virus or similar defect.

11.1.7. it shall have a contingency plan in place which can be implemented in the event of an incident or disaster impacting on the Consultant's ability to deliver the Services.

11.2. The Consultant shall indemnify Crown Commercial Service and any Crown Commercial Service Affiliate and any of their successors ("Affected Party") from and against any and all losses, liabilities, costs, claims, proceedings, actions, judgments, damages and expenses including (without limitation) any awards and/or penalties or fines imposed by any Regulator, on the Affected Party or its officers including defence costs, to the extent recoverable at law (and any associated costs thereto) and any legal and other professional fees, consultancy fees and expenses on a full indemnity basis, arising as a result of:

11.2.1. any breach of the Agreement by the Consultant;

11.2.2. any tax or national insurance contributions arising in respect of the Consultant or Key Personnel pursuant to Clause 2.8 for which any Affected Party is called upon to account to the relevant taxing authority;

11.2.3. the Consultant or its Key Personnel being construed as an employee, worker, agent or partner of Crown Commercial Service or any Crown Commercial Service Affiliate and the Consultant and its Key Personnel shall not hold himself out as such;

11.2.4. any liability for any employment related claim or any claim based on worker status brought by the Consultant or Key Personnel arising out of or in connection with the provision of the Services;

11.2.5. any neglect, act or default of the Consultant or claim that any Affected Party is

vicariously liable for the acts of the Consultant or the Key Personnel;

- 11.2.6. any claims or proceedings brought against the Affected Party by any third party that alleges that the performance of the Services by the Consultant or Key Personnel or the use of the Deliverables by Crown Commercial Service (1) infringes any Intellectual Property Rights or other rights of a third party, or (2) violates its obligations with respect to Confidential Information and/or data protection. If, in particular, any of the Deliverables is held to be infringing, the Consultant shall at its own costs and upon the Affected Party's request either (i) procure the right for the Affected Party to continue using it, or (ii) replace it with a non-infringing equivalent, or (iii) modify it to make it non-infringing, or (iv) if the aforementioned cannot be accomplished, refund to Crown Commercial Service all sums paid under the Agreement. For the avoidance of doubt the election of any of these options shall not restrict or limit Crown Commercial Service in claiming any other remedies.

## **12. LIABILITY**

- 12.1. Crown Commercial Service's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty) or otherwise for any default (or series of related events of default) in connection with this Agreement shall not exceed the Charges for Services payable under this Agreement.
- 12.2. Nothing in this Agreement shall exclude or limit either party's liability to the other party for death or personal injury caused by that party's negligence, or for fraud or fraudulent misrepresentation.

## **13. GENERAL**

- 13.1. Nothing in this Agreement shall constitute or imply, or be deemed to constitute or imply, any partnership, joint venture, agency, fiduciary relationship or other relationship

between the parties other than the contractual relationship expressly provided for in this Agreement and neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

- 13.2. This Agreement embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations oral or written, express or implied other than those contained in this Agreement.
- 13.3. Any notices under this Agreement shall be in writing delivered by hand or delivered by first class or special delivery post to the address set out in the Statement(s) of Work. Notices delivered by hand shall be given on the day of the receipt. Notices sent by post shall be given two (2) working days after posting.
- 13.4. No variation or amendment of this Agreement or oral promise or commitment related to shall be valid unless committed to writing and signed by or on behalf of both parties.
- 13.5. This Agreement is personal to the Consultant. Neither party shall assign or otherwise transfer or subcontract this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party save that Crown Commercial Service shall be entitled to assign the benefits and/or its obligations pursuant to this Agreement to any company who is a successor of or, who at the relevant time is a Crown Commercial Service Affiliate.
- 13.6. Any provision of this Agreement which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms hereof.
- 13.7. Neither the Contract (Rights of Third Parties) Act 1999 of the United Kingdom shall not

apply to this Agreement save in respect of Crown Commercial Service Affiliates.

13.8. No failure or delay by either party to exercise any right or remedy existing under this Agreement will act as a waiver or otherwise prejudice or restrict the rights of that party.

13.9. The rights and remedies under this Agreement are cumulative do not exclude rights and remedies provided by law or otherwise.

#### **14. DATA PROTECTION**

14.1. Each of Crown Commercial Service and the Consultant undertakes, where applicable, to comply fully with the Data Protection Legislation and to procure that its employees, agents and contractors observe the provisions of the Data Protection Legislation.

14.2. If the Consultant receives personal data (as defined in the DPA) pursuant to this Agreement, the Consultant shall:

14.2.1. only use it as strictly necessary for the performance of its obligations hereunder and in accordance with this Agreement; and

14.2.2. if the Consultant acts as a data processor (as defined in the DPA) in relation to any personal data processed pursuant to this Agreement on behalf of Crown Commercial Service (which, in this Clause 14 includes any Crown Commercial Service Affiliate), the Consultant shall:

- (a) comply with the obligations imposed on Crown Commercial Service by the seventh data protection principle set out in the DPA, including (i) maintaining security, technical and organisational security measures sufficient to comply at least with the obligations imposed on Crown Commercial Service by the seventh data protection principle set out in the DPA and taking reasonable steps to ensure the reliability of any employees of the Consultant who have access to such personal data; and (ii)

allowing representatives of Crown Commercial Service to audit the Consultant's compliance with Clause 14.2 on reasonable notice and/or, at the option of Crown Commercial Service, on request providing Crown Commercial Service with evidence of its compliance with such requirements;

- (b) not transfer or process any such personal data outside the European Economic Area without the prior written consent of Crown Commercial Service;
- (c) not otherwise process such personal data in any way contrary to any Data Protection Legislation applicable to the Consultant and/or Crown Commercial Service;
- (d) use reasonable endeavours to assist Crown Commercial Service to comply with any obligations imposed on Crown Commercial Service in relation to any such personal data processed by or on behalf of the Consultant; and
- (e) comply with all instructions of Crown Commercial Service in relation to any such personal data.

14.3. The Consultant shall not store or transfer any data containing personal data (as defined in the DPA) processed by the Consultant on behalf Crown Commercial Service or Confidential Information ("Crown Commercial Service Data") via any form of portable storage media (such as a USB Drive, disc or tape) unless the holding/transfer of such data has been previously authorised by the Crown Commercial Service in writing and such media is fully encrypted in accordance with the most stringent industry standards.

14.4. The Consultant shall ensure that all media containing Crown Commercial Service Data, including all paper-based Crown Commercial Service Data are safely stored, handled and

disposed of in line with recognized industry standards.

- 14.5. To the extent the Consultant moves any media storage with Crown Commercial Service Data offsite, the Consultant shall ensure that these media are encrypted, transported in accordance with Crown Commercial Service's instructions; and the chain of custody is made available for Crown Commercial Service.
- 14.6. Any breach of the provisions of this Clause 14 shall be immediately notified in writing by the Consultant to Crown Commercial Service and Crown Commercial Service shall be regularly updated thereafter with all relevant information regarding the breach including the nature of the information compromised or potentially compromised. The Consultant shall use all efforts to avoid such breach or mitigate its circumstances and implement any and all measures necessary to restore the security of compromised systems, files and information and take such measures to avoid this occurrence prospectively.
- 14.7. Upon becoming aware of any suspected, actual or potential security breach in connection with the Services, the Consultant shall promptly notify Crown Commercial Service thereof.

## **15. GOVERNING LAW AND DISPUTES**

- 15.1. The parties shall use their best endeavours to negotiate in good faith and settle amicably within a reasonable period of time any dispute that may arise in connection with the Agreement. Neither party may initiate any legal action until negotiations have been exhausted, unless such party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have. The existence of any dispute shall not entitle the Consultant to suspend or delay the carrying out of any part of the Services.
- 15.2. This Agreement shall be governed by and construed in accordance with the laws of

England and Wales. The courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Agreement, for which purpose all parties irrevocably agree to submit to such jurisdiction.