



THIS AGREEMENT IS DATED 1 February 2019

BETWEEN

- (1) **XXXXXX** incorporated and registered in XXXXXXXX with company number XXXXXXXX whose registered office is at XXXXXXXXXXXXXXXXXXXX, (the **Supplier**); and
- (2) **WISE ABILITY SERVICES LTD** incorporated and registered in England and Wales with company number 07200102 whose registered office is at 14 Victoria Road, Tamworth, B79 7HL (the **Customer**).

BACKGROUND

- (1) WISE Ability Services (the Customer) are looking to procure a partner to evaluate the overall impact of the BBO UCan Project in Dorset. The Customer wishes to engage the Supplier to carry out all aspects of the evaluation which should assess the UCan Project: design; appropriateness; relevance; efficiency; effectiveness; impact; outcomes; and, progression, delivered through the BBO UCan project in Dorset.
- (2) The Supplier will maintain evidence demonstrating the process having been undertaken, and testing that the evaluation has met European Social Fund, Big Lottery Fund and national contract regulation requirements.
- (3) The Supplier has been provided with a copy of the standard terms and conditions for the Building Better Opportunities programme, which the Customer entered into on 17 March 2017 (the **Grant Agreement**).

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

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



Charges:	the sums payable for the Services, as set out in Schedule 2.
Customer's Manager:	Philippa Plumpton, who is the person responsible for managing the Services on behalf of the Customer.
Customer Materials:	all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the services, including the items provided pursuant to clause 4.1.2.
Data Protection Legislation:	the General Data Protection Regulation 2016/679 ('GDPR'), the Data Protection Act 2018 ('DPA 2018'), and the Privacy and Electronic Communications Regulations 2003 ('PECR'), as amended, replaced or superseded, and all other applicable laws and regulations relating to the processing of personal data and privacy together with any applicable guidance and/or codes of practice issued or endorsed by the Information Commissioner or relevant government department in relation to such legislation.
Deliverables:	any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in Schedule 1 and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment).
Intellectual Property Rights:	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, , database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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.

Key Personnel: the Supplier's Manager and the individuals identified as key personnel in 3.4.1.

Mandatory Policies: the Customer's Policies listed in Schedule 3 and/or as amended by notification to the Supplier from time to time.

Milestones: a date by which a part of the Services is to be completed, as set out in Schedule 3.

Services: the services set out in Schedule 1, including services which are incidental or ancillary to such services.

Supplier's Manager: XXXXXX TBA

2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on 01 February 2019 and shall continue, unless terminated earlier in accordance with clause 12 (Termination), until 31 December 2019 or until the completion of services, whichever is later, when it shall terminate automatically without notice.
- 2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement from 01 February 2019.

3. SUPPLIER'S RESPONSIBILITIES

- 3.1 The Supplier shall:
 - 3.1.1 provide the Services and the Deliverables in accordance with Schedule 1;
 - 3.1.2 ensure that the Services and Deliverables will conform in all respects with Schedule 1 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Customer;
 - 3.1.3 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;



- 3.1.4 co-operate with the Customer in all matters relating to the Services, and comply with the Customer's instructions;
 - 3.1.5 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
 - 3.1.6 notify the Customer in writing immediately upon the occurrence of a change of control of the Supplier; and
 - 3.1.7 the Supplier shall, where requested by the Customer (or the Big Lottery Fund) inform others that the activities provided by the Customer have been financed in whole or in part by the European Social Fund in conjunction with the National Lottery through the Big Lottery Fund.
- 3.2 The Supplier acknowledges that the Customer is bound by terms of the Grant Agreement. Under the Grant Agreement, the Customer assumes a number of obligations including obligations in relation to expenditure of funds, provision of accounts and other records and information, monitoring standards, use of capital assets purchased. The Supplier undertakes to the Customer that, in consideration of the payments received under this Agreement, the Supplier will abide by the following terms and conditions of the Grant Agreement, as if the Customer was substituted for the Big Lottery Fund and the Supplier was substituted for the Customer:
- 1.5; 5.4; 6.9; 6.10; 6.11; 6.13; 6.14; 6.15; 6.16; 7.4; 8.3; and 11.4 – 11.6 inclusive;
- save that:
- 3.2.1 the Customer will only be obliged to make payment to the Supplier in respect of grant funding which has been received from the Big Lottery Fund;
 - 3.2.2 the Customer will only be able to request information or impose reporting requirements upon the Supplier to the extent that such requirements or obligations have been imposed on them by the Big Lottery Fund;
 - 3.2.3 in enforcing any obligations requiring the Supplier to provide information, the Supplier accepts that damages would not be an adequate remedy and that the



Customer shall be entitled to seek injunctive relief to require specific performance of the obligations; and

- 3.2.4 the Supplier shall indemnify the Customer for the consequential losses arising from any breach of the Supplier's undertakings hereto including, but not limited to, any loss by the Customer in having to repay the grant funding to the Big Lottery Fund in full or in part.
- 3.3 Time is of the essence in relation to any performance dates or Milestones for the Supplier. If the Supplier fails to meet the relevant deadlines, then (without prejudice to the Customer's right to terminate this agreement and any other rights it may have), the Customer may:
- 3.3.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 3.3.2 purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;
- 3.3.3 hold the Supplier accountable for any loss and additional costs incurred; and
- 3.3.4 have any sums previously paid by the Customer to the Supplier in respect of the affected Services refunded by the Supplier.
- 3.4 In relation to the Supplier's personnel, the Supplier shall:
- 3.4.1 use the Key Personnel in the provision of the Services. The Key Personnel are:-
XXXX,
XXXX,
XXXX,
- 3.4.2 ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this agreement;



- 3.4.3 promptly inform the Customer of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by the Customer, provide a suitably qualified replacement for such individual; and
 - 3.4.4 use its best endeavours not to make any changes to the Key Personnel throughout the term of this agreement and obtain the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.
- 3.5 The Supplier shall provide the Customer with such information that the Customer shall reasonably require in order to enable the Customer to fully monitor the Supplier's compliance with this agreement.
- 3.6 The Supplier shall allow the Customer (or its professional advisors) access to the Supplier's premises, personnel, systems and relevant records to verify that the Charges and any other sums charged to the Customer under this agreement are accurate.
- 3.7 The Customer and its professional advisors shall have the right to request copies or take copies of any records which they reasonably require in order to comply with its obligations under the Grant Agreement and the Supplier shall provide the necessary facilities to assist in copying, free of charge.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
 - 4.1.1 co-operate with the Supplier in all matters relating to the Services; and
 - 4.1.2 provide to the Supplier all documents, information, items and materials required under Schedule 1.

5. DEFAULT BY THE CUSTOMER

A failure by the Customer to comply with the terms of this agreement can only relieve the Supplier from complying with its obligations under this agreement with effect from the date on which the Supplier notifies the Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect on the Services.



6. CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges as laid out at Schedule 2.
- 6.2 The Charges are fixed, inclusive of all associated expenses and are inclusive of VAT.
- 6.3 The Supplier shall invoice the Customer on/or after the Commencement Date for 50% of the Charges (£43,000).
- 6.4 The Supplier shall invoice the Customer upon completion of the Services in July 2019(having been completed as required under this Agreement, in accordance with the Quotation, Plan, Milestones and Budget, which the Customer shall, in its sole discretion, decide) a further 25% of the Charges (£21,500.00).
- 6.5 The Supplier shall invoice the Customer upon completion of the Services in December 2019 (which the Customer shall, in its sole discretion, decide) for the remaining 25% of the Charges (£21,500.00).
- 6.6 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 6.7 The Customer acknowledges that the Grant Agreement contains provisions enabling the Big Lottery Fund to claw back grant funding in certain circumstances and to postpone payment of the grant (see clauses 11.5, 11.6, 11.7 and 11.8 of the Grant Agreement). The Supplier agrees to return any Charges to the Customer which are payable from any portion of grant monies subject to a clawback by the Big Lottery Fund.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 In relation to the Customer Materials:
- 7.1.1 the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- 7.1.2 the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.
- 7.2 In relation to the Deliverables:



- 7.2.1 the Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables;
 - 7.2.2 the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and
 - 7.2.3 the Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 7.2.1.
- 7.3 The Supplier:
- 7.3.1 warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Customer Materials) by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 7.3.2 shall indemnify the Customer in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use of supply of the Services and the Deliverables (excluding the Customer Materials).

8. **INSURANCE**

During the term of this agreement the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance at an amount not less than that which is normal and customary for a supplier in the business of providing services of a similar scope, nature and complexity to the Services.



9. DATA PROTECTION

9.1 In this clause, **Controller, Data Subject, Personal Data, Personal Data Breach, Processor, and Process(ing)** have the meaning assigned to them in the GDPR.

9.2 In relation to any Personal Data provided or made available under this Agreement, each Party is a Data Controller in its own right and must comply with all requirements of relevant Data Protection Legislation including but not limited to upholding the rights of Data Subjects and ensuring any Personal Data is Processed in accordance with the relevant data protection principles, including using appropriate security measures, and on the basis of one or more legal conditions in the relevant Data Protection Legislation.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time during this agreement, and for a period of three years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers or the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

10.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11. LIMITATION OF LIABILITY

11.1 Nothing in this agreement shall limit or exclude the Supplier's or the Customer's liability for death or personal injury caused by its negligence, or the negligence of its personnel,



agents or subcontractors; fraud or fraudulent misrepresentation; or shall limit or exclude the Supplier's liability under clause 7.3.2 (IPR indemnity).

11.2 Subject to clause 11.1 neither party to this agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

11.3 Notwithstanding clause 11.2, the losses for which the Supplier assumes responsibility and which shall be recoverable by the Customer include:

11.3.1 sums paid by the Customer to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the terms of this agreement;

11.3.2 wasted expenditure;

11.3.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

11.3.4 losses incurred by the Customer arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the Customer) against the Customer caused by the act or omission of the Supplier;

11.3.5 anticipated savings.

11.4 The rights of the Customer under this agreement are in addition to, and not exclusive of, any rights or remedies provided by the common law.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

12.1.1 the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 Business Days after being notified in writing to do so;



- 12.1.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 12.1.3 the other party 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 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 12.1.4 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 that other party (being a company);
 - 12.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 12.1.6 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party; and
 - 12.1.7 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 12.2 For the purposes of clause 12.1.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- 12.2.1 a substantial portion of this agreement; or
 - 12.2.2 any of the obligations set out in clauses 7 and 10,
- over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.



12.3 Without affecting any other right or remedy available to it, the Customer may terminate this agreement:

12.3.1 with immediate effect by giving written notice to the Supplier if there is a change of control of the Supplier; or

12.3.2 on the provision of 3 weeks' notice in writing.

13. CONSEQUENCES OF TERMINATION

13.1 On termination or expiry of this agreement:

13.1.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete and return all of the Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables and Customer Materials in its possession and will not use them for any purpose not connected with this agreement; and

13.1.2 the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it;

13.1.3 the following clauses shall continue in force: clause 1 (Interpretation), clause 7 (Intellectual Property Rights), clause 10 (Confidentiality), clause 11 (Limitation of liability), clause 13 (Consequences of termination), clause 18 (Severance), clause 20 (Conflict), 24 (Governing law) and clause 25 (Jurisdiction).

13.2 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 date of termination or expiry.

14. FORCE MAJEURE

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



- 14.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 14.1.2 epidemic or pandemic;
 - 14.1.3 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;
 - 14.1.4 nuclear, chemical or biological contamination or sonic boom; and
 - 14.1.5 collapse of buildings, fire, explosion or accident.
- 14.2 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.
- 14.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving one week's written notice to the Affected Party.
- 15. SUBCONTRACTING AND OTHER DEALINGS**
- 15.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 16. WAIVER**
- 16.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 16.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.



17. RIGHTS AND REMEDIES

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

18. SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

19. ENTIRE AGREEMENT

- 19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

20. CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of the schedules, the provisions of this agreement shall prevail.

21. NO PARTNERSHIP OR AGENCY

- 21.1 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.



21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22. THIRD PARTY RIGHTS

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.

23. NOTICES

23.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).

23.2 Any notice or communication shall be deemed to have been received:

23.2.1 if delivered by hand, on signature of a delivery receipt; or

23.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting.

24. GOVERNING LAW

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

25. JURISDICTION

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

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



Schedule 1 - Services Details

In this Schedule: “Our”, “we” means the Supplier, “Your” means the Customer.



Schedule 2- Charges, costs and payment

Pricing shall be a fixed price of £86,000 (inclusive of VAT) for delivering the full scope of service, and is inclusive of all associated fees, costs and expenses.

TBA once the successful Supplier is awarded contract



Schedule 3- Milestones

TBA once the successful Supplier is awarded contract



Signed by **SUPPLIER**

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Signed by **CUSTOMER**

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