

Professor David Hoffman
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: Erik Wilson
Chief Operating Officer

Our ref: PROC 596-2023

16 June 2023

BY EMAIL
[REDACTED]

LETTER OF RETAINER

Dear Professor Hoffman,

Microsoft Corporation v. Competition and Markets Authority

I am pleased to confirm that the Competition and Markets Authority would like to appoint you as expert witness in the matter of [REDACTED]
[REDACTED] [REDACTED]

Below are the principal terms of a retainer for the supply of expert advisory services as well as the duties and obligations placed on you. Please sign and return a copy of this letter, including completing any information required in Appendices 1-3 where applicable, to indicate your acceptance of each of the terms and undertakings.

A letter of instruction, setting out what you are required to do in your capacity as an expert ("**the Letter of Instruction**"), will follow shortly.

If, in the meantime, there is anything else we can do to assist, please contact [REDACTED]
[REDACTED]

Yours sincerely,
[REDACTED]
[REDACTED]
[REDACTED]

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1. Defined Terms

“Background IP”: all information, techniques, know-how, software, materials (regardless of the form or medium in which they are disclosed or stored) and intellectual property rights (owned by or licensed to the Parties at the date of this Retainer or generated outside of the Expert Services) that are provided by one Party to the other for use in the Expert Services (whether before or after the date of this Retainer)

“The CMA”: the Competition and Markets Authority

“Confidential Information”: any and all information, including Results, Background IP and information relating to the business or affairs of the Party, provided directly or indirectly by one Party to the other Party in oral or documentary form or by way of models, biological or chemical materials or other tangible form or by demonstrations, whether before, on or after the date of this Retainer and which in each case at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence; and any copy of the foregoing

“The Expert”: Professor David Hoffman

“The Expert Services”: the exact range of services with possible deadlines that the Expert is to provide

“The Matter”: the proceedings in the [REDACTED]
[REDACTED]

“Party” or “Parties”: a party or parties to this Retainer

“Retainer”: the written agreement between the CMA and the Expert consisting of the letter of retainer and Appendices 1, 2, and 3 thereof

“The Tribunal”: the Competition Appeal Tribunal

“UK GDPR”: the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679)

2. Duration of this Retainer

- 2.1 This Retainer shall commence on the date of the last signature and shall remain in force for a maximum period of 2 years thereafter, the time period being dependent upon the requirements of any litigation and the timetable in respect thereof.

3. *The Expert*

- 3.1 It is agreed that the Expert is involved in all aspects of the provision of services under this Retainer to the CMA and further that they will supervise and review all work carried out by others and take full responsibility for the end product of all services provided under this Retainer to the CMA.

4. *Duty of Independence*

- 4.1 Expert evidence, and any report produced by the Expert, must be, and must be seen to be, produced independently by the Expert, uninfluenced by any pressure. Further details on the duty of independence will be set out in the Letter of Instruction.

5. *Expert Witness Instruction*

- 5.1 The Expert will be instructed to act as expert witness before the Tribunal. The CMA shall provide the Expert with clear instructions in writing, unless it is not practical to do so. Where applicable, such provision shall be in accordance with section 8 of the Protocol for the Instruction of Experts to give Evidence in Civil Claims.
- 5.2 Upon receipt of the Letter of Instruction from the CMA, the Expert shall discuss and agree with the CMA the Expert Services.
- 5.3 If, in the reasonable opinion of the Expert, the Expert is not able to provide the Expert Services or any part of them within any agreed time scales, then the Expert shall inform the CMA at the earliest opportunity, taking into consideration the impact that this may have upon any timetable set by the court, where applicable.
- 5.4 The Expert shall use reasonable endeavours to meet any deadlines set by the CMA in the instructions given by the CMA to the Expert, except for deadlines or dates for compliance which are set by the court, where the Expert shall use best endeavours, subject always to the duty of the CMA to promptly inform the Expert of such court deadlines and court set dates for compliance.
- 5.5 The CMA shall provide any court orders and timetables which the Expert is required to comply with.
- 5.6 The CMA shall provide all relevant documents and answer any questions the Expert has in order to carry out the Expert Services.

5.7 The CMA shall not influence the Expert in any way. The Expert shall provide the Expert Services as an independent individual giving opinions on the evidence provided.

5.8 The CMA shall provide any necessary training required at CMA's cost, should the Expert be required to attend court.

6. Overriding Duty to the Tribunal

6.1 It is agreed that, to the extent the Expert is not already, the Expert will become familiar with those sections of the Tribunal Guide to Proceedings 2015 that relate to an expert's overriding duty to the Tribunal, as well as Part 35 of the Civil Procedure Rules and its Practice Direction, which the Tribunal takes into account in relation to expert evidence, as well as the guidance published by the Civil Justice Council for the instruction of experts in civil claims. Further details on the formal requirements and duties that apply to the Expert in his capacity of expert witness before the Tribunal will be set out in the Letter of Instruction.

7. Performance

7.1 Whilst providing Expert Services under this Retainer, the Expert agrees to use reasonable skill care and diligence in the provision of services and shall use all reasonable endeavours to comply with any timetable for the provision of Expert Services specified by the Tribunal or agreed between the CMA and the Expert.

7.2 Nothing in this Retainer shall create the relationship of employer and employee.

8. Proposed Work under this Retainer

8.1 The Expert will be instructed as an independent expert witness in the Matter.

9. Confidentiality, Data Protection and Communications

9.1 It is agreed that the Expert will comply with all applicable laws about the processing of personal data and privacy arising out of information passed to it pursuant to this Retainer and will provide all reasonable assistance to the CMA with any lawful requests made by the CMA to the Expert, in order to satisfy the CMA's personal data and privacy obligations.

9.2 The CMA follows Cabinet Office procurement policy in its contracts, a part of this procurement policy covers the UK GDPR and mandates the use of standard clauses. The current standard clauses are contained in Appendix 1 to this Retainer. It is agreed that the Expert will comply with these clauses during the currency of this Retainer.

9.3 To the extent necessary, it is agreed that that further detail of the arrangements on data protection is provided under Appendix 1.

10. Confidential Information

10.1 Each Party shall keep confidential and secret any and all Confidential Information that is acquired through this Retainer.

10.2 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under this Retainer. Each Party shall be responsible for ensuring that its officers and employees comply with the provisions of this clause. If a Party intends to use the services of subcontractors, consultants or third parties to work on, advise or manage any aspect of the Expert Services, that Party shall first ensure such subcontractors, consultants or other third parties sign legally-binding Retainers requiring them to abide by conditions of confidentiality no less binding than those provided herein.

10.3 In the event of one Party visiting any of the establishments of the other Party, the visiting Party undertakes that any information which may come to its knowledge as a result of any such visit, inclusive of the form, materials and design of the various elements of any relevant plant and equipment which may be seen at such establishments as well as all the plant as a whole, the methods of operation thereof and the various applications thereof, shall be kept strictly confidential and shall be regarded as Confidential Information for the purpose of this Retainer.

10.4 The obligations in clauses 10.1, 10.2 and 10.3 above shall not apply to Confidential Information, disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), where the Receiving Party can clearly demonstrate that the information:

- (a) was in the public domain prior to its disclosure or enters into the public domain after disclosure otherwise than by default of the Receiving Party;
- (b) becomes known to the Receiving Party by action of a third party not in breach of any obligation of confidentiality to the Disclosing Party;
- (c) was in the Receiving Party's possession before receipt from the Disclosing Party and was not acquired directly or indirectly from the Disclosing Party;

- (d) was independently developed by or for the Receiving Party at any time, independently of the Confidential Information disclosed to it by the Disclosing Party;
 - (e) is required to be disclosed by law or government regulation or court order. In such cases, the Receiving Party shall wherever practicable give reasonable advance notice of the intended disclosure to the other Party and shall limit the disclosure to the extent legally required to be disclosed. The relaxation of the obligations of confidentiality shall apply solely for such compliance and for as long as is necessary to comply with the relevant law or regulatory requirement.
- 10.5 The provisions of this clause 10 shall survive any termination of this Retainer for a period of 5 years from termination.
11. Transparency
- 11.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 (“**FOIA**”) and/or the Enterprise Act 2002 (“**EA02**”), the content of this Retainer is not Confidential Information. The CMA shall be responsible for determining in its absolute discretion whether any of the content of this Retainer is exempt from disclosure in accordance with the provisions of FOIA/EA02. Notwithstanding any other term of this Retainer, the Expert hereby gives consent for the CMA to publish this Retainer in its entirety (subject to clause 11.5), (but with any information which is exempt from disclosure in accordance with the provisions of FOIA/EA02 redacted) including from time to time agreed changes to this Retainer, to the general public.
- 11.2 The CMA will consult with the Expert to inform its decision regarding any redactions, and both Parties will seek to agree on the redactions and publication of this Retainer, but the CMA shall have the final decision in its absolute discretion.
- 11.3 The Expert shall assist and cooperate with the CMA to enable the CMA to publish this Retainer.
- 11.4 It is agreed that the Expert will provide all reasonable assistance to the CMA in relation to any requests for information in relation to this Retainer which are made to the CMA in connection with FOIA, the Environmental Information Regulations 2004 and/or any statutory modification or re-enactment thereof or any related guidelines or codes or practice at no additional charge.

- 11.5 The Expert accept that the CMA is able to disclose this Retainer and any information it receives from the Expert to the extent that the CMA deems such disclosure necessary or appropriate in the course of carrying out its public functions.
- 11.6 Please direct any communications on this matter to [REDACTED] [REDACTED] [REDACTED] and mark any correspondence or other documents as confidential and legally privileged and prepared at the request of the CMA Litigation Unit for the purpose of litigation.

12. Intellectual Property

13. For the purposes of this section, “**Results**” shall mean all information, reports, designs, inventions, software and other matter capable of being the subject of intellectual property rights which is conceived and first reduced to practice or writing or developed in whole or in substantial part for the purpose of the Expert Services.
- 13.1 All Background IP used in connection with the Expert Services shall remain the property of the Party (or its licensors) who introduces it and no licence is granted to either Party’s Background IP unless specifically agreed to in writing.
- 13.2 The Expert shall promptly disclose all Results to the CMA and on payment of the full fees, specified in clause 17, all Results shall automatically become the sole property of the CMA.
- 13.3 At the request and expense of the CMA, the Expert shall execute such documents as may reasonably be necessary for the CMA to transfer title to and apply for patents or other protections for the Results.

14. Warranties, Liability and Indemnities

- 14.1 All warranties, liabilities and indemnities as drafted here cannot and will not conflict with the overarching duty of the Expert to the Tribunal should an appeal be commenced.
- 14.2 The Expert undertakes that it will use all reasonable efforts commensurate with the highest standards of research and professional practice to perform the Expert Services and if any part of the Expert Services is performed negligently or in breach of contract then, at the request of the CMA given within 6 months of the completion date, the Expert will re-perform the relevant part of the Expert Services, subject to clauses 14.4 and 14.5 below.
- 14.3 Each Party shall be liable to the other Party for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to

loss or destruction of or damage to such other Party's property, which includes data) arising from a Party's breach of contract or duty (whether arising in negligence, tort, statute or otherwise). For the avoidance of doubt, the Expert's liability under this clause shall be subject to clause 14.5.

- 14.4 Neither Party shall be liable to the other Party for any damages, dispute or injury arising during the undertaking of the Expert Services unless caused by the wilful act, negligence or default of an employee, student, consultant or agent of that Party. Nor shall one Party be liable to the other Party for an indirect or consequential loss, damages, claims or demands arising out of this Retainer, including without limitation any economic loss or other loss of income, profits, business, opportunity or goodwill no matter how arising, whether by breach or by negligence and whether in contract, tort or otherwise.
- 14.5 The Expert's aggregate liability to the CMA for any loss or damage suffered or incurred by the CMA as a result of the Expert's breach of contract, negligence or otherwise howsoever arising shall be limited to the sums received or payable to the Expert under this Retainer in the year in which such liability arises. The Parties agree this to be a genuine and reasonable pre-estimate of anticipated possible losses. This clause shall not limit or exclude any liability that as a matter of English law may not be limited or excluded, such as liability for death or personal injury.
- 14.6 The CMA shall indemnify the Expert against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the CMA by the Expert in the course of providing the Expert Services, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to by, any act by the Expert.
- 14.7 For the avoidance of doubt, the terms and conditions of this Retainer are agreed to be in lieu of any warranties, obligations or conditions implied by law, trade usage, custom or otherwise as to the merchantable quality or the fitness of any particular purpose of the Expert Services being supplied herein.
15. Responsibility for Work
- 15.1 The Expert will not delegate any of the Expert Services under this Retainer without the prior approval of the CMA.
- 15.2 To the extent that it will be more cost effective for the Expert to delegate some aspects of the Expert Services, the Expert confirms that he will inform the CMA, before involving anybody other than the Expert. The Expert will also inform the

CMA which aspects of the Expert Services the Expert seeks to delegate, to whom the Expert is likely to delegate and the experience and the charge out rates of those involved.

16. Conflict of Interest

16.1 In accordance with Appendix 2 (Conflicts of Interest) and the Conflict of Interest Statement at Appendix 3, the Expert agrees to notify the CMA if, at any time during the continuance of this Retainer, it becomes reasonably aware of the likelihood of the Expert undertaking any consultancy services which may cause a conflict of interest between the Expert's duties herein and his/her obligation to a third party. In the event of a conflict or potential conflict, the Parties agree to amend the Expert Services to avoid any conflict or where this is not possible or viable to terminate the Expert Services forthwith on written notice.

17. Your Fees

17.1 Please confirm the following:

- (a) The Expert's fees will be calculated by reference to the amount of time which the Expert spends on this matter at the hourly rate of [REDACTED] per hour for all work up to and including attendance at trial.
- (b) The Expert will also charge for reasonable travelling expenses and other disbursements, and will obtain the CMA's prior written authority before incurring any significant disbursements or expenses over [REDACTED].
- (c) The Expert will send invoices on a monthly basis for the work undertaken in the preceding month prior to the issue of the invoice, and the CMA shall pay the invoices within 30 days from date of invoice. The invoices should include a breakdown of work done and time spent by the Expert at any given date, and the Expert procures the provision of Expert Services under this Retainer to include this information. If the Expert keeps separate time records, it would be helpful if you could let the CMA have a copy of these. This information may be important at the assessment of the CMA's costs, if successful in this matter in any litigation, and may have to be shown to the other side and to the costs judge. In any event, the CMA will need that information to prepare costs estimates.
- (d) Please send electronic invoices to **CMA Accounts Payable** using the email address [REDACTED]. In the event of a query regarding an outstanding payment you should contact **CMA Finance Team** either by email to [REDACTED] or by telephone on [REDACTED].

- (e) The Expert is to ensure that invoices are marked for the attention of [REDACTED], and include the procurement number (PROC 596-2023).

18. Termination

- 18.1 The CMA can terminate this Retainer upon 14 days written notice. Such termination will not affect the Expert's entitlement to payment by the CMA of any fees which became properly payable before the date of the termination.
- 18.2 Upon termination, all documents and materials provided to the Expert or produced by the Expert for the purpose of this Retainer must either be delivered promptly to the CMA or destroyed and any electronic material deleted as determined by the CMA.
- 18.3 The Expert can terminate this Retainer upon 30 days written notice to the CMA in circumstances where the Expert has been released by the Tribunal.

19. Withdrawal

- 19.1 If any instructions under this Retainer become incompatible with the Expert's duties as an expert, or any other substantial and significant reason results in the Expert considering withdrawing from the case, the Expert is required to discuss this with the CMA and consider carefully whether it would be more appropriate for the Expert to make a written request for directions from the Tribunal. If the Expert does withdraw, he is required to give the CMA written notice.

20. Publicity

- 20.1 Neither Party shall use the name, crest, logo, trademark, or registered image of the other Party nor the name of any employee, member of staff, or student of the other Party for any purpose without the express written permission of the other Party or individual, except that nothing in this clause shall restrict, delay, impede, or prevent a Party from using the other Party's name when making statutory disclosures under FOIA or any subsequent re-enactment or modification thereof.

21. Notices

- 21.1 Any notices required to be given to the CMA under this Retainer must be in writing and delivered to the addresses listed in paragraph 11.6 or as subsequently specified in writing.

21.2 Any notices required to be given to the Expert under this Retainer must be in writing and delivered to the addresses listed in the signature block below.

22. Non-Assignment

22.1 Neither Party may assign, delegate, sub-contract, or otherwise transfer any or all of its rights and obligations under this Retainer without the prior written agreement of the other Party.

23. Force Majeure

23.1 Neither Party shall be liable for any breach of its obligations under this Retainer resulting from causes beyond its reasonable control including, but not limited to, fires, strikes (excluding strikes by its own employees), floods, war, acts of God, pandemic or epidemic, catastrophic or partial failure of any part of the telecommunications or power supply network, insurrection or riots, embargoes, or regulations of any civil or military authority ("**Event of Force Majeure**").

23.2 Each of the Parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, the said notice to contain details of the circumstances giving rise to the Event of Force Majeure.

23.3 If a single Event of Force Majeure shall continue for more than 30 calendar days either Party shall be entitled to immediately terminate this Retainer at any time thereafter subject to providing the other Party notice of such termination. Neither Party shall have any liability to the other in respect of the termination of this Retainer as a result of such an Event of Force Majeure.

24. Dispute Resolution

24.1 In the event of any difference, dispute, or question, arising from this Retainer, the Parties shall endeavour to settle such matters amicably between themselves and in good faith. Should they be unable to do so within a period of 35 working days, the matter shall then be settled finally by referring it promptly to the "*Model Mediation Procedure*" promoted by the Centre for Effective Dispute Resolution using alternative dispute resolution techniques. Any decision reached in this way shall be final and binding upon the Parties.

25. Validity

25.1 If any provision of this Retainer is held by any competent authority to be illegal, void, voidable, invalid, unenforceable, or unreasonable in whole or in part it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability, or unreasonableness be deemed severable and the validity of

the other provisions of this Retainer and the remainder of the provision in question shall not be affected.

26. Third Parties

26.1 This Retainer does not in any way whatsoever entitle a person who is not a party to this Retainer (including, without any limitation, any employee, officer, agent, or representative) to enforce or amend any term or condition of this Retainer, which expressly, or by implication, confers a benefit on him/her pursuant to the Contracts (Rights of Third Parties) Act 1999, without the prior written Retainer of both Parties.

27. Entire Agreements

27.1 This Retainer, including any attachments, supersedes all other agreements or Retainers, understandings, and representations however made between the Parties regarding the Expert Services and constitutes the entire agreement between the Parties concerning the Expert Services and constitutes the sole basis on which they have entered into this Retainer.

28. Jurisdiction

28.1 The validity, construction and performance of this Retainer shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the courts of England to which the Parties hereby submit.

29. Deadlines

29.1 The Expert shall provide a completed expert report to the CMA by email before **5PM BST on 26 June 2023**.

Please sign and date this letter and return it to indicate acceptance of the terms and undertakings set out above.

Read and acknowledged by:

Signed: ...  ...




Date: ... 

Email: 

APPENDIX 1

CONTRACT TERMS & CONDITIONS (DATA PROCESSING)

Below and in the Annex to this Appendix are set out the terms and conditions on data and information processing in connection with the Expert Services.

Defined Terms

“Authority”: the Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ

“Authority Data”: (i) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which are supplied to the Service Provider by or on behalf of the CMA or which the Service Provider is required to generate, process, store or transmit pursuant to this Retainer; or (ii) any Personal Data for which the Authority is the Controller

“Controller”: shall have the meaning given in GDPR

“Data Loss Event”: any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Retainer, and/or actual or potential loss and/or destruction of Personal Data in breach of this Retainer, including any Personal Data Breach

“Data Protection Impact Assessment”: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

“Data Protection Legislation” (i) the 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; and (iii) all applicable laws about the Processing of Personal Data and privacy

“Data Protection Officer”: shall have the meaning given in GDPR

“Data Subject”: shall have the meaning given in GDPR

“Data Subject Request”: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data

“DPA 2018”: the Data Protection Act 2018

“EIR”: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations

“FOIA”: the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

“UK GDPR” or “GDPR”: the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679)

“Joint Controllers”: means where two or more Controllers jointly determine the purpose and meaning of Processing

“LED” the Law Enforcement Directive (Directive (EU) 2016/680)

“Party” or “Parties”: a Party or Parties to this Retainer e.g. the Authority and the Service Provider

“Personal Data”: shall have the meaning given in GDPR

“Personal Data Breach”: shall have the meaning given in GDPR

“Processor”: shall have the meaning given in GDPR

“Processor Personnel”: means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of the obligations under this Retainer

“Protective Measures”: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it, including those outlined in Appendix 1, Annex A (Processing, Personal Data and Data Subjects)

“Retainer”: the written agreement between the Authority and the Service Provider consisting of the Retainer letter and Appendix 1, 2 and 3

“Service Provider”: the Expert in accordance with the terms of this Retainer

“Service Provider Personnel”: all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under the Retainer

“Sub-processor”: any third-party appointed to process Personal Data on behalf of the Service Provider related to the Retainer

“Working Day”: means a day which is not a Saturday, a Sunday or a bank or public holiday in England

Data Protection

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor. The only processing that the Processor is authorised to do is listed in Annex A to this Appendix (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor.

2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controllers, include:
 - (1) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (2) an assessment of the necessity and proportionality of the processing operations in relation to the Expert Services;
 - (3) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (4) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Retainer:
 - (1) process that Personal Data only in accordance with Annex A (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
 - (2) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - (3) ensure that:
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Retainer (and in particular with Annex A (Processing, Personal Data and Data Subjects));
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this

clause;

- (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Retainer; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (4) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) The Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) The Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (5) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Retainer unless the Service Provider is required by law to retain the Personal Data.
5. Subject to Clause 6 the Processor shall notify the Controller immediately if it:
- (1) receives a Data Subject Request (or purported Data Subject Request);
 - (2) receives a request to rectify, block or erase any Personal Data;
 - (3) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (4) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Retainer;
 - (5) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or

- (6) becomes aware of a Data Loss Event.
- 6. The Processor's obligation to notify under Clause 5 shall include the provision of further information to the Controller in phases, as details become available.
- 7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - (1) The Controller with full details and copies of the complaint, communication or request;
 - (2) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (3) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (4) assistance as requested by the Controller following any Data Loss Event; and
 - (5) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - (1) The Controller determines that the processing is not occasional;
 - (2) The Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (3) The Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 9. The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 10. Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 11. Before allowing any Sub-processor to process any Personal Data related to this Retainer, the Processor must:
 - (1) notify the Controller in writing of the intended Sub-processor and processing;

- (2) obtain the written consent of the Controller;
 - (3) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 1 such that they apply to the Sub-processor; and
 - (4) provide the Controller with such information regarding the Sub- processor as the Controller may reasonably require.
12. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
13. The Controllers may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Retainer).
14. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Retainer to ensure that it complies with any guidance issued by the Information Commissioner's Office.
15. Where the Parties include two or more Joint Controllers as identified in Annex A (Processing, Personal Data and Data Subjects) in accordance with GDPR Article 26.

APPENDIX 1

ANNEX

(PROCESSING, PERSONAL DATA AND DATA SUBJECTS)

The final decision as to the content of this Annex shall be with the Controller at its absolute discretion.

The contact details of the Controller's Data Protection Officer are: [REDACTED]

The contact details of the Processor's Data Protection Representative are: [REDACTED]

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Annex A (Processing, Personal Data and Data Subjects).

<i>Description</i>	<i>Details</i>
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor in accordance with clause 1, Appendix 1: Contract Terms & Conditions (Data Processing)
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver the Retainer to provide a service to the competition and market authority for its obligation to protect members of the public for consumer related issues.
Duration of the processing	For the duration of the Retainer.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose is to enable the Authority to conduct its statutory obligation to protect consumers.</p>
Type of Personal Data being Processed may include (but are not limited to)	Name, address, telephone number, images.

Categories of Data Subject may include (but are not limited to)	Staff (including volunteers, agents, and temporary workers), customers, clients, suppliers, patients, students, pupils, members of the public, users of a particular website etc.
Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data	All personal Data should be returned or securely destroyed upon termination of the Retainer.

APPENDIX 2

CONFLICT OF INTEREST

1. A potential or actual conflict of interest could arise in connection with this Retainer, for instance where the Expert is carrying out, or has previously carried out work for or on behalf of any companies under investigation by the Authority in the relevant case, whether directly or indirectly.
2. Notwithstanding the above, the Expert will notify the Authority of any actual or potential conflicts of interest that might affect the Expert and of the impact the Expert considers such conflict may have on the Expert's ability to provide independent expert advice with seven days of said conflict arising.
3. Further, in respect of each conflict which the Expert has identified a mitigation strategy must be developed which explains how the adoption of such strategy can prevent the conflict occurring or mitigate the impact of the conflict on the Expert. The strategy must be proportionate and appropriate to the risk involved and may include aspects such as physical separation of staff, protection of information, control of personnel and management separation.
4. The Authority will determine whether the measures outlined are sufficiently robust to mitigate the identified conflict to its satisfaction. The Authority will also consider whether the measures outlined to deal with conflicts that might arise during the course of the Retainer are sufficiently robust.

APPENDIX 3

CONFLICT OF INTEREST ASSESSMENT AND DECLARATION

Conflict of Interest Assessment

An actual or potential conflict of interest could arise in connection with this Retainer, for instance, where the Expert is carrying out, or has previously carried out work for or on behalf of any companies under investigation by the Authority in the Matter, whether directly or indirectly. To assist, the relevant companies are listed in the Schedule to this Appendix (The Relevant Companies) below.

You are required to notify the Authority of any actual or potential conflicts interest that might affect the Expert and of the impact the Expert consider such conflict may have on the Expert's ability to provide independent expert advice.

Question 1 requires you to respond "Yes" if there is an actual or potential conflict, or "No" to confirm that there is no actual or potential conflict.

Question 2 requires you to develop a mitigation strategy and explain how the adoption of such strategy can prevent the conflict occurring, or mitigate the impact of the conflict, on you or your organisation in respect of each conflict which identified. The mitigation strategy must be proportionate and appropriate to the risk involved, and may include aspects such as physical separation of staff, protection of information, control of personnel and management separation.

Question 3 requires you to set out your proposed arrangements for identifying and managing any actual or potential conflicts of interest that might arise during the course of the Retainer.

Where you answer "Yes" to Question 1, the Authority will determine whether the measures proposed are sufficiently robust to mitigate the identified conflict to its satisfaction. The Authority will also consider whether the measures proposed to deal with conflicts that might arise during the course of the Retainer are sufficiently robust.

Questionnaire

1. In accordance with Appendix 2 of this Retainer and the guidance above, please confirm whether there is an actual or potential conflict of interest.

No

2. If you have answered "Yes" to question 1, please provide details.

N/A

3. Please provide details of how you propose to deal with any conflicts of interest that might arise during the course of the Retainer.




I will inform the Authority immediately, in writing, of any potential or actual conflict as it arises. I do not envisage this will occur.


Declaration


1. I confirm that there is no conflict of interest, except as disclosed to the Authority on behalf of the Expert. The acceptance of the following shall be taken as confirmation that no such conflicts of interest exist.
2. I shall ensure that actual or potential conflicts do not arise whilst providing the Expert Services. In particular, unless otherwise agreed with the Authority:
 - (1) For the duration of the Investigation and any related litigation we shall not undertake or actively seek any work for any organisation that is directly related to the subject matter of the Investigation and any related litigation. We agree that work which is indirectly related other than that laid out in the Contract may only be undertaken with the Authority's written consent which shall not be unreasonably withheld.
 - (2) I confirm that any individuals providing the Expert Services in relation to the Investigation, as applicable, shall not carry out any other work related to the subject-matter of the Investigation for any other client for the duration of the Investigation and any related litigation.
 - (3) I confirm that individuals providing the Expert Services to the Authority and their immediate families do not own or have a beneficial interest in the shares of the relevant companies unless such holdings are independently managed (e.g. by a unit trust or pension fund).
 - (4) All information acquired by the individuals providing the Expert Services shall be treated as confidential to the Authority both for the duration of the Retainer and thereafter. The individuals providing the Expert Services shall not communicate any such information to third parties or other individuals within their firm unless it has already entered the public domain by other means. All documents supplied to us in connection with the Expert Services and this Retainer, copies of any part of such documents, whether in electronic or material form, and any documents prepared by the Authority which are based on material supplied in connection with the Expert Services, must be returned to the Authority at the end of the Investigation or any related litigation, or sooner if requested.
3. The Authority may terminate this Retainer at any time should it become of the opinion that an actual or potential conflict of interest on my part has arisen. I shall be entitled to remuneration on the basis set out in the Retainer up to the date of termination save in circumstances where we are in breach of my obligations under the Retainer.
4. It shall be my responsibility to ensure that no conflict of interest arises which might be said to prejudice my independence and objectivity in performing the Expert Services. This responsibility includes all of my senior staff (e.g. directors, and partners) or my personnel whose involvement in providing the Services to the Authority is not purely mechanical or clerical. If we are at any time in doubt about whether any conflict of interest may exist or arise, I shall notify the Authority forthwith and comply with any directions given with a view to avoiding the conflict.

5. Unless otherwise agreed with the Authority during the period of the Retainer, and for an agreed period after it ends, we would, except with the prior written consent of the Contract Manager, be debarred from working for, or having any other interest in, any of the relevant companies. This requirement is made to avoid conflicts of interest.
6. Signing this Conflict of Interest Statement shall be taken as confirming agreement on all of the above points in relation to the Expert and the provision of Expert Services.

Read and acknowledged by:

Signed: ...  ...



Date: 

Email: 

APPENDIX 3

SCHEDULE

(THE RELEVANT COMPANIES)

