

DATED

2023

NORTH NORTHAMPTONSHIRE COUNCIL

and

[SERVICE PROVIDER]

AGREEMENT FOR PROVISION OF CONSULTANCY SERVICES

CONTENTS

CLAUSE

1. Definitions and Interpretation.....	3
2. Commencement and Duration.....	90
3. Due Diligence and Service Provider's Warranty	90
4. Supply of Services	102
5. Performance	112
6. Compliance and Changes in Law.....	Error! Bookmark not defined. 3
7. Authority Premises	14
8. Charges, Invoicing and Payment.....	14
9. Interest.....	14
10. Service Provider Personnel.....	14
11. Review and Monitoring.....	15
12. Change Control.....	15
13. Dispute resolution	15
14. Sub-Contracting	16
15. Indemnities.....	17
16. Limitation of Liability.....	17
17. Insurance	<u>19</u>
18. Freedom of Information	20
19. Data Processing.....	21
20. Confidentiality	23
21. Audit.....	24
22. Intellectual Property	26
23. Termination	26
24. Force majeure.....	27
25. Prevention of Bribery.....	<u>28</u>
26. Consequences of Termination or Expiry.....	<u>29</u>
27. Non-solicitation	<u>29</u>
28. Waiver.....	30
29. Rights and Remedies	30
30. Severance.....	30
31. No Partnership or Agency	30
32. Third Party Rights	30
33. Assignment and Other Dealings.....	31

34. Publicity	31
35. Notices	31
36. Entire Agreement	32
37. Variation	32
38. Counterparts	32
39. Governing law	33
40. Jurisdiction	33

SCHEDULES

Schedule 1 Specification	37
Schedule 2 Service Provider's Tender	38
Schedule 3 Charges and Payment	39
Schedule 4 Contract Management	40
Schedule 5 Change Control	41
Schedule 6 Data Processing	42
Schedule 7 Mandatory Policies	43

THIS AGREEMENT is dated [INSERT DATE] 2022

Parties

- (1) [NAME OF PUBLIC AUTHORITY] of [ADDRESS] (**Authority**)
- (2) [INSERT FULL LEGAL NAME OF SERVICE PROVIDER], [incorporated and registered in England and Wales under Company Number [INSERT COMPANY NUMBER] whose registered office is at [INSERT FULL POSTAL ADDRESS OF THE SERVICE PROVIDER'S REGISTERED OFFICE] OR, IF SERVICE PROVIDER IS NOT A LIMITED COMPANY] of [INSERT FULL POSTAL ADDRESS OF SERVICE PROVIDER'S PLACE OF BUSINESS] (**Service Provider**)
- (3) (**Service Provider**)

BACKGROUND

- (A) On [DATE], the Authority advertised on the UK e-notification service (reference [STATE TENDER NUMBER]), inviting prospective Service Providers to submit proposals for the provision of Consultancy Services for the development and provision of a new Parking Strategy for North Northamptonshire.
- (B) On the basis of the Service Provider's response to the advertisement and subsequent tender process, the Authority selected the Service Provider to provide the services and the Service Provider is willing and able to provide such services in accordance with the terms of This Agreement.
- (C) Accordingly, the parties have agreed to enter into a contract for the provision of the Services (as defined below) on the terms and conditions of This Agreement.

Agreed terms

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context does not so permit the following words and expressions have the following respective meanings:-

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

Authorised Representatives: the persons respectively designated as such by the Authority and the Service Provider pursuant to Clause 13, the initial Authorised Representatives being specified in Schedule 44;

Authority Premises: such buildings and premises of the Authority as the Authority requires Representatives of the Service Provider to attend from time to time for any purpose connected with this Agreement;

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

Change: any change to This Agreement including to any of the Services;

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure;

Change Control Procedure: the procedure for changing This Agreement, as set out in Schedule 55;

Change in Law: any change in any Law which materially impacts on the ability of the Service Provide to perform the Services and which comes into force after the Commencement Date;

Charges: the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of This Agreement, as such charges are set out in Schedule 33;

Commencement Date: the date of this Agreement;

Confidential Information: means all information, of whatever kind and in whatever form, disclosed directly or indirectly by either party or its Representatives to the other party or that party's Representatives, or which otherwise comes to the attention of the other party or its Representatives in connection with, or as a consequence of the parties having entered into, this Agreement, including:

- a) any information relating to the business, affairs, customers, operations, processes, product information, know-how, designs, trade secrets or software of either party; or
- b) any information developed by the parties in the course of the performance of, or otherwise for the purposes of, this Agreement;

Controller: as defined in the Data Protection Legislation;

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

Data Subject: as defined in the Data Protection Legislation;

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

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

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

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

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic; **or** prohibition; or
- c) collapse of buildings, fire, explosion or accident;

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

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

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

Insolvency Event: where:

- a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (the Service Provider being a company) for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party;
- c) the Service Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party

with one or more other companies or the solvent reconstruction of that other party;

- e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider (being a company, partnership or limited liability partnership);
- f) the holder of a qualifying floating charge over the assets of the Service Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- g) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- h) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 10 Working Days;
- i) any event occurs, or proceeding is taken, with respect to the Service Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
- j) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Mandatory Policies: the Authority's policies listed in **Schedule 17**, as the same may be amended by notice from the Authority to the Service Provider from time to time;

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

Personal Data: as defined in the Data Protection Legislation;

Processor: as defined in the Data Protection Legislation;

Prohibited Act: the following constitute Prohibited Acts:

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

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

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

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

Services: the services to be delivered by or on behalf of the Service Provider under This Agreement, as more particularly described in the Specification;

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

Service Provider's Tender: the tender submitted by the Service Provider and other associated documentation, as set out in [Schedule 22](#);

Specification: the specification for the Services set out in [Schedule 1](#);

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

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

Term: the duration of this Agreement, being the period beginning on the Commencement Date and ending upon the completion by the Service Provider of the performance of the Services or the earlier termination of this Agreement in accordance with its terms (as the case may be);

Termination Date: the final day of the Term;

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

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

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The expression **person**, where used in this Agreement, includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in this Agreement denoting the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to the other genders.
- 1.7 Unless expressly provided otherwise in this Agreement, a reference to any legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.8 A reference in this Agreement to **writing** or **written** includes e-mail but not facsimile.
- 1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.10 A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document as varied from time to time.
- 1.11 References in this Agreement to Clauses and Schedules are to the Clauses and Schedules of this Agreement.
- 1.12 Any words or expressions in this Agreement following the expressions **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.13 If there is any conflict or ambiguity between any of the provisions in the main body of this Agreement and the Schedules, such conflict or inconsistency shall be resolved according to the following descending order of priority:

- (a) Schedule 1;
- (b) the remaining Schedules; and
- (c) the Clauses.

1.14 Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail.

2. Commencement and Duration

2.1 This Agreement shall come into effect on the Commencement Date and shall continue for the Term.

3. Due Diligence and Service Provider's Warranty

3.1 The Service Provider acknowledges and confirms that:

- (a) the Authority has delivered or made available to the Service Provider all of the information and documents that the Service Provider considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 3.1(a);
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this Agreement; and
- (d) it has entered into this Agreement in reliance on its own due diligence.

3.2 No representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Service Provider by the Authority and any and all such representations, warranties or conditions are excluded to the fullest extent permissible by law.

3.3 The Service Provider:

- (a) warrants and represents that all information and statements made by the Service Provider as a part of the procurement process, including without limitation the Service Provider's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been

specifically disclosed in writing to the Authority prior to the Commencement Date;
and

- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this Agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services.

3.4 The Service Provider shall not be entitled to recover any additional costs or charges from the Authority arising as a result of, nor be relieved from any of its obligations under this Agreement on the grounds of, any matters or inaccuracies notified to the Authority by the Service Provider in accordance with clause 3.3(b), save to the extent that such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authority and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time when it was provided. If this exception applies, the Service Provider may recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

4. Supply of Services

4.1 The Service Provider shall provide the Services to the Authority with effect from the Commencement Date in accordance with the provisions of this Agreement, including without limitation the Specification and **Error! Reference source not found..**

4.2 In providing the Services, the Service Provider shall at all times:

- (a) without prejudice to **Error! Bookmark not defined.Error! Reference source not found.**, provide the Services with reasonable care and skill and in accordance with Best Industry Practice;
- (b) ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (c) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Authority).
- (d) allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;
- (e) ensure that any of the Service Provider's Personnel who are engaged in any capacity, directly or indirectly, in the provision of the Services shall, if required by the Authority, attend such meetings at the premises of the Authority or elsewhere as may be reasonably required by the Authority from time to time; and

- (f) provide such reasonable co-operation and information in relation to the Services to such of the Authority's other Service Providers as the Authority may reasonably require from time to time for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Authority.

5. Performance

- 5.1 Without limiting its obligations under Clause 4, the Service Provider shall procure that, where a timescale for the completion of any element of the Services is specified in the Specification, that timescale is met in full.
- 5.2 In the event of any failure on the part of the Service Provider to comply with Clause 5.1, the parties shall each procure that their respective Authorised Representatives enter into discussions, in good faith and in a timely fashion, for the purpose of agreeing an action plan for the purpose of rectifying the failure or, if rectification is not reasonably achievable, of minimising any further delay to the completion of the Services. If no such action plan has been agreed within such time as the Authority, acting reasonably, considers appropriate the Authority may finalise the action plan in such terms as it reasonably considers necessary and issue it to the Service Provider.
- 5.3 Upon the determination of any action plan pursuant to Clause 5.2 the Service Provider shall comply with the same in the performance of the Services. Any failure by the Service Provider to comply with the action plan shall constitute a material breach of this Agreement for the purposes of Clause 23.1(a).

6. Compliance and Changes in Law

- 6.1 In performing its obligations under this Agreement, the Service Provider shall at all times comply with:
 - (a) Applicable Law; and
 - (b) the Mandatory Policies.

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

- 6.2 Without limiting the general obligation set out in clause 6.1, the Service Provider shall (and shall procure that the Service Provider Personnel shall):
 - (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

- (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authority's equality and diversity policy as provided to the Service Provider from time to time;
 - (iii) any other requirements and instructions which the Authority reasonably imposes from time to time in connection with any equality obligations imposed on the Authority at any time under applicable equality law;
 - (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or any successor organisation.
- 6.3 The Service Provider shall monitor and shall keep the Authority informed in writing of any changes in Applicable Law which may impact the Services and shall provide the Authority promptly upon request with timely details of all measures it proposes to take and changes it proposes to make to comply with any such changes. The Service Provider shall only implement such changes in accordance with the Change Control Procedure.
- 6.4 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of a General Change in Law.

7. Authority Premises

- 7.1 The Service Provider shall ensure that, when visiting the Authority Premises, the Service Provider Personnel shall:
- (a) co-operate as far as may be reasonably necessary with the Authority's employees;
 - (b) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Authority; and
 - (c) comply with all the rules and regulations that the Authority notifies to the Service Provider from time to time relating to the use and security of the Authority Premises.
- 7.2 The Service Provider shall ensure that the Service Provider Personnel shall not:
- (a) obstruct access to the Authority Premises, or any part of them; or
 - (b) do or permit to be done on the Authority's Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Authority or the occupiers of or visitors to the Authority Premises.

8. Charges, Invoicing and Payment

- 8.1 The Authority shall pay the Charges to the Service Provider in accordance with **Schedule 33**.
- 8.2 The Charges:
- (a) shall remain fixed during the Term; and
 - (b) are the entire price payable by the Authority to the Service Provider in respect of the Services and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Service Provider, travel costs, accommodation expenses and all costs relating to Service Provider Personnel.
- 8.3 Except as otherwise provided in this Agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.
- 8.4 The Service Provider shall invoice the Authority for payment of the Charges at the time the Charges are expressed to be payable in accordance with **Schedule 33**. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Service Provider from time to time.
- 8.5 The Authority shall accept for processing any electronic invoice submitted by the Service Provider that complies with the standard on electronic invoicing provided that it is valid and undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 8.6 Where the Service Provider submits an invoice to the Authority in accordance with clause **8.34**, the Authority will consider and verify that invoice in a timely fashion. Where the Authority fails to do so, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause **8.7** after a reasonable time has passed.
- 8.7 The Authority shall pay the Service Provider any Charges due under any invoice submitted to it by the Service Provider within 30 days of verifying that the invoice is valid and undisputed.
- 8.8 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause **133**. Provided that the sum has been disputed in

good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.

- 8.9 Subject to clause 8.8, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this Agreement in accordance with clause 9. The Service Provider shall not suspend the supply of the Services if any payment is overdue.
- 8.10 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Service Provider shall fully indemnify the Authority, and keep the Authority fully indemnified, against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this Agreement.
- 8.11 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to This Agreement. Such records shall be retained for inspection by the Authority for seven (7) years from the end of the Contract Year to which the records relate.
- 8.12 The Authority may at any time, set off any liability of the Service Provider to the Authority against any liability of the Authority to the Service Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Authority of its rights under this Clause 8.12 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

9. Interest

- 9.1 Each party shall pay interest on any undisputed sum due under this Agreement at the rate per annum of 4% above the Bank of England's base rate from time to time, but at 4% per annum for any period when that base rate is below 0%, from the date on which the overdue sum became due, until it is paid.

10. Service Provider Personnel

- 10.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Service Provider Personnel to provide the Services in accordance with this Agreement; and

- (c) all of the Service Provider Personnel comply with the Mandatory Policies.

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

11. Review and Monitoring

- 11.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf and contractually bind it in respect of all matters relating to the performance of This Agreement. The initial Authorised Representatives are specified in **Schedule 44**. The parties shall respectively procure that their Authorised Representatives co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services (including by signing Change Control Notes).
- 11.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following the giving of reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business or organisation.
- 11.3 The Parties shall severally procure that its Authorised Representatives shall meet at intervals of not less than one month to monitor and review the performance of the Services. Such meetings shall be minuted by the Authority's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.
- 11.4 At each such meeting, the parties shall use their respective reasonable endeavours to agree a plan to address any problems identified in the performance of the Services. In the event of any such problem being unresolved, or a failure to agree on the plan, the plan shall be determined by the Authority, acting reasonably. Progress in implementing the plan shall be included in the agenda for the next monthly meeting.
- 11.5 The Service Provider shall submit any other management reports to the Authority in the form and at the intervals stated in the Specification.

12. Change Control

- 12.1 Any requirement for a Change shall be subject to the Change Control Procedure.

13. Dispute Resolution

- 13.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the following procedure:

- (a) either party may give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents;
- (b) On service of the Dispute Notice, the parties shall each procure that their respective Authorised Representatives attempt, in good faith and in a timely fashion, to resolve the Dispute;
- (c) if the Authorised Representatives are for any reason unable to resolve the Dispute within 10 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [SPECIFY TITLE] and the Service Provider's [SPECIFY TITLE] who shall attempt in good faith to resolve it;
- (d) if the Authority's [SPECIFY TITLE] and the Service Provider's [SPECIFY TITLE] are for any reason unable to resolve the Dispute within 10 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 10 Working Days of referral of the Dispute pursuant to Paragraph (b) above, the mediator will be nominated by CEDR. To initiate the mediation, one party must serve notice in writing to the other party to the Dispute, referring the dispute to mediation.

13.2 The commencement of mediation pursuant to Clause 13.1 shall not prevent the parties from commencing or continuing court proceedings.

14. Sub-Contracting

14.1 The Service Provider shall not sub-contract the performance of any of its obligations under this Agreement without the express prior written consent of the Authority and otherwise in accordance with this clause 14.

14.2 To help the Authority reach a decision on a proposed Sub-Contract, the Authority may request (and the Service Provider shall provide) a copy of the proposed Sub-Contract, together with any other information that the Authority may reasonably require from time to time about the proposed Sub-Contractor and the impact of the proposed Sub-Contract on this Agreement.

14.3 If the Authority agrees that the Service Provider may sub-contract its obligations, the Service Provider shall implement an appropriate system of training designed to ensure the Sub-Contractor's compliance with the Mandatory Policies.

14.4 In the event that the Service Provider enters into any Sub-Contract it shall:

- (a) remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own;

- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Agreement and procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract in its final signed or executed form on receipt of a request for such by the Authority's Authorised Representative.

14.5 The Authority may require the Service Provider to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Authority's right of termination of this Agreement pursuant to clause 23.1 or if there is a change of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Insolvency Event.

15. Indemnities

15.1 Subject to clause 15.2, the Service Provider shall fully indemnify the Authority and keep the Authority fully indemnified from and against any and all costs (including reasonable legal costs) expenses, losses, damages and liability suffered or incurred by the Authority arising out of or in connection with:

- (a) the Service Provider's breach or negligent performance or non-performance of, or other wrongful act or omission in connection with, this Agreement;
- (b) any action, claim or demand brought or made against the Authority arising out of or in connection with the provision of the Services, to the extent that the same arises out of the breach or negligent performance or non-performance of, or other wrongful act or omission in connection with, this Agreement by or on the part of the Service Provider or Service Provider Personnel; or
- (c) the enforcement of this Agreement.

15.2 The indemnity under clause 15.1 shall not apply to the extent that the costs, expenses, losses, damage or liability (as the case may be) incurred by the Authority are directly caused by (or directly arise from) from any negligence or breach of this Agreement on the part of the Authority.

16. Limitation of Liability

16.1 The Service Provider has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims as more particularly set out in Clause 17. The limits and exclusions in this Clause reflect the insurance cover that the Service Provider has been able to arrange and the Authority is responsible for making its own arrangements for the insurance of any excess liability.

- 16.2 References to liability in this clause 16 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 16.3 Neither party may benefit from the limitations and exclusions set out in this Clause in respect of any liability arising from its deliberate default.
- 16.4 Nothing in this clause 16 shall limit the Authority's payment obligations under this Agreement.
- 16.5 Nothing in this clause 16 shall limit any liability under:
- (a) clause 22.2; or
 - (b) clause 25.
- 16.6 Nothing in This Agreement limits or excludes any liability which cannot legally be limited or excluded, including for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 16.7 Subject to Clauses 16.3, 16.5, 16.6 and 16.10, the Service Provider's total aggregate liability to the Authority:
- (a) for loss arising from the Service Provider's failure to comply with its data processing obligations under clause 19 shall not exceed £5,000,000 (Five million pounds);
 - (b) in respect of physical damage to the Authority's (or any third party's) property caused or arising by reason of any act or omission of the Service Provider or Service Provider Personnel, shall not exceed £5,000,000 (Five million pounds) for any one event or series of connected events; and
 - (c) in respect of all other claims, losses or damages arising in connection with this Agreement shall not exceed 200% of the Charges.
- 16.8 Subject to Clauses 16.3, 16.5, 16.6 and 16.10, the Authority's total aggregate liability in respect of all claims, (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), losses or damages arising in each Contract Year shall not exceed 100% of the Charges.
- 16.9 Subject to Clauses 16.3, 16.5, 16.6 and 16.10, neither party shall have any liability to the other for any of the following kinds of loss suffered or incurred by the other party and arising out of or in connection with this Agreement, whether in contract, tort or otherwise

and irrespective of whether the other party had been advised of the possibility of such loss arising:-

- (i) Loss of profits;
- (ii) Loss of sales or business;
- (iii) Loss of anticipated savings;
- (iv) Loss of use or corruption of software, data or information;
- (v) Loss of or damage to goodwill; or
- (vi) Indirect or consequential loss.

16.10 The liability of either party to the other for any of the following shall not be excluded or limited:-

- (i) Sums paid by the Authority to the Service Provider pursuant to the agreement in respect of any Services not provided in accordance with the agreement;
- (ii) Wasted expenditure;
- (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with this Agreement, including consultancy costs, additional costs of management time; or
- (iv) Losses incurred by the Authority arising out of or in connection with any third party claim against the Authority which has been caused by the act or omission of the Service Provider or any Service Party Personnel. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by Sub-Contractors, the Service Provider's Personnel, regulators and customers of the Authority.

17. Insurance

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

- (a) public liability insurance with a limit of indemnity of at least £5,000,000 (Five million pounds) in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of at least £5,000,000 (Five million pounds) in relation to any one claim or series of claims; and
- (c) professional indemnity insurance with a limit of indemnity of not less than £2,000,000 (Two million pounds) in relation to any one claim or series of claims

and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover.

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

- 17.2 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 17.3 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 17.4 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under this Agreement.
- 17.5 The Service Provider shall hold and maintain the Required Insurances for a minimum of six years following the Termination Date.

18. Freedom of Information

- 18.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

- 18.2 The Service Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Authority shall take reasonable steps to notify the Service Provider of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in This Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 18.3 Notwithstanding any other term of This Agreement, the Service Provider consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that the Authority considers is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 18.4 The Authority shall, prior to publication, consult with the Service Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Service Provider shall assist and co-operate with the Authority to enable the Authority to publish this Agreement.

19. Data Processing

- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.2 The parties acknowledge that, for the purposes of the Data Protection Legislation, the Authority is the Controller and the Service Provider is the Processor. Schedule 66 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 19.3 Without prejudice to the generality of clause 19.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Agreement.
- 19.4 Without prejudice to the generality of clause 19.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Authority, unless the Service Provider is required by Applicable Law otherwise to process that Personal Data. Where the Service Provider is relying on Applicable Law as the basis for processing Personal Data, the Service Provider shall

promptly notify the Authority of this before performing the processing required by Applicable Law unless Applicable Law prohibits the Service Provider from so notifying the Authority;

- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Service Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (e) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection

Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- (g) notify the Authority without undue delay on becoming aware of a Personal Data breach, including any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
- (h) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by Applicable Law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 20 and immediately inform the Customer if, in the opinion of the Service Provider, an instruction infringes the Data Protection Legislation.

19.5 If the Service Provider wishes to appoint a sub-processor to process any Personal Data relating to this Agreement, such sub-processor shall constitute a Sub-Contractor and the Service Provider shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) not appoint the Sub-Contractor without the express prior written consent of the Authority; and
- (c) enter into a written agreement with the Sub-Contractor incorporating terms which are the same in all material respects to those set out in this clause 19.

19.6 Either party may, at any time on giving not less than 30 Working Days' written notice to the other party, revise this clause 19 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 replaced by attachment to this Agreement).

20. Confidentiality

20.1 The provisions of this Clause 20 do not apply to any Confidential information which:

- (a) is or becomes a matter of public knowledge (other than as a result of its disclosure by the receiving party or its Representatives in breach of this Clause 20);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

- (d) the parties agree in writing is not confidential or may be disclosed; or
- (e) is disclosed by the Authority on a confidential basis to any central government or regulatory body.

20.2 Each party (**receiving party**) shall keep the Confidential Information of the other party (**disclosing party**) secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (**Permitted Purpose**); or
- (b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 200.

20.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a party to This Agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 20.

20.4 A party may disclose Confidential Information to the extent that such Confidential Information is required to be disclosed by Applicable Law (including under the FOIA or EIRs), by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much advance notice of such disclosure as possible.

20.5 The provisions of this clause 200 shall survive the expiry or termination of this Agreement.

21. **Audit**

21.1 During the Term and for a period of six years after the Termination Date, the Service Provider shall allow the Authority (acting by itself or through its Representatives) to access any of the Service Provider's premises, systems, Service Provider Personnel and relevant records as the Authority may reasonably require from time to time in order to:

- (a) fulfil any legally enforceable request by any regulatory body;
- (b) verify the accuracy of Charges or identify suspected fraud;

- (c) review the integrity, confidentiality and security of any data relating to the Authority or any service users;
 - (d) review the Service Provider's compliance with the Data Protection Legislation and the FOIA, in accordance with clause 19 or 20, and any other legislation applicable to the Services; or
 - (e) verify that the Services are being provided, and all obligations of the Service Provider are being performed, in accordance with This Agreement.
- 21.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Service Provider has not complied with its obligations under this Agreement, the Authority may not conduct an audit under this clause 21.1 more than twice in any calendar year.
- 21.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.
- 21.4 Subject to the Authority's obligations of confidentiality as set out in Clause 20, the Service Provider shall on demand provide the Authority and any relevant regulatory body (or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services or of the Service Provider's obligations under this Agreement; and
 - (c) access to the Service Provider Personnel.
- 21.5 The Authority shall endeavour to (but is not obliged to) provide at least 10 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 21.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a material failure by the Service Provider to perform its obligations under this Agreement in any material manner, in which case the Service Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of or otherwise in connection with the audit.
- 21.7 If an audit identifies that:
 - (a) the Service Provider has failed to perform its obligations under this Agreement and such failure is capable of remedy, the Authority may serve notice upon the Service Provider identifying the failure in question and requiring it to be rectified

within such time period as the Authority, acting reasonably, shall specify in the notice (**rectification notice**), and any failure by the Service Provider to comply with a rectification notice shall constitute a material breach of this Agreement for the purposes of Clause 23.1(a);

- (b) the Authority has overpaid any Charges, the Service Provider shall repay to the Authority the amount overpaid within 21 days from the date of receipt of the Authority's invoice for the amount of the overpayment or notice to make such payment (as the case may be) The Authority may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and .
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Service Provider the amount of the underpayment within 30 days from the date of receipt of an invoice for such amount.

22. Intellectual property

22.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Service Provider or Service Provider Personnel:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

22.2 The Service Provider shall fully indemnify the Authority and keep the Authority fully indemnified from and against any and all actions, claims, demands, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses, damage and liability suffered or incurred by the Authority to the extent that the same arise or occur as the result of, or are incurred by reason of, any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right as a result of the use or enjoyment by the Authority of the Services, except to the extent that they have arisen or incurred as the result of, or are incurred by reason of, any wrongful act or omission on the part of the Authority.

23. Termination

23.1 Without affecting any other right or remedy available to it, the Authority may terminate this Agreement with immediate effect by giving written notice of termination to the Service Provider if one or more of the following circumstances occurs or exists:

- (a) the Service Provider is in material breach of this Agreement and either such breach is irremediable or, if the breach is capable of remedy, the Service Provider fails to remedy it within 10 Working Days of the date of receipt by it of notice from the Authority identifying the breach in question and requiring it to be remedied;

- (b) if there is an Insolvency Event;
 - (c) if there is a change of control of the Service Provider within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Authority reasonably objects, provided that the Authority serves its notice of termination within 10 Working Days of the date on which the Service Provider informs the Authority (by written notice) of the change of control or on which the Authority otherwise becomes aware of the change of control; or
 - (d) the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
- 23.2 The Authority may in addition terminate this Agreement at any time by giving not less than 14 days' written notice of termination to the Service Provider.

24. Force Majeure

- 24.1 Subject to the remaining provisions of this clause 24, 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 by a period commensurate with the duration of the inability of the Affected Party to perform its obligations.
- 24.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 24.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than three days from its start], notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 24.4 If the Service Provider is the Affected Party, it shall not be entitled to claim relief to the extent that the consequences of the relevant Force Majeure Event should have been foreseen and prevented or avoided by a prudent provider of service similar to the Services.
- 24.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under This Agreement. Following such notification, This Agreement

shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

- 24.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 20 Working Days, the party not affected by the Force Majeure Event may terminate this Agreement with immediate effect by giving written notice of termination to the Affected Party.

25. Prevention of Bribery

- 25.1 The Service Provider represents and warrants that neither it, nor any Service Provider Personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 25.2 The Service Provider shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 25.1 at the relevant time.

- 25.3 The Supplier shall (and shall procure that its Service Provider Personnel shall) during the Term:

- (a) not commit a Prohibited Act;
- (b) not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
- (c) comply with the Authority's Anti-bribery and Anti-Corruption Policy as updated from time to time and set out in **Schedule 17**; or
- (d) notify the Authority (in writing) if it becomes aware of any breach of clause 25.3(a) or clause **25.3(b)**, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Agreement.

- 25.4 The Service Provider shall maintain appropriate and up to date records showing all payments made by the Service Provider in connection with this Agreement and the steps taken to comply with its obligations under this clause 25.
- 25.5 The Service Provider shall allow the Authority and its third party representatives to audit any of the Service Provider's records and any other relevant documentation in accordance with clause 211.
- 25.6 If the Service Provider is in default under this clause 25 the Authority may, by the giving of notice to the Service Provider:
- (a) require the Service Provider to remove from performance of this Agreement any Service Provider Personnel whose acts or omissions have caused the default; or
 - (b) terminate this Agreement with immediate effect.
- 25.7 Any notice served by the Authority under clause 25.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

26. Consequences of Termination or Expiry

- 26.1 Upon the termination or expiry of this Agreement for any reason, the Service Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Service Provider's Authorised Representative shall certify full compliance with this Clause 26.1.
- 26.2 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including **Error! Bookmark not defined.**13, 15, 17, 18, 19, 200, 211 and this clause 26, shall remain in full force and effect.
- 26.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

27. Non-Solicitation

In order to protect each other's legitimate business interests, neither party shall (except with the express prior written consent of the other), during the Term and for a period of six months thereafter, solicit or attempt to solicit or entice away any employees of the other party who have been engaged or employed in the provision of the Services or the

administration of this Agreement or any significant part thereof, whether as principal, agent, employee, independent contractor or in any other form of employment or engagement. Provided that nothing in this Clause 27 shall prohibit either party from employing or engaging any individual who has made an unsolicited application for employment or engagement pursuant to a public recruitment process.

28. Waiver

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

29. 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.

30. Severance

- 30.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 30.2 If any provision or part-provision of This Agreement is deemed deleted under clause 30.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

31. No Partnership or Agency

- 31.1 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.
- 31.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

32. Third Party Rights

This Agreement does not confer or give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of This Agreement.

33. Assignment and Other Dealings

- 33.1 The Authority may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice of such dealing to the Service Provider.
- 33.2 Without limiting the provisions of Clause 14, the Service Provider shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the express prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

34. Publicity

The Service Provider shall not:

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

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the express prior written consent of the Authority.

35. Notices

- 35.1 Any notice given to a party under or in connection with this Agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) For notices served on the Authority: [SPECIFY ADDRESS]; and
 - (ii) For notices served on the Service Provider: [SPECIFY ADDRESS].
- 35.2 Subject to Clause 35.3, any notice served in accordance with Clause 36.1 shall be deemed to have been received:
- (a) If delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, on the third Working Day after the date of posting; or

- (c) if sent by email, at the time of transmission, or, if that time does not fall on a Working Day or is after 16.00 hours local time at the recipient's address, on the next following Working Day.

35.3 Where, having regard to Clause 35.2, a notice would be deemed to have been served other than on a Working Day or the actual time of receipt is after 16.00 hours local time at the recipient's premises on a Working Day, that notice shall be deemed to have been served on the next following Working Day.

35.4 This Clause 35 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

36. Entire Agreement

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

36.2 Each party acknowledges that in entering into This Agreement it does not rely on, and shall no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

36.3 Nothing in this Agreement shall have the effect of excluding or limiting the liability of either party for fraud or for fraudulent misrepresentation.

37. Variation

Without limiting clause 122, no variation of this Agreement shall be effective unless it is in writing and signed by the Authorised Representatives of the parties.

38. Counterparts

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

38.2 Transmission of an executed counterpart of this Agreement in its entirety (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of This Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

39. Governing Law

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

40. Jurisdiction

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

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

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

.....
Director

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

.....
Director

Schedule 1 Specification

Schedule 2 Service Provider's Tender

Schedule 3 Charges and Payment

1. Calculation of the Charges

The Charges shall be calculated on the basis of the prices set out in this Schedule.

2. Charges based on a fixed price

Service	Price (£)
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
TOTAL	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]

Schedule 4 Contract management

1. Authorised representatives

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

1.2 The Service Provider's initial Authorised Representative: [INSERT NAME]

Schedule 5 Change Control

1. General principles

- 1.1 Where the Authority or the Service Provider perceives a need to change this Agreement, the Authority may at any time request, and the Service Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 55.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Service Provider shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Authority and the Service Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Service Provider and the Service Provider Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this 5, shall be undertaken entirely at the expense and liability of the Service Provider.

2. Procedure

- 2.1 Discussion between the Authority and the Service Provider concerning a Change shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to change this Agreement by the Authority; or
 - (c) a recommendation to change this Agreement by the Service Provider.
- 2.2 Where a written request for a Change is received from the Authority, the Service Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Service Provider to the Authority within five (5) Working Days of the date of the request.
- 2.3 A recommendation to amend this Agreement by the Service Provider shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Service Provider at the time of such recommendation. The Authority shall give its response to the Change Control Note within five (5) Working Days.
- 2.4 The Service Provider shall procure that each Change Control contains:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;

- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) details of the likely impact, if any, of the Change on other aspects of this Agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the Charges;
 - (iii) the Documentation to be provided;
 - (iv) other contractual issues;
- (h) the date of expiry of validity of the Change Control Note; and
- (i) provision for signature by the Authority and the Service Provider.

2.5 For each Change Control Note submitted by the Service Provider the Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Service Provider; or
 - (iii) notify the Service Provider of the rejection of the Change Control Note.

2.6 A Change Control Note signed by the Authority and by the Service Provider shall constitute an amendment to This Agreement.

Schedule 6 Data Processing

1. Processing by the Service Provider

1.1 Scope.

The Service Provider shall process Personal Data solely in connection with matters relating to this Agreement or as otherwise instructed or permitted by the Authority from time to time

1.2 Nature

Storage and use for the purpose of communications with the Authority.

1.3 Purpose of Processing

The performance by the Service Provider of its obligations and functions, and the enjoyment and enforcement of its rights under, this Agreement.

1.4 Duration of Processing

The duration of the Term and thereafter as necessary in order to fulfil the Purpose of the Processing as set out in paragraph 1.3 above.

2. Types of Personal Data

Names, e-mail addresses and telephone contact details of Data Subjects.

3. Categories of Data Subject

Such employees, workers, contractors, contractors and external advisers of the Authority and any such other individuals as the Authority deems appropriate from time to time.