

DATED

MASTER SERVICES AGREEMENT

between

North PB Limited

and

Party 2

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This agreement is dated [DATE]

Parties

- (1) North PB Limited incorporated and registered in England and Wales with company number 05217343 whose registered office is at North House, St. Asaph Business Park, St. Asaph, Wales, LL17 0JG (**Supplier**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

BACKGROUND

- (A) The Supplier is in the business of providing the Available Services.
- (B) The Customer wishes to obtain and the Supplier wishes to provide the Available Services on the terms set out in this agreement.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement:

Affiliate: in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Applicable Laws: all applicable laws, statutes, regulation [and codes] from time to time in force.

Available Services: the services as set out in **Schedule 1**.

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

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

Change Order: has the meaning given in clause 8.1.

Commencement Date: [INSERT] OR [the date of this agreement].

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and **controls**, **controlled** and the expression **change of control** shall be construed accordingly.

Customer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Works, including the items provided pursuant to clause 6.1(d).

Customer Personal Data: any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.

Deliverables: any output of the Works to be provided by the Supplier to the Customer as specified in a Statement of Work and any other documents, products and materials provided by the Supplier to the Customer in relation to the Works (excluding the Supplier's Equipment).

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Goods: means such part of the Deliverables as are goods and manufactured or raw materials;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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 Customer's business policies listed in Schedule 4, as amended by notification to the Supplier from time to time.

Milestone: a date by which a part or all of the Works is to be completed, as set out in a Statement of Work.

Reference Charges: the standard charges for the Available Services or the framework for calculating them as set out in **Schedule 3**.

SoW Charges: the sums payable for the Works as set out in a Statement of Work.

Statement of Work: a detailed plan, agreed in accordance with clause **3**, describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the template statement of work set out in **Schedule 2**.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Works, including any such items specified in a Statement of Work but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

Supplier Personal Data: any personal data that the Supplier processes in connection with this agreement, in the capacity of a controller.

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

VAT: value added tax chargeable in the UK.

Works: the Available Services which are provided by the Supplier under a Statement of Work[, including services which are incidental or ancillary to the Works].

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** 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. 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 the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted

assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- 1.9 A reference to legislation or a legislative provision is a reference to it as [amended, extended or re-enacted from time to time.
- 1.10 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time.
- 1.11 A reference to **writing** or **written** includes email (provided the email is supported by a valid server delivery receipt).
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

- 2.1 This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause **15** (Termination), until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the [first] anniversary of the Commencement Date and shall expire on the completion of all Statements of Work entered into before the date on which it is served.
- 2.2 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause **2.1** such notice shall terminate this agreement with immediate effect.
- 2.3 The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under clause **2.1**.
- 2.4 The Customer may procure any of the Available Services by agreeing a Statement of Work with the Supplier pursuant to clause **3** (Statements of Work).

2.5 The Supplier shall provide the Works from the date specified in the relevant Statement of Work.

3. Statements of Work

3.1 Each Statement of Work shall be agreed in the following manner:

- (a) the Customer shall ask the Supplier to provide any or all of the Available Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Statement of Work for the Available Services requested;
- (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
 - (i) inform the Customer that it declines to provide the requested Available Services; or
 - (ii) provide the Customer with a draft Statement of Work.
- (c) if the Supplier provides the Customer with a draft Statement of Work pursuant to clause 3.1(b)(ii), the Supplier and the Customer shall discuss and agree that draft Statement of Work; and
- (d) both parties shall sign the draft Statement of Work when it is agreed.

3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.

3.3 The Supplier may charge for the preparation of Statements of Work on a time and materials basis in accordance with the Supplier's daily fee rates as set out in Schedule 3.

3.4 Once a Statement of Work has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 8 (Change control) or clause 19 (Variation).

3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

3.6 Goods supplied to the Customer pursuant to a Statement of Work are also supplied subject to the Supplier's standard terms and conditions for the supply of goods current at the time of delivery. A copy of the Supplier's standard terms and conditions for the supply of goods current at the date of signature of this agreement are at Schedule 7. In the event of any conflict between the terms and conditions of this agreement and the applicable standard terms and conditions for the supply of goods the latter shall take precedence to the extent of the conflict.

4. TUPE on entry

If TUPE is applicable in relation to the Works under a Statement of Work, the provisions of **Schedule 5** shall apply on commencement of that Statement of Work.

5. Supplier's responsibilities

- 5.1 The Supplier shall use reasonable endeavours to [manage and complete **OR** provide] the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects.
- 5.2 The Supplier shall use reasonable endeavours to meet [any performance dates **OR** the Milestones] specified in a Statement of Work but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this agreement.
- 5.3 The Supplier shall appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind the Supplier on all matters relating to the relevant Works (including by signing Change Orders). The Supplier [shall use all reasonable endeavours to ensure that the same person acts as the Supplier's manager throughout the term of the relevant Statement of Work, but] may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.
- 5.4 [The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at [any of] the Customer's premises and that have been communicated to it under clause **6.1(e)** [and which are set out in **Schedule 4**], provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.]

6. Customer's obligations

- 6.1 The Customer shall:
 - (a) co-operate with the Supplier in all matters relating to the Works;
 - (b) appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Works (including by signing Change Orders);
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier including any such access as is specified in a Statement of Work;

- (d) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement of Work or otherwise reasonably required by the Supplier in connection with the Works and ensure that they are accurate and complete [in all material respects];
- (e) inform the Supplier of all health and safety and security requirements that apply at the Customer's premises[. The Customer's requirements in this regard are set out in Schedule 4]. If the Customer wishes to make a change to those requirements which will materially affect provision of the Works, it can only do so via the change control procedure set out in clause 8 (Change control)];
- (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used [in relation to the Works] and conforms to [all relevant United Kingdom standards or requirements **OR** [SPECIFY STANDARDS WITH WHICH THE CUSTOMER'S EQUIPMENT IS REQUIRED TO COMPLY]];
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Works, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment [insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment], in all cases before the date on which the Works are to start;
- (h) keep, maintain [and insure] the Supplier's Equipment [in good condition **OR** in accordance with the Supplier's instructions from time to time] and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; [and]
- (i) [comply with any additional responsibilities of the Customer as set out in the relevant Statement of Work; and]
- (j) [ANY OTHER RELEVANT OBLIGATIONS].

6.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

7. Non-solicitation and employment

7.1 Except in respect of any transfer of employees of the Supplier to the Customer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246), the Customer shall not, without the prior written consent of the Supplier, at

any time from the date on which any Works commence to the expiry of six (6) months after the completion of such Works, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of such Works.

- 7.2 Any consent given by the Supplier in accordance with clause 7.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

8. Change control

- 8.1 Either party may propose changes to the scope or execution of the Works but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- (a) the Works;
- (b) the SoW Charges;
- (c) the timetable for the Works; and
- (d) any of the other terms of the relevant Statement of Work.

- 8.2 If the Supplier wishes to make a change to the Works it shall provide a draft Change Order to the Customer.

- 8.3 If the Customer wishes to make a change to the Works:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 8.3(a), provide a draft Change Order to the Customer.

- 8.4 If the parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 29 (Multi-tiered dispute resolution procedure).

8.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 8.3 on a time and materials basis at the Supplier's daily rates specified in Schedule 3.

9. Charges and payment

9.1 In consideration of the provision of the Works by the Supplier, the Customer shall pay the SoW Charges.

9.2 Where the SoW Charges are calculated on a time and materials basis:

- (a) the Supplier's daily fee rates for each individual person as set out in Schedule 3 are calculated on the basis of an eight-hour day, worked during Business Hours;
- (b) the Supplier shall be entitled to charge an overtime rate of [PERCENTAGE]% of the daily fee rate set out in Schedule 3 on a pro rata basis for any time worked by individuals whom it engages on the Works outside Business Hours; and
- (c) the Supplier shall ensure that every individual whom it engages on the Works completes time sheets to record time spent on the Works, and the Supplier shall indicate the time spent per individual in its invoices.

9.3 Where the SoW Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Statement of Work.

9.4 The SoW Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Works; and
- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Works as such items and their cost are [set out in the Statement of Work **OR** approved by the Customer in advance from time to time].

9.5 The Supplier may increase the Reference Charges and any SoW Charges not calculated in accordance with the Reference Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the [Retail Prices Index **OR** Average Weekly Earnings Index] in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be [based on] the latest available figure for the percentage increase in the [Retail Prices Index **OR** Average Weekly Earnings Index].

9.6 Any increase in the Reference Charges shall affect:

- (a) the SoW Charges (to the extent that they are calculated in accordance with the Reference Charges) in Statements of Work in force at the date the increase takes effect; and
 - (b) the calculation of the SoW Charges for Statements of Work entered into after the date the increase takes effect.
- 9.7 The Supplier shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Works performed during that month.
- 9.8 The Customer shall pay each invoice submitted to it by the Supplier within [30] days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 9.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
 - (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) the Supplier may suspend part or all of the Works until payment has been made in full.
- 9.10 All sums payable to the Supplier under this agreement:
 - (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.11 Goods supplied to the Customer pursuant to a Statement of Work are also supplied subject to the Supplier's standard terms and conditions for the supply of goods current at the time of delivery. A copy of the Supplier's standard terms and conditions for the supply of goods current at the date of signature of this agreement are at Schedule 7.

10. Intellectual property rights

- 10.1 In relation to the Deliverables:
 - (a) the Supplier and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Customer Materials;

- (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free [perpetual and irrevocable licence **OR** licence during the term of this agreement] to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Works and the Deliverables [in its business]; and
- (c) the Customer [shall not sub-license, assign or otherwise transfer the rights granted in clause 10.1(b) **OR** may sub-license the rights granted in clause 10.1(b):
 - (i) to its Affiliates and customers; and
 - (ii) [, subject to their entering into appropriate confidentiality undertakings,] to third parties for the purpose of the Customer's receipt of services similar to the Works].

10.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all IPRs in the Customer Materials; and
- (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Works to the Customer.

10.3 The Supplier:

- (a) warrants that the receipt, use [and onward supply] of the Works and the Deliverables by the Customer [and its permitted sub-licensees] shall not infringe [the rights, including any Intellectual Property Rights, of any third party **OR** any rights of third parties to the extent that the infringement results from copying];
- (b) shall, subject to [clause 14.7 **OR** clause 14.8], indemnify the customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all other [reasonable] professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights[, to the extent that the infringement or alleged infringement results from copying,] arising out of, or in connection with, the receipt, use [or onward supply] of the Works and Deliverables.
- (c) shall not be in breach of the warranty at clause 10.3(a), and the Customer shall have no claim under the indemnity at clause 10.3(b) to the extent the infringement arises from:
 - (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Works or any Deliverable;

- (ii) any modification of the Works or any Deliverable, other than by or on behalf of the Supplier; and
- (iii) compliance with the Customer's specifications or instructions[, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement].

10.4 The Customer:

- (a) warrants that the receipt and use in the performance of this agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe [the rights, including any Intellectual Property Rights, of any third party **OR** any rights of third parties to the extent that infringement results from copying]; and
- (b) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights[, to the extent that the infringement or alleged infringement results from copying.] arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

10.5 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 10, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 10.3(b) or clause 10.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent

counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

11. Compliance with laws and policies

- 11.1 In performing its obligations under this agreement, the Supplier shall comply with:
- (a) the Applicable Laws; and
 - (b) the Mandatory Policies, provided that the Customer shall give the Supplier not less than [NUMBER] months' notice of any change to such policies.
- 11.2 Changes to the Works required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in clause 8 (Change control).]

12. Data protection

- 12.1 For the purposes of this clause 12, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 12.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 12.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
- (a) the Supplier shall process the personal data as set out in paragraph 1.1 of Schedule 6 as processor on behalf of the Customer; and
 - (b) the Supplier shall act as controller of the personal data set out in paragraph 1.2 of Schedule 6.
- 12.4 Should the determination in clause 12.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 12 and Schedule 6.
- 12.5 [The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at [COMPANY WEBSITE URL] (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this agreement, the Privacy Policy will take precedence.]
- 12.6 Without prejudice to the generality of clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the

Supplier Personal Data and Customer Personal Data to the Supplier [[and **OR** or] lawful collection of the same by the Supplier] for the duration and purposes of this agreement.

- 12.7 In relation to the Customer Personal Data, **Schedule 6** sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 12.8 Without prejudice to the generality of clause **12.2**, the Supplier shall, in relation to Customer Personal Data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer[, which shall be to process the Customer Personal Data for the purposes set out in **[Schedule 6** (Processing, personal data and data subjects) **OR** [DOCUMENT]] unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
 - (b) implement the technical and organisational measures set out in **[Schedule 6_OR** [DOCUMENT]] to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are 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;
 - (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;

- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 12.8(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 12, [and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice].

12.9 The Customer provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 12;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

12.10 Either party may, at any time on not less than 30 days' notice, revise this clause 12 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).

12.11 The Supplier's liability for losses arising from breaches of this clause 12 is as set out in clause 14.7(b).

13. Confidentiality

13.1 Each party undertakes that it shall not [at any time **OR** at any time during this agreement, and for a period of [two **OR** five] years after termination or expiry of this agreement,] disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], except as permitted by clause 13.2(a).

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

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

14. Limitation of liability

14.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £[AMOUNT] per claim. [The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price.] The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

14.2 References to liability in this clause 14 (Limitation of liability) include every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

14.3 [Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.]

14.4 Nothing in this clause 14 shall limit the Customer's payment obligations under this agreement.

- 14.5 Nothing in this agreement shall limit the Customer's liability under the following clauses:
- (a) clause 10.4 (IPR indemnities); and
 - (b) paragraph 1.4 of Schedule 5 (TUPE on entry).
- 14.6 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.7 Subject to clause 14.3 (no limitations in respect of deliberate default) and clause 14.6 (liabilities which cannot legally be limited), the Supplier's total liability to the Customer:
- (a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £[AMOUNT LINKED TO RELEVANT INSURANCE POLICY] for any one event or series of connected events;
 - (b) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 12 (Data protection) shall not exceed £[AMOUNT]; and
 - (c) for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed £[AMOUNT].
- 14.8 Subject to clause 14.3 (no limitations in respect of deliberate default), clause 14.5 (liability under identified clauses) and clause 14.6 (liabilities which cannot legally be limited), the Customer's total liability to the Supplier:
- (a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £[AMOUNT LINKED TO RELEVANT INSURANCE POLICY] for any one event or series of connected events;
 - (b) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 12 (Data protection) shall not exceed £[AMOUNT]; and
 - (c) for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed £[AMOUNT].
- 14.9 The caps on the Customer's liabilities shall not be reduced by:
- (a) amounts awarded or agreed to be paid under:
 - (i) clause 10 (IPR indemnities); and

- (ii) **Schedule 5** (TUPE on entry).
 - (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 14.10 Subject to clause **14.3** (No limitations in respect of deliberate default), clause **14.4** (No limitation on the customer's payment obligations), clause **14.5** (liability under identified clauses) and clause **14.6** (Liabilities which cannot legally be limited), this clause **14.10** specifies the types of losses that are excluded:
 - (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 14.11 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause **5.1** (Supplier's responsibilities). In view of these commitments, the terms implied by sections 3[, 4] and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 14.12 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of [the event having occurred **OR** its having grounds to make a claim in respect of the event] and shall expire [NUMBER] months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

15. Termination

- 15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of [NUMBER] days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party 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 any of its creditors other than (being a company) 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) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (f) 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 other party (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;
- (g) 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 an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (j) a creditor or encumbrancer of the other party 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 [14] days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(c) to clause 15.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

- (m) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

15.2 [For the purposes of clause 15.1(a) **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in clauses [NUMBERS],

over [the term of this agreement **OR** any [NUMBER]-month period during the term of this agreement]. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.]

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

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [NUMBER] days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Customer.

16. **Obligations on termination and survival**

16.1 **Obligations on termination or expiry**

On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and
- (c) the Supplier shall on request return any of the Customer Materials not used up in the provision of the Works.

16.2 **Survival**

- (a) On termination or expiry of this agreement, all existing Statements at Work shall terminate automatically.

- (b) 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 of this agreement shall remain in full force and effect.
- (c) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

17. Force majeure

17.1 Force Majeure Event means any circumstance not within a party's reasonable control including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or companies in the same group as that party)];
- (h) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (i) interruption or failure of utility service.

17.2 Provided it has complied with clause **17.4**, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

17.3 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.

17.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event [but no later than [NUMBER] 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 on the performance of its obligations.

17.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [NUMBER] weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving [NUMBER] weeks' written notice to the Affected Party.

18. Assignment and other dealings

18.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

18.2 The Supplier 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 under this agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

19. Variation

Subject to clause 8 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. Waiver

20.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

21. 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.

22. Severance

22.1 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.

22.2 If any provision or part-provision of this agreement is deemed deleted under clause 22.1 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.

23. Entire agreement

23.1 This agreement and Statements of Work made under it constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

24. Conflict

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

25. No partnership or agency

25.1 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.

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

26. Third party rights

- 26.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 26.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

27. Notices

- 27.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the address specified in [SPECIFY RELEVANT DOCUMENT OR CLAUSE].
- 27.2 Any notice or communication 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 Business Day delivery services, at 9.00 am on the second Business Day after posting; or
 - (c) if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a Business Day.
- 27.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28. Counterparts

- 28.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 28.2 Transmission of an executed counterpart of this agreement (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.

28.3 No counterpart shall be effective until each party has executed at least one counterpart.

29. Multi-tiered dispute resolution procedure

29.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of the Customer and [EMPLOYEE TITLE] of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the [EMPLOYEE TITLE] of the Customer and [EMPLOYEE TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Customer and [SENIOR OFFICER TITLE] of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the [SENIOR OFFICER TITLE] of the Customer and [SENIOR OFFICER TITLE] of the Supplier are for any reason unable to resolve the Dispute within [30] 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, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than [NUMBER] days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 31 which clause shall apply at all times.

29.3 If the Dispute is not resolved within [NUMBER] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation 31

30. Governing law

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

31. Jurisdiction

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

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

Schedule 1 Available Services

Support Services: management and monitoring of critical networks and systems, and customised helpdesk support, including rapid response remote and on-site support.

Managed Services: customised and integrated remote, on-site, or hybrid management of networks, systems and infrastructure.

Major Events: facilitative networking, broadcasting, communication and security infrastructure and services to major live events.

Strategic Projects: facilitative transformation of operations through project-based delivery and integration of new technologies and solutions.

Network Asset Management: centralised monitoring and management of network assets delivering network insights and data intelligence to facilitate proactive network risk management.

Schedule 2 Template Statement of Work

1. Works: [LIST OUT ALL THE WORKS TO BE PROVIDED UNDER THIS STATEMENT OF WORK. THE WORKS SHOULD BE FROM THE LIST OF AVAILABLE SERVICES IN **Schedule 1**].

2. Customer's manager and Supplier's manager: [LIST OUT THE RELEVANT INDIVIDUALS].

3. Start date and term: [SPECIFY WHEN THE WORKS WILL COMMENCE, AND THE TERM OF THIS STATEMENT OF WORK].

4. Customer Materials: [LIST OUT THE CUSTOMER MATERIALS].

5. Customer's Equipment: [LIST OUT THE CUSTOMER'S EQUIPMENT].

6. Supplier's Equipment: [LIST OUT THE SUPPLIER'S EQUIPMENT].

7. [Service Levels: [INCLUDE ANY SERVICE LEVELS, IF APPLICABLE].]

8. Timetable: [SET OUT THE TIMETABLE FOR PERFORMING THE WORKS].

9. Milestones: [SET OUT ANY MILESTONES FOR THE WORKS].

10. Deliverables: [SET OUT ANY DELIVERABLES FOR THE WORKS].

Products, goods and materials supplied to the Customer as part of the Deliverables are supplied subject to the Supplier's general terms of sale in force at the time of delivery. The Supplier's current general terms of sale are appended at Schedule 7.

11. Acceptance Criteria: [SET OUT ANY CRITERIA FOR ACCEPTING THE DELIVERABLES OR THE MILESTONES].

12. SoW Charges: [SET OUT THE CHARGES AND PAYMENT FOR THE WORKS].

13. Access to information, premises, and facilities: [CLAUSE 6.1(c) PROVIDES FOR GENERALISED ACCESS. BUT SET OUT HERE ANY NECESSARY SPECIFICS]

14. Specific licenses and consents: [CLAUSE 6.1(g) PROVIDES FOR GENERALISED CONSENTS. BUT IF ANY SPECIFICS ARE NEEDED THEY SHOULD BE DETAILED HERE]

The list of Employees for the purposes of paragraph **1.1(b)** of **Schedule 5** (TUPE) are set out below:

List of Employees

Employee name	Benefits
[EMPLOYEE NAME]	[DETAILS OF BENEFITS]

.....

Signed by [NAME OF CUSTOMER REPRESENTATIVE] for and on behalf of the Customer.

.....

Signed by [NAME OF SUPPLIER REPRESENTATIVE] for and on behalf of the Supplier.

Schedule 3 Reference Charges and payment terms

Fixed price: [PRE-AGREED PRICES FOR PARTICULAR SERVICES OR METHOD OF CALCULATING FIXED PRICE]

Time and materials:

- Daily rates: [DAILY RATES FOR MEMBERS OF THE SUPPLIER'S TEAM]
- Weekend/overtime rates: [WEEKEND/OVERTIME RATES OF MEMBERS OF THE SUPPLIER'S TEAM]

Additional charges: The following materials and services procured from third parties shall be invoiced to the Customer in addition to the Charges: [DETAILS OF THIRD PARTY MATERIALS AND SERVICES TO BE CHARGED IN ADDITION TO THE CHARGES]

Payment terms: [PAYMENT TERMS FOR PARTICULAR SERVICES]

Schedule 4 Mandatory Policies

The Mandatory Policies are:

- [Modern Slavery and Human Trafficking Policy].
- [Corporate and Social Responsibility Policy].
- [Data and Privacy Policy].
- [Ethics and Anti-Bribery Policy].
- [Expenses Policy].
- [Health and Safety Policy].
- [Security Policy].

Schedule 5 TUPE on entry

1. TUPE on entry

1.1 In this Schedule 5 the following definitions apply:

- (a) **Effective Date:** the date on which a Statement of Work commences.
- (b) **Employees:** those employees whose contract of employment transfer to the Supplier from the Customer as at the Effective Date, being those employees who are listed in the applicable Statement of Work.
- (c) **Employee Liability Information:** in respect of each of the Employees:
 - (i) the identity and age of the Employee;
 - (ii) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
 - (iii) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
 - (iv) information about any court or tribunal case, claim or action either brought by the Employee against the Customer within the previous two years or where the Customer has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer; and
 - (v) information about any collective agreement which will have effect after the [Effective Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.
- (d) **Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

1.2 The Customer and the Supplier believe that, pursuant to the Employment Regulations, at the Effective Date, the Supplier will become the employer of the Employees.

1.3 The Customer represents, warrants and undertakes to the Supplier that:

- (a) no persons are employed or engaged in the provision of the Works other than the Employees;
- (b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this agreement;

- (c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable other than the pension benefits of any Employees disclosed in accordance with [DETAIL]) are set out in the relevant Statement of Work;
- (d) there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Works which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
- (e) in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Works) the Customer has:
 - (i) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;
 - (ii) maintained adequate and suitable records regarding the service of each of its employees;
 - (iii) calculated and paid all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 (*SI 1998/1833*) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;
 - (iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
 - (v) complied with all relevant orders and awards made under any statute affecting their conditions of service;
- (f) the Customer has not been involved in any industrial or trade disputes in the last [three] years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this agreement including the identity of the Supplier is likely to lead to any industrial dispute;
- (g) there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;

- (h) the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- (i) the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- (j) [there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;]
- (k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance [and pension contributions]) are in arrears or unpaid;
- (l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state of affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;
- (m) the Customer has provided the Employee Liability Information to the Supplier regarding each of the Employees either in writing or by making it available to the Supplier in a readily accessible form;
- (n) the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Supplier;
- (o) the Customer has notified the Supplier in writing of any change in the Employee Liability Information since the date on which it was provided;[and]
- (p) the Employee Liability Information was provided not less than 28 days before the Effective Date[. **OR** ; and]
- (q) [the Customer has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992, if required.]

1.4 The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the termination by the Customer of the employment of any of the Employees;
- (b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the Supplier by virtue of the Employment Regulations; and
- (c) any claim made at any time by any employee of the Customer other than the Employees who claim to have become an employee of or have rights against the Supplier by virtue of the Employment Regulations (**Claims**);

provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier.

1.5 The Supplier shall procure that its employees, agents and successors in title shall promptly:

- (a) take such action in connection with the Claims as the Customer shall from time to time reasonably request;
- (b) provide free of charge all such assistance and information as the Customer may reasonably request relating to the Claims to enable the Claims to be pursued;
- (c) subject to any restriction imposed by law, provide the Customer, its legal and other advisers with access to all documents, records or other information held by the Supplier relating to the Claims;
- (d) provide the Customer and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Customer with the preparation of its cases in relation to the Claims;
- (e) permit and require such employees as the Customer and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Customer and/or its legal or other professional advisers may reasonably require;
- (f) provide such other assistance as the Customer may reasonably request in order to ensure the due and timely prosecution of the Claims;
- (g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the Customer and obtaining its agreement to any approval of the request; and
- (h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Customer's consent to such waiver, such consent not to be unreasonably withheld.

- 1.6 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Effective Date and by the Supplier with effect from the Effective Date.
- 1.7 The Supplier shall indemnify the Customer in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (a) any failure by the Supplier to comply with its obligations pursuant to the Employment Regulations; and
 - (b) anything done or omitted to be done by the Supplier in respect of any of the Employees whether before or after the Effective Date.
- 1.8 During the term of the relevant Statement of Work, the Supplier shall provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Works under that Statement of Work (subject to Applicable Data Protection Laws).

Schedule 6 **Processing, personal data and data subjects**

1. Parties' roles

1.1 Where the Supplier acts as a processor

1.2 [Where the Supplier acts as a controller]

2. Particulars of processing

2.1 Scope

2.2 Nature

2.3 Purpose of processing

2.4 Duration of the processing

2.5 Types of personal data

2.6 Categories of data subject

3. Technical and organisational measures

Schedule 7 General terms of sale of goods, products, materials

Signed by [NAME OF
DIRECTOR] for and on behalf
of North PB Limited

.....
Director

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

.....
Director

SCHEDULE 7

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. Interpretation

1.1 Definitions

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

Conditions: these terms and conditions.

Contract: the contract between the Supplier and the Customer as set out in the Master Services Agreement and a statement of work made under it, as supplemented by the Order and these Conditions.

Delivery Date: the date specified for delivery of an Order in accordance with clause 3.

Delivery Location: the address for delivery of the Goods, as set out in the Contract.

Force Majeure Event: as defined in the master services agreement between the Supplier and the Customer.

Goods: the goods and manufactured or raw materials (or any part of them) supplied pursuant to the Contract.

Master Services Agreement: the master services agreement between the Supplier and the Customer.

Order: an order for Goods to be supplied under the Contract pursuant to clause 3.

Price: the price for the Goods, as provided for in the Contract.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

2. Application

These standard terms and conditions of sale apply to all supplies of Goods by North PB Limited (**Supplier**) to the customer pursuant to the Contract (**Customer**). These standard terms and conditions only apply to supplies of Goods under the Contract. In the event of any conflict between these standard terms and conditions and other terms and conditions of the Contract, these standard terms and conditions shall take precedence to the extent of the conflict.

3. Orders

- 3.1 Orders shall be as per a statement of work under the Contract. If not listed in full detail in a statement of work, Orders shall include such items in such quantities as the Supplier deems necessary for proper execution of the Contract.
- 3.2 Orders shall be drawn up in writing by the Supplier and signed by the Customer.
- 3.3 The Supplier shall assign an order number to each Order and notify the order number to the Customer. Each party shall use the relevant order number in all subsequent correspondence relating to the Order or Goods supplied under it.
- 3.4 After confirming an Order, the Supplier shall as soon as practicable inform the Customer of the Supplier's estimated delivery date for the Order.
- 3.5 Except as provided at clause 4.2 the Supplier is responsible for ensuring that Orders and any applicable Specification are appropriate and accurate. The Customer shall give the Supplier all necessary information that the Supplier reasonably requires in order to fulfil each Order.

4. The Goods

- 4.1 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 4.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the specification. This clause 4.2 shall survive termination of the Contract.
- 4.3 The Supplier reserves the right to amend any specification if required by any applicable statutory or regulatory requirements.

5. Delivery

- 5.1 The Supplier shall ensure that:

- (a) each delivery of Goods is accompanied by a delivery note that shows the order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.2 The Supplier shall endeavour to deliver Goods or have them delivered to the Delivery Location on the relevant Delivery Date.
- 5.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 The Supplier may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

6. Quality and fitness for purpose

- 6.1 The Supplier warrants that, for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
 - (a) conform in all material respects with their description and specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.
- 6.2 Subject to clause **6.3**, if:
 - (a) the Customer gives notice in writing to the Supplier during the warranty period and within 15 Business Days of discovery that some or all of the Goods do not comply with the warranties set out in clause 6.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and

- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:

- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause .

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

7. Title and risk

7.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Location.

7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.

- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any event which gives rise to the Supplier having a right to terminate the Contract under the Master Services Agreement (clause 15); and
 - (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.
- 7.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer.
- 7.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.
- 8. Product recall**
- 8.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice.
- 8.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.
- 9. Price and payment**
- 9.1 The Customer shall pay for Goods in accordance with this clause 9.
- 9.2 The Price excludes:

- (a) the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price; and
- (b) amounts in respect of VAT, which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

9.3 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after the Supplier has informed the Customer it is ready and willing to deliver the Goods. The Supplier shall ensure that the invoice includes an Order number, invoice number, and Contract number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

9.4 The Customer shall pay invoices in full in cleared funds within 20 Business Days of the invoice date. Payment shall be made to the bank account nominated in writing by the Supplier.

9.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under **Error! Bookmark not defined.**9:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) the Supplier may suspend all further deliveries of Goods until payment has been made in full.

9.6 All amounts due under the Contract from the Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

10. Limitation of liability

10.1 The Supplier has obtained insurance cover in respect of certain aspects its own legal liability for individual claims not exceeding £[AMOUNT] per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

10.2 Nothing in this Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.3 Subject to clause 10.2:

- (a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with Goods supplied under the Contract; and
- (b) the Supplier's total liability to the Customer for all other losses arising in connection with Goods supplied under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed **£[FIGURE] OR the greater of £[FIGURE] and [NUMBER IN WORDS] per cent ([NUMBER IN FIGURES]%) of the total sums paid and/or payable by the Customer for Goods under the Contract].**

Commented [HM1]: Link amounts to insured amounts, or lesser.