



dated 202[]

[Insert Name of Preferred Bidder]

and

WM5G Limited

Services agreement

in relation to []

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Services agreement

dated 202[]

Parties

- (1) [Insert Name of Preferred Bidder] incorporated and registered in England and Wales with company number [] whose registered office is at [] (the Supplier); and
- (2) WM5G Limited incorporated and registered in England and Wales with company number 11848619 whose registered office is at 16 Summer Lane, Birmingham, West Midlands, United Kingdom, B19 3SD (the Customer),

each one a party and together the parties.

Background

- (A) The Supplier is in the business of providing [].
- (B) Following completion of a procurement exercise, the Customer wishes to obtain and the Supplier wishes to provide the Services on the terms set out in this agreement.

Agreed terms

1 Definitions and interpretation

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

1.1 Definitions

Accounting Records includes originals of any invoices, timesheets, receipts, minutes from meetings, accounts, deeds, and any other relevant documentation, whether in hard copy or electronic form;

Applicable Laws means any law, statute, declaration, decree, directive, legislative enactment, order, statutory instrument, subordinate legislation, ordinance, regulation, rule, by-law, binding restriction, binding code of practice, or directive/requirement of any semi-governmental or regulatory body, each as amended, consolidated or re-enacted from time to time, with which a person is bound to comply;

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

Change Order has the meaning given in clause 6.1;

Charges means the sums payable for the Services, as set out in Schedule 2;

Commencement Date means the date of this agreement;

control has the meaning given in section 1124 Corporation Tax Act 2010, and the expression change of control shall be construed accordingly;

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures means as defined in the Data Protection Legislation;

Customer's Equipment means any kit, 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 Services including any such items specified in Schedule 1;

Customer's Manager means the individual identified as such in Schedule 3, being the person responsible for managing the Services on behalf of the Customer.

Customer Materials means all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to 4.3.

Data Protection Legislation means the UK Data Protection Legislation and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

Deliverables means any outputs of the Services and any other documents, products and materials provided by the Supplier to the Customer as specified in Schedule 1 and any other documents, products and materials provided by the Supplier to the Customer in relation to the Services (excluding the Supplier's Equipment);

Developed IPRs means any and all IPRs that subsist in Developed Materials;

Developed Materials means any and all Materials and Deliverables which are developed pursuant to this agreement by or on behalf of a party to agreement or both of the parties to this agreement (including in collaboration with another in connection with agreement);

DLUHC means the Department of Levelling Up, Housing and Communities;

Finance Officer means, where the stated person is:

- (a) a local authority - an officer who has responsibility for the proper administration of the person's financial affairs, in accordance with section 151 of the Local Government Act 1972; or
- (b) not a local authority – a finance director or equivalent person who has responsibility for the proper administration of the proper administration of the person's financial affairs;

Funder means any funder that provides grant funding to WM5G pursuant to a Funding Agreement;

Funding Agreement means any funding agreement through which WM5G receives grant funding from third party funders which it uses to pay the Charges to the Recipient;

ICNIRP Guidelines means the guidelines for limiting exposure to time-varying electric, magnetic, and electromagnetic fields (up to 300GHz) maintained by International

Commission on Non-Ionizing Radiation Protection, first issued in 1998 and available (at the date of agreement) at:
<https://www.icnirp.org/cms/upload/publications/ICNIRPmfgdl.pdf>, including any subsequent updates to those guidelines from time to time;

Intellectual Property Rights or IPRs means any and all intellectual property rights, including all patents, rights to inventions, copyright and related rights, database rights, rights in designs, trade marks, service marks, trade names, trade secrets, rights to goodwill or to sue for passing off, rights in confidential information (including know-how) and other similar or equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world;

Key Personnel means the Supplier's Manager and the individuals identified as key personnel in Schedule 3, or any replacement individuals appointed by the Supplier pursuant to clauses 3.3.4 and 3.3.5;

Mandatory Policies means the Customer's business policies and codes listed in Schedule 4, as amended by notification to the Supplier from time to time;

Materials means any and all tools, designs, methodologies, processes, procedures, libraries, databases, code, software, firmware, technology, documentation, information, reports, forecasts, know-how and any other materials;

Media Protocol means the media protocol provided by the Customer to the Supplier prior to the date of this agreement;

Milestones means a date by which a part of the Services is to be completed, as set out in Schedules 1 and 2;

NAO means the National Audit Office;

Procurement Laws means any Applicable Laws regulating procurement process and practices in the UK public sector, including the Procurement Act 2023 and the Procurement Regulations 2024;

Prompt Payment Code means the payment practices and best practice code administered by the Chartered Institute of Credit Management available at: www.promptpaymentcode.org.uk;

Representatives means a person's directors, officers, employees, agents, consultants and professional advisors;

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

Supplier's Equipment means any kit, equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in Schedule 1;

Supplier's Manager means the individual identified in Schedule 3, or any replacement individual appointed by the Supplier pursuant to clauses 3.3.4 and 3.3.5, being the person responsible for managing the Services on behalf of the Supplier;

UK Data Protection Legislation means 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, the Data (Use and Access) Act 2025 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

UK GDPR means the General Data Protection Regulation (**GDPR**) (Regulation (EU) 2016/679) as incorporated into UK law by the European Union (Withdrawal) Act 2018 and subsequently amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419); and

WMCA means the West Midlands Combined Authority.

- 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 and Annexes 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 and Annexes.
- 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 genders.
- 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 a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written does not include fax or email.
- 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 referred to in this agreement is a reference of this agreement or such other agreement or document as

varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.14 References to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes 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, until [] (inclusive) when it shall terminate automatically without notice.

2.2 The Supplier shall provide the Services to the Customer in accordance with this agreement from XX until XX.

3 Supplier's responsibilities

3.1 The Supplier shall:

3.1.1 provide the Services and the Deliverables in accordance with Schedule 1;

3.1.2 ensure that:

- (a) the Services and Deliverables will conform in all respects with Schedule 1;
- (b) the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Customer; and
- (c) if so requested by the Customer, all re-iterations or redrafts of the Deliverables are undertaken promptly and in accordance with Schedule 1;

3.1.3 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

3.1.4 ensure that the Deliverables, and 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;

3.1.5 co-operate with the Customer in all matters relating to the Services, and comply with the Customer's instructions in order to perform the Services (which may include liaising with Representatives of the WMCA and other Funders);

3.1.6 before the date on which the Services are to start, obtain and at all times, and maintain during the term of this agreement, all necessary licences and consents and comply with all Applicable Laws in relation to the Services;

Commented [YP1]: WM5G note: if the term of the contract is 9 months or less, include two month milestones in the agreement, with the ability for WM5G to exit immediately if performance criteria are not met. Volumes should start low for the first two months and then gradually increase.

- 3.1.7 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time. The Customer reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the Customer's premises, which shall only be given to the extent necessary for the performance of the Services;
- 3.1.8 hold all Customer Materials (if any) in safe custody at its own risk and maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisations;
- 3.1.9 take good care of any of the Customer's Equipment (if any) provided by the Customer;
- 3.1.10 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- 3.1.11 notify the Customer in writing immediately upon the occurrence of a change of control of the Supplier; [and]
- 3.1.12 ensure that all publicity (including websites, media, press releases and other written material) created pursuant to this agreement complies with the Media Protocol; [and]

3.1.13 []

- 3.2 Time is of the essence in relation to Milestones for the Supplier. If the Supplier fails to meet the relevant Milestone, then (without prejudice to the Customer's right to terminate this agreement and any other rights it may have), the Customer may:

- 3.2.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 3.2.2 purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;
- 3.2.3 hold the Supplier accountable for any loss and additional costs incurred; and
- 3.2.4 have any sums previously paid by the Customer to the Supplier in respect of the affected Services refunded by the Supplier.

- 3.3 In relation to the Supplier's personnel, the Supplier shall:

- 3.3.1 use the Key Personnel in the provision of the Services;
- 3.3.2 ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this agreement;

- 3.3.3 ensure that the Supplier's Manager has authority to bind the Supplier on all matters relating to the Services (including by signing Change Orders);
- 3.3.4 promptly inform the Customer of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by the Customer, provide a suitably qualified replacement for such individual; and
- 3.3.5 use its best endeavours not to make any changes to the Key Personnel throughout the term of this agreement and obtain the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.

4 Customer's obligations

The Customer shall:

- 4.1 co-operate with the Supplier in all matters relating to the Services;
- 4.2 where possible, provide access to the Customer's premises and data and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of performing the Services;
- 4.3 provide to the Supplier all Customer Materials (if any); and
- 4.4 provide to the Supplier all of the Customer's Equipment (if any).

5 Default by the Customer

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

6 Change Control

- 6.1 Either party may propose changes to the scope or execution of the Services, 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 those changes will have on:
 - 6.1.1 the Services;
 - 6.1.2 the Charges;
 - 6.1.3 the timetable for the Services; and
 - 6.1.4 any terms of this agreement.
- 6.2 If the Customer wishes to make a change to the Services:
 - 6.2.1 it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft Change Order; and

6.2.2 the Supplier shall, within five (5) Business Days of receiving the Customer's request pursuant to clause 6.2.1, provide a draft Change Order to the Customer;

6.3 If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.

6.4 If the Supplier submits a draft Change Order (in accordance with clause 6.3) in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.5 If the parties:

6.5.1 agree to a Change Order, they shall sign it and that Change Order shall amend this agreement; or

6.5.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with clause 30.

6.6 Each party shall bear its own costs in preparing, considering or negotiating Change Orders.

7 Charges and payment

7.1 In consideration of the provision of the Services by the Supplier and subject always to receipt of the relevant grant funding from the relevant Funder, the Customer shall pay the Charges.

7.2 [The Supplier shall bear all expenses and disbursements incurred pursuant to this agreement.]

7.3 [The Supplier shall invoice the Customer for the Charges upon completion of the Services and approval by the Customer of the Deliverables.]

7.4 Subject to the Customer receiving the relevant grant funding from the relevant Funder, the Customer shall pay each undisputed invoice submitted to it by the Supplier within sixty (60) days of receipt to a bank account nominated in writing by the Supplier.

7.5 If the Customer fails to make a payment due to the Supplier under this agreement by the due date, then, without limiting the Supplier's remedies under clause 15 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 7.5 will accrue at 1% a year above the Bank of England's base rate from time to time, but at 1% a year for any period when that base rate is below 0%.

7.6 If the Customer disputes a payment in good faith, then the interest payable under clause 7.5 is only payable after the dispute is resolved, on sums found or agreed to be due, from the day the dispute is resolved until payment.

7.7 The Customer may, at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either

Commented [YP2]: WM5G note: do not allow any payments in advance.

liability arises under this agreement. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

8 Additional obligations

8.1 By entering into this agreement, the Supplier acknowledges that:

- 8.1.1 the Customer's business is partly-funded by grant funding pursuant to one or more WM5G Funding Agreements; and
- 8.1.2 the Customer is required to place certain contractual obligations on the Supplier, as set out in clause 8.2 below, in order to satisfy its contractual obligations under the WM5G Funding Agreements; and
- 8.1.3 payment from the Customer to the Supplier under this agreement may be made up of, and shall be subject to the receipt by WM5G of, grant funding from Funders.

8.2 The Supplier shall:

- 8.2.1 not engage in any act or omission which is reasonably likely to diminish the trust that the public places in any relevant Funder and/or the Customer or bring the same into disrepute;
- 8.2.2 comply with the Prompt Payment Code and therefore make all undisputed payments to suppliers and contractors in relation to this agreement by the agreed date or, if no date is specified, within thirty (30) days;
- 8.2.3 keep proper books of accounts at all times;
- 8.2.4 open its accounts and activities relating to the agreement to inspection by the Comptroller and Auditor General if requested for the purposes of any examination carried out under section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which resources have been used;
- 8.2.5 permit the NAO and/or any relevant Funder or their nominees to carry out examinations into the economy, efficiency and effectiveness with which any grant funding (as referred to in clause 8.1) has been used;
- 8.2.6 permit any Representative of a Funder, the NAO or the DLUHC to:
 - (a) visit the Supplier's premises and/or delivery locations of the Services under this agreement;
 - (b) inspect any of the Supplier's activities relating to this agreement;
 - (c) examine and take copies of books of account and such other documents or records (including Accounting Records) that in the Representative's view may relate to the use of grant funding (as referred to in clause 8.1) and/or related expenditure; and

- (d) require Representatives of the Supplier to submit oral and written explanations in relation to the use of grant funding (as referred to in clause 8.1) and related expenditure;
- 8.2.7 where reasonably required, provide the Customer and/or any relevant Funder with:
- (a) an annual written statement, signed by the Supplier's Finance Officer (or equivalent), of how any grant funding (as referred to in clause 8.1) attributable to the Supplier was spent;
 - (b) a signed undertaking that the Supplier will retain such documents as are described in clauses 8.2.3, 8.2.4, 8.2.5, 8.2.6 above and this clause 8.2.7; and
 - (c) a right to inspect and make copies of all documents referred to in clause 8.2.7(b) above,
- provided that the Supplier shall not be required to disclose, or allow access to, any confidential information;
- 8.2.8 comply with:
- (a) the Procurement Laws;
 - (b) the Equality Act 2010 and any other anti-discrimination and equal opportunities legislation;
 - (c) the ICNIRP Guidelines; and
 - (d) all other Applicable Law,
- in force from time to time throughout the term of agreement **provided that** the Supplier shall comply with the requirements set out in this clause 8.2.8 only to the extent that such requirement does not impose an additional regulatory burden upon the Supplier that did not exist prior to the date of this agreement;
- 8.2.9 carry out any procurement in accordance with the Public Contract Regulations 2015, where so required, if the Supplier is a 'contracting authority' as defined in the Public Contracts Regulations 2015;
- 8.2.10 carry out any procurement by way of fair and open practices where it is appropriate to do so if it is not a 'contracting authority' as defined in the Public Contracts Regulations 2015;
- 8.2.11 cooperate in any reasonable additional assessments as may be undertaken by any relevant Funder from time to time in respect of the compliance of grant funding (as referred to in clause 8.1) with the applicable grant funding conditions and the Procurement Laws;
- 8.2.12 use all reasonable endeavours to ensure that the Supplier, its employees or officers are not influenced by any conflicts of interest during the performance of its obligations under this agreement;

- 8.2.13 not make any announcement to any third party or the public in any form of media relating to this agreement or its subject matter without the prior written consent of the Customer. The Customer may impose any conditions to its consent under this clause (including but not limited to requiring compliance with the Media Protocol); and
- 8.2.14 provide reasonable assistance to the Customer where so required in order to enable the Customer to satisfy its contractual obligations under any relevant Funding Agreement.

9 Intellectual Property Rights

9.1 In relation to the Customer Materials:

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

9.2 The parties acknowledge and agree that:

- 9.2.1 all Developed IPRs shall vest in the Customer absolutely on creation and to the extent that they do not the Supplier undertakes to, at their own expense, execute all documents, make all applications, give all assistance and do all acts and things at any time either during or after the term of this agreement, as may, in the opinion of the Customer, be necessary or desirable to vest the Developed IPRs in the Customer; and
- 9.2.2 the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9.3 The Supplier:

- 9.3.1 warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Customer Materials) by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 9.3.2 shall indemnify the Customer in full against all liabilities, costs, expenses, damages and losses (including but not limited to 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 professional costs and expenses) suffered or incurred by the Customer arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding the Customer Materials).

10 **Insurance**

During the term of this agreement and for a period of three years after the expiry or termination of this agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £X,000,000 for each and every claim and public liability insurance at an amount not less than £X,000,000 for each and every claim to cover the liabilities that may arise under or in connection with this agreement. The Supplier shall produce to the Customer on request the insurance certificate giving details of the relevant cover.

11 **Compliance with policies**

In performing its obligations under this agreement, the Supplier shall comply with the Mandatory Policies.

12 **Data Protection**

12.1 Where a term is not already defined in the definitions to the Agreement, the following terms shall have the following meanings:

Authority Correspondence means any correspondence from a Supervisory Authority in relation to the Processing of the Personal Data;

Controller has the meaning set out in the Data Protection Legislation;

Data Subject has the meaning set out in the Data Protection Legislation;

Data Subject Request means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation;

Personal Data means any data relating to any person relevant to this Agreement including but not limited to name, address, contact details, date of birth, salary or any other data in relation to any person, including Sensitive Personal Data;

Processing has the meaning set out in the Data Protection Legislation (and **Process**, **Processes** and **Processed** shall be construed accordingly);

Sensitive Personal Data means any sensitive personal data or special categories of personal data as defined as such by the Data Protection Legislation;

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation, including the UK Information Commissioner's Office, or any successor or replacement bodies from time to time; and

12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

12.3 During the term of this Agreement it is anticipated, and the Supplier acknowledges, that the Supplier shall be the Data Controller in respect of any Personal Data that it Processes

in the delivery of the Services and has obligations under applicable Data Protection Legislation including, without limitation, to:

- 12.3.1 Make due notification to the Supervisory Authority, including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Legislation.
- 12.3.2 Ensure that all Personal Data disclosed or transferred to, or accessed by, the Customer or the Partners is accurate and up-to-date, as well as adequate, relevant and not excessive to enable them to Process the Personal Data, as envisaged under this Agreement.
- 12.3.3 Ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the Customer with evidence of its compliance with such requirement.
- 12.3.4 Promptly, and in any event within 48 hours of receipt of any Data Subject Request or Authority Correspondence, notify the Customer in the event that it receives such a Data Subject Request or Authority Correspondence in relation to the processing of Personal Data under, or in connection with, this Agreement.
- 12.3.5 Promptly and in no more than 24 hours notify the Customer in writing upon it becoming aware of any actual or suspected breach of clause 12.3.3 in relation to the Personal Data and shall, within such timescale to be agreed by the Parties (acting reasonably and good faith):
 - (a) implement any measures necessary to restore the security of compromised Personal Data; and
 - (b) support the Customer to make any required notifications to the Supervisory Authority and affected Data Subjects.
- 12.3.6 Take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data.
- 12.3.7 Hold the information contained in the Personal Data confidentially.
- 12.4 The Supplier shall assist the Customer to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Customer or the Partners to breach any of their obligations under the Data Protection Legislation to the extent that the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 12.5 Notwithstanding clause 12.3, to the extent that the Supplier is in fact acting as a Processor for and on behalf of the Customer as the Controller, in relation to the Processing that it is carrying out arising out of, or in connection with, the performance of its obligations under this Agreement, it shall:

- 12.5.1 Process Personal Data for and on behalf of the Controller for the purposes of performing its obligations under this Agreement, and only in accordance with the terms of this Agreement and any documented instructions from the Controller, and as updated from time to time. Unless prohibited by law, if a Processor is required by UK law to act other than in accordance with the instructions of the Controller, the Processor shall promptly, and in any event within twenty-four (24) hours of becoming aware of the same, notify the Controller.
- 12.5.2 Notify the Controller immediately (and in any event within twenty-four (24) hours) if it considers, in its opinion (acting reasonably), that any of the Controller's instructions under clause 12.5.1 infringes any of the Data Protection Legislation.
- 12.5.3 Ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the Controller evidence of its compliance with such requirement.
- 12.5.4 Maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Controller, containing such information as the Controller may reasonably require.
- 12.5.5 Not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without the Controller's prior written consent.
- 12.5.6 Notify the Controller promptly (and in any event within 24 hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and:
- i implement any measures necessary to restore the security of compromised Personal Data; and
 - ii assist the Controller to make any notifications to the Supervisory Authority and affected Data Subjects.
- 12.5.7 On termination or expiry of this Agreement (as applicable), cease Processing all Personal Data and return and/or permanently and securely destroy (as directed in writing by the Controller) all Personal Data and all copies in its possession or control.
- 12.5.8 Comply with the obligations imposed upon a Processor under the Data Protection Legislation.
- 12.5.9 Use all reasonable endeavours in accordance with good industry practice to assist the Controller to comply with the obligations imposed on the Controller by the Data Protection Legislation, at the Processor's cost.
- 12.5.10 Not appoint any third party processor of personal data under this Agreement without the Customer's consent.

12.6 The Supplier shall indemnify and keep indemnified the Customer in respect of all data protection losses or damages suffered or incurred by, awarded against or agreed to be paid by, the Customer arising from or in connection with any breach by the Supplier of any of its obligations under this clause 12.

12.7 The Customer may, at any time on not less than thirty (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.

13 **Confidentiality**

13.1 Each party undertakes that it shall not at any time during this agreement, and for a period of three (3) 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, except as permitted by clause 13.2. For the avoidance of doubt, the Customer Materials shall be regarded as confidential information for the purposes of this clause.

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

13.2.1 to its Representatives 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 Representatives to whom it discloses the other party's confidential information comply with this clause 13; and

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

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

13.4 By entering into this agreement, the Supplier acknowledges that the Customer may be obliged to disclose information (including confidential information) without consulting the Supplier pursuant to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004. Notwithstanding the foregoing, if so requested by the Customer, the Supplier shall at their own expense provide reasonable assistance to the Customer to satisfy their obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

14 **Limitation of liability**

14.1 Nothing in this agreement:

14.1.1 shall limit or exclude the Supplier's or the Customer's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;

- (c) breach of the terms implied by section 2 Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law; or
- 14.1.2 shall limit or exclude the Supplier's liability under clause 9.3.2, clause 12.6 or clause 13.1.
- 14.2 Subject to clause 14.1:
 - 14.2.1 neither party to this agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement;
 - 14.2.2 the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to £[AMOUNT]; and
 - 14.2.3 the Customer's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the Charges payable by the Customer pursuant to Schedule 2.
- 14.3 Notwithstanding clause 14.2.1 the losses for which the Supplier assumes responsibility and which shall (subject to clause 14.2.2) be recoverable by the Customer include:
 - 14.3.1 sums paid by the Customer to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the terms of this agreement;
 - 14.3.2 wasted expenditure;
 - 14.3.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - 14.3.4 losses incurred by the Customer arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the Customer) against the Customer caused by the act or omission of the Supplier; and
 - 14.3.5 anticipated savings.
- 14.4 No amount awarded or agreed to be paid under the indemnity in clause 9.3.2 or clause 12.6 or pursuant to clause 13.1 shall count towards the cap on the Supplier's liability under clause 14.2.2.
- 14.5 The rights of the Customer under this agreement are in addition to, and not exclusive of, any rights or remedies provided by the common law.

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:

- 15.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- 15.1.2 the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fifteen (15) days after being notified in writing to do so;
- 15.1.3 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;
- 15.1.4 the other party does not meet any Milestones by the specified milestone date;
- 15.1.5 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 Insolvency Act 1986;
- 15.1.6 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;
- 15.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) 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;
- 15.1.8 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 other party (being a company);
- 15.1.9 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 15.1.10 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;
- 15.1.11 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 fourteen (14) days;

15.1.12 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 15.1.5 to clause 15.1.11 (inclusive); and

15.1.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.2 For the purposes of clause 15.1.2, 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:

15.2.1 a substantial portion of this agreement; or

15.2.2 any of the obligations set out in the following clauses: 3.1, 8.2, 10, 11, 12, 13 and 19.1,

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

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

15.3.1 there is a change of control of the Supplier; and/or

15.3.2 some or all of the grant funding identified by WM5G for the payment of the Charges is withdrawn by the relevant Funder.

15.4 Without affecting any other right or remedy available to it, the Customer may terminate this agreement by giving the Supplier ninety (90) days' notice in writing.

16 **Consequences of termination**

16.1 On termination or expiry of this agreement:

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

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

16.1.3 the following clauses shall continue in force: 1, 8, 9.3.2, 10, 12.6, 13, 14, 16, 17, 25, 27, 31 and 32.

- 16.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 17 **Inadequacy of damages**
- Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Customer shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.
- 18 **Force Majeure**
- 18.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
- 18.1.1 acts of God, flood, drought, earthquake or other natural disaster;
 - 18.1.2 epidemic or pandemic;
 - 18.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 18.1.4 nuclear, chemical or biological contamination or sonic boom;
 - 18.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - 18.1.6 collapse of buildings, fire, explosion or accident; and
 - 18.1.7 interruption or failure of utility service.
- 18.2 Provided it has complied with clause 18.3, 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.
- 18.3 The Affected Party shall:
- 18.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) 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
 - 18.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

18.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving one (1) week's written notice to the Affected Party.

19 Assignment and other dealings

19.1 The Supplier 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.

19.2 The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that it gives prior written notice of such dealing to the Supplier.

20 Variation

Subject to clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21 Waiver

21.1 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.

21.2 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.

22 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.

23 Severance

23.1 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.

23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 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.

24 Entire agreement

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

- 24.2 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.
- 24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 25 **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.
- 26 **No partnership or agency**
- 26.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership, employment relationship 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.
- 26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 27 **Third party rights**
- 27.1 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.
- 27.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.
- 28 **Notices**
- 28.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 28.2 Any notice shall be deemed to have been received:
- 28.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 28.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9 am on the second Business Day after posting.
- 28.3 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.
- 29 **Counterparts**
- This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

30 **Multi-tiered Dispute Resolution Procedure**

30.1 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:

30.1.1 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 Head of Delivery of the Customer and **[EMPLOYEE TITLE]** of the Supplier shall attempt in good faith to resolve the Dispute;

30.1.2 if the Head of Delivery of the Customer and **[EMPLOYEE TITLE]** of the Supplier are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Customer and **[SENIOR OFFICER TITLE]** of the Supplier who shall attempt in good faith to resolve it; and

30.1.3 if the Managing Director of the Customer and **[SENIOR OFFICER TITLE]** of the Supplier are for any reason unable to resolve the Dispute within fourteen (14) 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 fourteen (14) days after the date of the ADR Notice.

30.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 32 which clause shall apply at all times.

30.3 If the Dispute is not resolved within twenty-eight (28) days after service of the ADR Notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of twenty-eight (28) days, or the mediation terminates before the expiration of the said period of twenty-eight (28) days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 32.

31 **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.

32 **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.

Schedule 1

Services Details

- 1 Services: The Services are as follows:
 - 1.1 [INSERT]
- 2 Customer Materials: [INSERT]
- 3 Customer's Equipment: [INSERT]
- 4 Supplier's Equipment: Any equipment required by the Supplier to deliver the Services, including:
 - 4.1 [INSERT]
- 5 Milestones: The Milestones are as follows:
 - 5.1 [INSERT]
- 6 Timetable: All Services shall be provided by the Supplier within [INSERT].
- 7 Deliverables: All deliverables arising from the Services including but not limited to:
 - 7.1 [INSERT]

Schedule 2

Charges, costs and payment

Commented [YP3]: WM5G note: set out the evidence WM5G requires before it makes any payments.

Commented [YP4]: WM5G note: do not allow any payments in advance.

1 Charges:

1.1 Fixed price:

1.1.1 The total charges for the Services are £[AMOUNT] (exclusive of VAT).

1.1.2 [The Supplier shall bear all expenses and disbursements incurred pursuant to this agreement.]

1.1.3 The fixed price is calculated in accordance with Annex 1 to this Schedule 2.

2 Milestones

Commented [YP5]: WM5G note: include clear Milestones and Milestone dates in this schedule for the supplier's services to be reviewed against.

2.1 The Milestones are as follows:

Milestone number	Milestone description	Milestone date	[Milestone payment]

Commented [YP6]: WM5G note: include if WM5G are going to link payments to the completion of Milestones.

Schedule 2

Annex 1

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[INSERT IF APPLICABLE]

Schedule 3

Supplier's Key Personnel and Customer's Manager

- 1 Supplier's Manager: *[name]*
- 2 Other Key Personnel: *[names and titles of relevant employees]*
- 3 Customer's Manager: *[name]*

Schedule 4
Mandatory policies

The Mandatory Policies are:

1 **[INSERT]**.

Schedule 5

Processing, Personal Data and Data Subjects

The subject matter and duration of the Processing	Subject matter: [REDACTED] Duration: From the Commencement Date until expiry of this agreement or, if earlier, termination of this agreement.
The nature and purpose of the Processing	The Supplier is required to undertake Processing in order to deliver the Services set out in this agreement.
The type of personal data being Processed	[REDACTED]
The categories of Data Subjects	[REDACTED]

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

Signed by a director
for and on behalf of
[Insert Name of Preferred Bidder]

.....
Director

Signed by a director
for and on behalf of
WM5G LIMITED

.....
Director