

DATED _____ **2018**

(1) GREATER CAMBRIDGE AND GREATER PETERBOROUGH ENTERPRISE PARTNERSHIP LIMITED

(2) CAMBRIDGESHIRE & PETERBOROUGH COMBINED AUTHORITY

AGREEMENT
for the transfer of the undertaking and
certain of the assets of the Business of
Greater Cambridge and Greater
Peterborough Enterprise Partnership Limited



CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	2
2	SALE	5
3	EXCLUDED ASSETS	6
4	PRICE	6
5	FURTHER ASSURANCE	6
6	VALUE ADDED TAX	6
7	COMPLETION	7
8	TITLE AND RISK	7
9	EMPLOYEES	7
10	INTELLECTUAL PROPERTY	8
11	RECORDS	8
12	DEBTS	9
13	BUSINESS CONTRACTS AND SUPPLIER CONTRACTS	9
14	ANNOUNCEMENTS	9
15	DATA PROTECTION	9
16	GENERAL	10

THIS AGREEMENT is made on

2018

BETWEEN:-

- (1) **GREATER CAMBRIDGE AND GREATER PETERBOROUGH ENTERPRISE PARTNERSHIP LIMITED** (No.07553554) whose registered office is at The Incubator Alconbury Weald Enterprise Campus, Alconbury, Huntingdon, Cambridgeshire, PE28 4WX (the "**Company**")
- (2) **CAMBRIDGE AND PETERBOROUGH COMBINED AUTHORITY** whose registered office is at The Grange, Nutholt Lane, Ely, Cambridgeshire, CB7 4EE (the "**Buyer**")

WHEREAS:-

- (A) The Company sells and the Buyer buys with effect from the Effective Date such right title and interest (if any) as the Company may have in the Business and the Assets subject to the following terms and conditions.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement these words shall mean:-

" Assets "	the assets details of which are set out in Clause 2
" Assumed Liabilities "	All debts, liabilities and obligations of any nature of the Company relating to the Business, whether actual, prospective or contingent, which are due or outstanding on or have accrued at the Effective Date, including but not limited to, without limitation, any and all liabilities and obligations in respect of Employees, Pension matters, Business Contracts and Supplier Contracts.
" Business "	the business of the Company as a local enterprise partnership in the Greater Cambridge and Greater Peterborough area
" Business Contracts "	all contracts, grants, undertakings, arrangements, orders and engagements placed by central government, government bodies, local authorities, councils, combined authorities and any other customers of the Business, under which any obligation of the Company to supply any grant funding, other funding, lending, goods or services is in any respect wholly or partly unperformed at the Effective Date
" Business Day "	a day (other than a Saturday or Sunday) on which clearing banks in the city of London are open for the transaction of normal sterling banking business
" Buyer's Solicitors "	Pinsent Masons LLP of 30 Crown Place, Earl Street, London, EC2A 4ES
" Claims "	any action, proceeding, claim, damages or demands of any kind whatsoever (actual or contingent) which may be alleged, brought or made against any of the Company
" Completion "	completion of the sale and purchase in accordance with Clause 8

"Data Protection Laws"	the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended from time to time and all applicable laws and regulations and any successor legislation relating to processing of personal data and privacy
"Debts"	<p>(a) in relation to the Business Contracts, the right to receive and recover all payments due to be made to the Company for grants, loans, goods and services supplied prior to the Effective Date, whether or not invoiced at the Effective Date;</p> <p>(b) in all other respects all book and other debts, all choses in action and all rights of action whatsoever arising prior to the Effective Date, irrespective of their due date for payment, including, without limitation, claims for damages or other remedies, or under any policy of insurance, in respect of matters occurring at any time; and</p> <p>(c) any security, guarantee, bill of exchange or other negotiable instrument held by or available to the Company in respect of any of the foregoing</p>
"Directive"	the European Acquired Rights Directive 2001/23/EC (or Business Transfer Directive)
"Effective Date"	means 1st April 2018
"Employees"	all individuals engaged in or assigned to the Business at the Effective Date
"Encumbrance"	any encumbrance or security interest of any kind whatsoever including any mortgage, charge, pledge, lien, hypothecation, guarantee, restriction, third party right or interest, right of set off or counterclaim, equities, trust arrangement, lease, loan, hire purchase or rental agreement, conditional sale agreement, finance leasing arrangement or other like agreements having similar effect
"Equipment"	the office equipment, furniture and other like articles owned by the Company and used in connection with the Business on the Effective Date (but excluding any landlord's fixtures and fittings)
"Excluded Assets"	the assets and rights referred to in Clause 3
"Goodwill"	the goodwill of the Company in connection with the Business as at the Effective Date and the right for the Buyer to represent itself as carrying on the Business in succession to the Company and to use the name "Greater Cambridge and Greater Peterborough Local Enterprise Partnership"
"Intellectual Property"	<p>any and all of the following used in connection with the Business:-</p> <p>(a) patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, know how, trade secrets, unregistered trade marks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites)</p>

unregistered design rights and other rights in designs and rights in databases

(b) rights under licences, consents, orders statutes or otherwise in respect of any rights of the nature specified in paragraph (a) above and

(c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) above

in each case in any jurisdiction

"Interest"

interest on any sum for the period specified in relation to it, at a rate equal to the Bank's base rate from time to time during such period (before and after any judgment) plus 4% calculated on a daily basis and compounded on the last days of March, June, September and December in each year

"IT System"

All computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licenced by or in relation to the Business by the Company at the Effective Date

"Loss(es)"

any loss, damage, cost, charge, expense or liability (contingent or actual) of whatever nature including properly incurred legal costs on an indemnity basis that any of the Company has incurred or sustained or may, directly or indirectly, incur or sustain

"Price"

the total consideration payable for the Business and Assets under Clause 4

"Records"

all stationery, books and records, accounts, including sales and other commercial information used in the Business and other documents, excluding all VAT Records of the Business and excluding the Statutory Books

"Regulations"

the Transfer of Undertakings (Protection of Employment) Regulations 2006

"Statutory Books"

those books and records of the Company usually described as statutory books and records

"Supplier Contracts"

all contracts, arrangements and outstanding orders, entered into by the Company in the course of the Business for the supply of goods or services to the Business to the extent that the same remain outstanding and uncompleted at the Effective Date

"Value Added Tax" and "VAT"

Value Added Tax or any equivalent tax which may at any time during the currency of this Agreement be imposed in substitution for, or in addition to, it

"VAT Records"

the records relating to VAT referred to in section 49(1) of the Value Added Tax Act 1994

1.2 In this Agreement a reference to:-

1.2.1 the singular includes the plural and vice versa and reference to any gender includes the other genders;

- 1.2.2 a "**person**" includes any individual, partnership, firm, bodies corporate, unincorporated associations, wherever incorporated or situate, and includes a reference to that person's legal representatives and successors;
 - 1.2.3 words and phrases defined in the Companies Act as amended by the Companies Act 2006 or the Insolvency Act 1986 have the same meanings in this Agreement;
 - 1.2.4 a "**Clause**" or a "**Schedule**" is a reference to a clause or schedule to this Agreement and references within a Schedule to "**paragraphs**" are to paragraphs or sub-paragraphs of that Schedule;
 - 1.2.5 obligations undertaken by a party that comprise more than one person shall be deemed to be made jointly and severally; and
 - 1.2.6 except as expressly set out in this Agreement, any lists contained in any Schedule are for guidance only and shall not constitute any warranty in respect of the Company's ownership of the listed items or otherwise.
- 1.3 Any reference to any statute or statutory instrument, or any section or part thereof, includes any enactment that has replaced or amended it or any instrument, order or regulation made under it that is now in force and also includes any past statutory provisions which such provision has directly or indirectly replaced.
- 1.4 Headings are for reference purposes only and shall not affect the construction of anything in this Agreement.
- 1.5 References to documents "in the agreed form" are to documents in the form of a draft initialled for the purpose of identification by or on behalf of each party to this Agreement.
- 1.6 The Schedules shall be treated as an integral part of this Agreement and references to this Agreement shall include the Schedules.

2. **SALE**

- 2.1 The Company shall sell and the Buyer shall purchase for the Price at the Effective Date the Business and Assets, free from Encumbrances, set out below:-
- 2.1.1 the benefit, subject to the burden, of the Business Contracts and Supplier Contracts
 - 2.1.2 Debts;
 - 2.1.3 Equipment;
 - 2.1.4 Goodwill;
 - 2.1.5 Intellectual Property;
 - 2.1.6 Records
 - 2.1.7 the IT System
 - 2.1.8 the benefit (so far at the same can be lawfully assigned or transferred to or held in trust for the Buyer) of all statutory and other licences held by the Company in so far at they relate to the Business; and
 - 2.1.9 all other property, rights and assets owned by the Company and used, enjoyed or exercised exclusively in the Business at the Effective Date

2.2 If any of the Assets are subject to any Encumbrance (including a retention of title arrangement) the Company will not be deemed to sell such Assets with full title guarantee and the Company's right, title and interest in such Assets will pass to the Buyer when the Company is able to pass such right, title and interest on.

3. **EXCLUDED ASSETS**

3.1 The Excluded Assets set out below are excluded from the sale and nothing in this Agreement operates as a sale or transfer of any right title or interest in or right to possession of the Excluded Assets:-

3.1.1 any cash, stocks, shares, cheques, bills, negotiable instruments or other securities held by the Company or in which it has any interest;

3.1.2 the benefit of any contract of insurance (including insurance as to credit risk and claims arising prior to the Effective Date), assurance, indemnity or surety;

3.1.3 the VAT Records, and the Statutory Books;

3.1.4 any property interests of the Company, wherever situated and whether freehold, leasehold or otherwise;

3.1.5 the issued share capital beneficially owned by the Company of any subsidiaries or associated companies of the Company.

4. **PRICE**

4.1 The Price payable by the Buyer for the Business and Assets at the Effective Date is £400,000.

4.2 The Price is payable by the Buyer to the Company at Completion in accordance with the provisions of Clause 8.

5. **ASSUMED LIABILITIES**

5.1 The Buyer shall, to the extent not otherwise paid by the Company, with effect from the Effective Date assume responsibility for and pay, satisfy or perform the Assumed Liabilities.

6. **FURTHER ASSURANCE**

Subject to the terms of this Agreement, the Company agrees that it will, for a period of nine (9) months after the Effective Date (at the cost of the Buyer), execute and deliver such other documents as may be reasonably required from time to time by the Buyer to vest in the Buyer the Business and Assets in accordance with the terms of this Agreement.

7. **VALUE ADDED TAX**

7.1 The Price is exclusive of VAT and any VAT chargeable in respect of the supply constituted by the sale of the Business and Assets under this Agreement is payable in addition to the Price PROVIDED THAT VAT shall only be payable on the Price in accordance with this Clause 7.

7.2 The Company and the Buyer intend that the Business and Assets shall be transferred to the Buyer as a going concern with effect from the Effective Date and that Article 5 of the Value Added Tax (Special Provisions) Order 1995 ("Article 5") shall apply to the sale of the Business and Assets under this Agreement, so that the sale is treated as neither a supply of goods nor a supply of services pursuant to the provisions of that article and with a view to procuring that that article shall apply, the Buyer:-

7.2.1 declares that it is duly registered for VAT purposes;

7.2.2 declares that with effect from the Effective Date the Business and Assets will be used by the Buyer in carrying on the same kind of business as that carried on by the Company prior to the Effective Date.

7.3 If HM Revenue & Customs rule that VAT is chargeable on any supply by the Company under this Agreement, the Buyer shall indemnify the Company for the amount of that VAT and any related interest and penalties by the later of the Effective Date and five (5) days after the Company gives the Buyer written notice of the ruling.

7.4 The Company shall issue to the Buyer a valid VAT invoice in respect of any VAT payable in accordance with Clause 7.3.

7.5 If the Buyer fails to pay the amount of the VAT on the due date under Clause 7.3, it shall pay interest on that amount from the due date until actual payment (excluding any period for which interest indemnified under Clause 7.3 runs) at the rate of 4% per annum above the base rate for the time being of Barclays Bank Plc compounded monthly.

7.6 The Company and the Buyer intend that section 49 of the Value Added Tax Act 1994 shall apply to the sale of the Business and Assets under this Agreement and accordingly the Company shall preserve the VAT records for such period as may be required by law and shall during that period permit the Buyer or its agents reasonable access to them to inspect or make copies of them.

7.7 The Buyer agrees to indemnify and keep indemnified the Company from and against all Claims and Losses of whatsoever nature or howsoever arising directly or indirectly out of a breach by the Buyer of this Clause 7.

8. **COMPLETION**

Completion shall take place on the Effective Date and at Completion the Buyer shall pay the Price by electronic funds transfer for value that day to the Company's account and subject thereto, the Company shall be deemed to have made delivery of all those Assets title to which is capable of passing by delivery.

9. **TITLE AND RISK**

Risk in and such right title and interest as the Company may have in the Assets shall pass to the Buyer on the Effective Date (but only upon payment in full being made at the Effective Date of all sums then owed pursuant to the terms of this Agreement).

10. **EMPLOYEES**

10.1 The Buyer acknowledges that, pursuant to the Regulations, the contracts of employment made between the Company and the Employees will have effect after the Effective Date as if originally made between the Buyer and the Employees.

10.2 The Buyer shall have no recourse or right of action whatsoever against the Company in respect of any claims made or liabilities or obligations by or in relation to any Employee, whether under the Regulations or otherwise.

10.3 The Buyer will assume the outstanding obligations of the Company in respect of any accrued holiday entitlements and accrued holiday remuneration of the Employees at the Effective Date and shall further be responsible for all emoluments and outgoings in respect of the Employees (including without limitation all wages, bonuses, commissions, PAYE, national insurance contributions and pension contributions) for all periods prior to and after the Effective Date.

10.4 The Buyer shall indemnify the Company against all Claims and Losses incurred in connection with or as a result of:-

10.4.1 any claim or demand by any Employee in respect of redundancy, unfair dismissal or any other claim within the jurisdiction of an employment tribunal, any claim for wrongful

dismissal or breach of contract, any claim in tort or any other claim whatsoever, whether arising at common law, under statute or otherwise (in all cases whether arising under UK law or European law) and whether arising directly or indirectly from any act, fault or omission of the Company in relation to any Employee and whether arising prior to, on or at any time after the Effective Date and which shall be deemed to include (without limitation) the cessation of the Employee's employment with the Company as contemplated by this Agreement (whether or not the Regulations do in fact apply); and

10.4.2 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union, staff association (whether or not recognised by the Company in respect of all or any of the Employees) or by any other employee representatives within the meaning of Regulation 13(3) of the Regulations arising from or connected with any failure by the Company to comply with any legal obligation to such trade union, staff association or employee representatives whether under Regulation 13 of the Regulations, under the Directive or otherwise and whether any such claim arises or has its origin before or after the Effective Date.

10.5 The Buyer hereby waives any Claims which it may have against the Company pursuant to Regulation 12 of the Regulations and warrants that it will not pursue any such Claims. The Buyer acknowledges that the Company has entered into this Agreement in specific reliance upon this warranty. Without prejudice to any other remedy which the Company may have for breach of this warranty, the Buyer shall indemnify the Company against all Claims and Losses incurred in connection with or as a result of any claim by the Buyer or any transferee pursuant to Regulation 12.

11. **INTELLECTUAL PROPERTY**

11.1 The Company assigns to the Buyer whatever right, title and interest it has in and to the Intellectual Property Rights, including (without prejudice to the generality of the foregoing):

11.1.1 the Goodwill;

11.1.2 the Records

11.1.3 the IT System; and

11.1.4 the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Intellectual Property Rights whether occurring before, on, or after the Effective Date.

11.2 Save as set out in Clause 11.1 above, it shall be the sole responsibility of the Buyer to contact and make arrangements with the owners of the appropriate rights in all such software and the Intellectual Property.

11.3 The Buyer agrees to indemnify and keep indemnified the Company from and against all Claims and Losses of whatsoever nature or howsoever arising directly or indirectly out of the use or possession by the Buyer of any such software or the infringement of any person's rights by the Buyer or any person gaining access thereto through the Buyer.

12. **RECORDS**

12.1 The Buyer shall, for a period of twelve (12) months after the Effective Date, allow the Company and its agents to have reasonable rights of access to and authority to take copies of any Records relating to the Business prior to the Effective Date.

12.2 The Statutory Books shall be retained by the Company at all times and for all purposes.

13. **DEBTS**

13.1 If the Company receives after the Effective Date any cheque or payment from any person that is in respect of, or includes any sum in respect of, a Debt then the Company shall hold the same on trust for the Buyer and shall forthwith deliver the cheque, or pay any payment, to the Buyer in full.

14. **BUSINESS CONTRACTS AND SUPPLIER CONTRACTS**

14.1 Subject to the other provisions of this Clause 14, the Buyer shall assume the obligations and liabilities and become entitled to the benefits, of the Company under the Business Contracts and Supplier Contracts with effect from the Effective Date.

14.2 The Company hereby assigns to the Buyer with effect from the Effective Date all its rights, title and interest under or pursuant to all the Business Contracts and Supplier Contracts which are capable of assignment without the consent of other parties.

14.3 The Buyer acknowledges that the Company may not have the power at law to transfer any Business Contracts or Supplier Contracts to the Buyer without the consent of the other parties to such contract. Accordingly, it shall be the sole responsibility of the Buyer to make arrangements with such parties for their future dealings with the Buyer and (without limitation):-

14.3.1 to issue purchase orders to suppliers in place of those previously issued by the Company;

14.3.2 to obtain from customers replacement orders, or confirmation that orders placed on the Company may be treated as orders placed on the Buyer insofar as the Buyer wishes to do so; and

14.3.3 to obtain any permission necessary for it to perform under, and realise any benefit from, any Business Contracts or Supplier Contracts. The benefit of each of the Business Contracts and Supplier Contracts is sold subject to the burden thereof, and to any claims or rights which the other party or parties thereto may have under them.

14.4 Notwithstanding the provisions of Clause 14.1, if required by the Buyer, the Company shall execute any document reasonably required to novate a Customer Contract or Supplier Contract to the Buyer, provided that the document is in a form approved by the Company (and any subsequently appointed liquidator of the Company) and contains a full release of the Company from any past, present or future obligations arising out of or in connection with the relevant Customer Contract or Supplier Contract.

14.5 The Buyer shall, as from the Effective Date, assume, pay, perform, satisfy and discharge (in each case as and when the same falls due to be paid, performed, satisfied or discharged) all obligations and liabilities which fall due to be paid, performed, satisfied or discharged under any Business Contract and Supplier Contract before, on and after the Effective Date and the Buyer shall indemnify and keep indemnified the Company at all times from and against all Losses suffered or incurred by the Company arising out of, or in connection with, any such obligation or liability.

15. **ANNOUNCEMENTS**

No announcements to any third parties may be made by the Buyer concerning this Agreement without the consent of the Company. The terms of this Agreement shall not be disclosed by the Buyer to any person without the prior consent of the Company, save as such disclosure may be compelled by law.

16. **DATA PROTECTION**

The Buyer warrants and represents that it will comply with all relevant provisions of the Data Protection Laws in its processing of any personal data held on any databases acquired with the Business and Assets. The Buyer will indemnify and keep indemnified the Company against any Claims or Losses arising from or in relation to the Buyer's breach of warranty set out above.

17. **GENERAL**

- 17.1 This Agreement shall as to any of its provisions remaining to be performed or capable of having effect following the Effective Date remain in full force and effect after the Effective Date and the payment in full of the consideration payable hereunder.
- 17.2 This Agreement sets forth the entire agreement between the Company and the Buyer in connection with the sale and purchase of the Business and Assets referred to herein and this Agreement shall not be capable of being varied except in writing signed by or on behalf of the Company and the Buyer. The Buyer acknowledges that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Agreement. Nothing in this clause will exclude or limit any liability for fraud or fraudulent misrepresentation.
- 17.3 All conditions, warranties and liabilities on the part of the Company whether express or implied by statute or otherwise as to any Assets and any other asset of which the Buyer is given possession or use and in particular (without limitation) warranties as to title, quiet possession, satisfactory quality, fitness for any purpose and correspondence with any description are excluded.
- 17.4 Any notice to be given in connection with this Agreement shall be in writing and (without prejudice to proof that it has been effectively given in any other manner) shall be deemed duly served if delivered at or posted by recorded delivery to the address of the party concerned which is set out in this Agreement or such other address for service as that party may have notified to the other party in accordance with the provisions of this Clause. Any such notice shall be deemed to be served if delivered personally, on the day on which it is delivered or if posted, at 9am on the second business day after the day of posting. Evidence that the notice was properly addressed stamped and put into the post shall be conclusive evidence of service.
- 17.5 Failure by the Company to require performance of any terms or conditions of this Agreement shall not prevent the subsequent enforcement of such terms or conditions nor shall such failure be deemed to be a waiver of any or any subsequent breach of this Agreement or of any right or remedy granted by this Agreement or by the general law.
- 17.6 If any provision of this Agreement is held to be unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected.
- 17.7 This Agreement may be executed in any number of counterparts and by each of the parties as separate counterparts, each of which, when executed and delivered, shall be deemed to be an original but all the counterparts together shall constitute one and the same agreement.
- 17.8 All obligations of any party in this Agreement, being obligations imposed by this Agreement, shall if they have not been performed at the Effective Date or are capable of operating or taking effect after the Effective Date, remain in full force and effect notwithstanding execution of this Agreement and the satisfaction of the Price.
- 17.9 Any payments to be made by the Buyer under this Agreement shall be made in full without any set-off or deduction or any counterclaim or claim to a lien whether any such set-off deduction, counterclaim or lien in favour of the Buyer arises under this Agreement or otherwise and if not paid on the due date shall bear the Interest.
- 17.10 The benefits of this Agreement shall continue for the benefit of the successors or assignees of each of the parties.
- 17.11 This Agreement is personal to the parties and neither it nor any benefit arising under it may be assigned without the prior written consent of the other party and neither party shall purport to assign or transfer the same.
- 17.12 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement PROVIDED THAT this does not affect any right or remedy of the third party that exists or is available apart from that Act.

17.13 This Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the High Court of England in relation to any dispute or claim arising out of or in connection with this Agreement.

SIGNED by or on behalf of the parties on the date which first appears in this Agreement.

SIGNED by) **[DN: SIGNATURE BLOCKS TBC]**
)
[REDACTED])
)
duly authorised on behalf of)

**GREATER CAMBRIDGE AND GREATER
PETERBOROUGH ENTERPRISE
PARTNERSHIP LIMITED**

in the presence of:-

Signature of Witness:

Name of Witness:

Address:

SIGNED by)
)
[REDACTED])
)
duly authorised on behalf of)

**CAMBRIDGE AND PETERBOROUGH
COMBINED AUTHORITY**

in the presence of:-

Signature of Witness:

Name of Witness:

Address

