

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (the “Agreement”) dated [XXXXXXXXXX] (the “Effective Date”) is by and between:

1. **The Cambridgeshire and Peterborough Combined Authority**, having a principal place of business at 2 The Incubator, Alconbury Weald Enterprise Campus, Huntingdon, PE28 4WX (the “CPCA”); and
2. [NAME] having a principal place of business at [ADDRESS] (the “Supplier”)

each individually a “Party” and collectively the “Parties”

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Parties agree as follows:

1. Interpretation

1.1. Definitions:

Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Day means any day other than Saturday and Sunday, or a public or Bank Holiday.

Commercially Sensitive Information means information of a commercially sensitive nature relating to the Supplier, its IPR or its business or which the Supplier has indicated to the CPCA that, if disclosed by the CPCA, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information means all confidential information (however recorded or preserved) disclosed by a Party (the “Disclosing Party”) or its Representatives to the other Party (the “Receiving Party”) and that Party’s Representatives in connection with this Agreement, including but not limited to:

- a. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;
- b. any information developed by the Parties in the course of carrying out this Agreement;
- c. Personal Data;
- d. any Commercially Sensitive Information.

CPCA Service Manager means the individual appointed by the CPCA to manage the delivery of the Services by the Supplier, on behalf of the CPCA

Data Controller is as defined under Data Protection Legislation

Data Processing means the processing of Personal Data, as defined under Data Protection Legislation

Data Protection Legislation means (i) the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) unless and until it is no longer directly applicable in the UK, and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR and/or the Data Protection Act 2018.

Data Subject means an individual who is the subject of Personal Data,

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

Fees means the sums to be paid to the Supplier by the CPCA for delivery of the Services under this Agreement, excluding VAT

FOIA means the Freedom of Information Act 2000 and all regulations made there from time to time or any superseding or amending enactment

Force Majeure Event means any circumstance not within a Party’s reasonable control including, without limitation:

- a. acts of God, flood, drought, earthquake or other natural disaster;
- b. epidemic or pandemic;
- 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 action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f. collapse of buildings, fire, explosion or accident; and
- g. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier’s workforce or the workforce of any Sub-Contractor of the Supplier).

Initial Term means the period commencing on the Effective Date and ending on the [NUMBER] anniversary of the Effective Date.

Insolvency Event means where:

- a. the Supplier 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- b. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies;
- c. 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 Supplier;
- d. 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 Supplier;
- e. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; or
- f. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

Insurance Policies means professional indemnity insurance cover of **£1 Million**; employer's liability insurance cover of **£5 Million**; and public liability insurance cover of **£5 Million**.

Intellectual Property Rights ("IPR") means patents, rights to Inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

Law means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply

Liabilities means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

Performance Indicator means any measure of the Supplier's performance in the delivery of the Services, which may affect payment, as detailed in the Specification or the Supplier's Tender

Personal Data is as defined under Data Protection Legislation

Prohibited Act means:

- a. to directly or indirectly offer, promise or give any person working for or engaged by the CPCA, a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;
- b. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- c. committing any offence:
 - I. under the Bribery Act;
 - II. under legislation creating offences concerning fraudulent acts;
 - III. at common law concerning fraudulent acts relating to this Agreement or any other contract with the CPCA; or
- d. defrauding, attempting to defraud or conspiring to defraud the CPCA.

Purchase Order means any order for Services raised by the CPCA and placed with the Supplier pursuant to this Agreement;

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulatory Body means any of those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, are legally entitled to regulate the matters dealt with in this Agreement

or any other affairs of the CPCA;

Representatives: means, in relation to a Party, its employees, officers, representatives and advisors.

Request for Information means a request for information made under the FOIA and/or the EIR

Services means the services to be delivered by or on behalf of the Supplier under this Agreement, as more particularly described in the Specification.

Specification means the description of the Services required by the CPCA, as detailed in Schedule 1 appended hereto;

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor means the third party that enter into a Sub-Contract with the Supplier.

Supplier Personnel means all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier Service Manager means the individual appointed by the Supplier to manage the Services on behalf of the Supplier

Supplier's Tender means the tender submitted by the Supplier and other associated documentation set out in Schedule 2 appended hereto;

Term means the period of the Initial Term as may be varied by:

- a. any Extension Period; or
 - b. the earlier termination of this Agreement in accordance with its terms.
- 1.2. The headings in this Agreement are inserted for convenience only and shall not affect its construction
 - 1.3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it
 - 1.4. In this Agreement use of the singular includes the plural (and vice versa) and reference to any gender includes all genders
 - 1.5. Any reference to a clause or schedule is a reference to that clause or schedule to this Agreement
 - 1.6. The annexed schedules form part of this Agreement and a reference to "this Agreement" includes a reference to the schedules

2. Term

- 2.1. This Agreement shall commence on the Effective Date and remain in full force and effect for the Term.

3. Extending the Initial Term

- 3.1. The CPCA may extend this Agreement beyond the Initial Term by a further period or periods of up to [NUMBER] years (each such extension together with any such extensions, being the "Extension Period").
- 3.2. If the CPCA wishes to extend this Agreement, it shall give the Supplier at least thirty (30) days written notice of such intention before the expiry of the Initial Term or Extension Period.

3.2.1. If the CPCA gives such notice, then provided that the Supplier is in agreement, the Term shall be extended by the period set out in the notice.

3.3. If the CPCA does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term

4. Services

4.1. The Supplier shall provide the Services:

4.1.1. to the standards laid out in the Specification and any relevant Purchase Order and in accordance with the Supplier's Tender;

4.1.2. to all applicable standards and codes of practice or conduct of any appropriate professional bodies, trade associations or regulators; and,

4.1.3. with all due skill, care and diligence to be expected of a competent supplier experienced in providing services of the type, size and scope of the Services.

4.2. The Supplier shall provide the Service in compliance with:

4.2.1. this Agreement; and

4.2.2. the requirements and provisions of the Specification.

4.3. The Supplier shall provide all of the facilities, supplies and staff necessary to deliver the Services.

4.4. The Supplier warrants to the CPCA that it will use all reasonable efforts to:

4.4.1. allocate sufficient time, effort, equipment and facilities for the conduct of the activities detailed in the Specification; and

4.4.2. use Supplier Personnel with sufficient skills and experience as are required to deliver the Services

4.5. The Supplier will provide timely commencement and provision of the Services in accordance with time scales agreed by the CPCA

4.6. The CPCA shall have the right to inspect and examine the performance of the Services at any premises where any part of the Services is being performed, provided that the CPCA provides the Supplier, with reasonable notice.

4.6.1. If the CPCA informs the Supplier in writing or via email that any part of the Services does not meet the requirements of this Agreement or differ in any way from the Specification, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Agreement, within a reasonable time frame to be agreed with the CPCA.

5. Contract Management

- 5.1. The Supplier Service Manager will be authorised to act on behalf of the Supplier for all purposes connected with this Agreement and any statement or direction given to the Supplier Service Manager will be deemed to have been given to the Supplier.
- 5.2. If the Supplier requires an explanation or clarification on the delivery of Services under this Agreement, it will contact the CPCA Service Manager and will accept and comply with the CPCA's Service Manager explanation or direction, which will be given or confirmed in writing.
- 5.3. From time to time the CPCA Service Manager may appoint another individual to act as his/her deputy and will notify the Supplier of any such appointments.
- 5.4. If the Supplier Service Manager is unavailable for any reason whatsoever, the Supplier shall nominate a deputy to perform the required duties.
- 5.5. The Parties Service Managers will meet, as laid out in the Specification, or as otherwise agreed from time to time by the Parties, in order to monitor the Supplier's performance under this Agreement.
- 5.6. The CPCA Service Manager, acting reasonably, may because of the nature of the Services or the locations at which they are to be provided or by virtue of the behaviour of any Supplier Personnel, require the Supplier to remove certain Supplier Personnel from the provision of the Services by giving the Supplier Service Manager written notice to that effect, stating the reasons.
 - 5.6.1. In such an event, the Supplier shall remove such Supplier Personnel and as soon as reasonably practicable, provide a replacement of appropriate skills and experience.
- 5.7. For the avoidance of doubt, removal of any Supplier Personnel from the delivery of the Services shall not mean dismissal from employment or cessation of services to the Supplier and the CPCA shall not be liable either to the Supplier or to any Supplier Personnel in respect of any liability, loss or damage as a result of that removal.

6. Fees

- 6.1. In consideration for the delivery of the Services by the Supplier in accordance with the terms and conditions of this Agreement and subject to receipt of the Supplier's invoice, the CPCA will pay the Supplier the Fees set forth in the Supplier's Tender
 - 6.1.1. The Fees to be paid under this Agreement shall remain unchanged during the Term, unless agreed otherwise by the Parties in the Specification.
- 6.2. Any payments made by the CPCA under this Agreement shall be exclusive of any value added tax ("**VAT**"), which will be added thereon as applicable. Where VAT is properly chargeable on the Services provided under this Agreement, the CPCA will pay the amount of VAT to the Supplier only on receipt of a valid tax invoice.

- 6.3. The Supplier will invoice the CPCA for any and all payments due for the Services and the CPCA will pay the amount due within thirty (30) days from the receipt of an undisputed invoice and supporting documentation from the Supplier.
- 6.4. All Supplier invoices must contain:
 - 6.4.1. the correct CPCA Purchase Order;
 - 6.4.2. all appropriate references;
 - 6.4.3. a detailed breakdown of the Services supplied;
 - 6.4.4. any other documentation stipulated in the Specification; and,
 - 6.4.5. any other documentation that is reasonably required by the CPCA to substantiate the invoice.
- 6.5. If the CPCA does not pay an undisputed amount by the due date, then the CPCA shall be liable to pay the Supplier interest at the Statutory Interest rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6. If the Parties have a dispute about an invoice:
 - 6.6.1. the CPCA shall pay any undisputed part of the invoice;
 - 6.6.2. the Supplier shall continue to supply the Services; a dispute about an invoice shall not allow the Supplier to suspend or terminate the supply of the Services; and,
 - 6.6.3. the Parties will resolve the dispute using the dispute resolution procedure laid out in this Agreement.
- 6.7. The Supplier shall indemnify the CPCA and keep the CPCA indemnified against any liability, including any interest, penalties or costs, which the CPCA may be required to pay at any time in respect of the Supplier's failure to account for or to pay any VAT connected to payments made to the Supplier under this Agreement;
 - 6.7.1. the Supplier will pay any amounts due under this clause to the CPCA not less than five (5) Business Days before the date upon which the tax or other liability is payable by the CPCA.
- 6.8. If the Supplier owes money to the CPCA for any reason connected with this Agreement, then the CPCA shall have the right to deduct (set-off) that money from any sum owed by the CPCA to the Supplier, whether or not owed for a reason connected with this Agreement.
 - 6.8.1. The Supplier shall not have the right to make any claim against the CPCA in order to withhold payment and/or set-off of any such amount in whole or in part.

7. Intellectual Property

- 7.1. In the absence of prior written agreement by the CPCA to the contrary, all IPR created by the Supplier or Supplier Personnel:
- 7.1.1. in the course of performing the Services; or
 - 7.1.2. exclusively for the purpose of performing the Services,
- shall vest in the CPCA on creation.
- 7.2. The Supplier shall indemnify the CPCA against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any IPR by the delivery of the Services, except to the extent that they have been caused by or contributed to by any acts or omissions of the CPCA.

8. Antibribery

- 8.1. The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- 8.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 8.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 8.2. The Supplier shall not during the Term:
- 8.2.1. commit a Prohibited Act; and/or
 - 8.2.2. do or suffer anything to be done which would cause the CPCA or any of the CPCA's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 8.3. The Supplier shall during the Term:
- 8.3.1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

- 8.3.2. keep appropriate records of its compliance with its obligations under Clause 8.3.1 and make such records available to the CPCA on request.
- 8.4. The Supplier shall immediately notify the CPCA in writing if it becomes aware of any breach of Clauses 8.1 and 8.2 or has reason to believe that it has or any of the Supplier Personnel have:
 - 8.4.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act
 - 8.4.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 8.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act
- 8.5. If the Supplier makes a notification to the CPCA pursuant to Clause 8.4, the Supplier shall respond promptly to the CPCA's enquiries, co-operate with any investigation, and allow the CPCA to audit any books, records and/or any other relevant documentation
- 8.6. If the Supplier is in default under Clauses 8.1 and 8.2, the CPCA may by notice:
 - 8.6.1. require the Supplier to remove from performance of this Agreement any Supplier's Personnel whose acts or omissions have caused the default; or
 - 8.6.2. immediately terminate this Agreement
- 8.7. Any notice served by the CPCA under Clause 8.6, shall specify the nature of the Prohibited Act, the identity of the Party who the CPCA believes has committed the Prohibited Act and the action that the CPCA has elected to take (including, where relevant, the date on which this Agreement shall terminate).

9. **Compliance**

- 9.1. The Supplier shall ensure that all necessary consents are in place to provide the Services (a "**Necessary Consent**") and the CPCA shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 9.2. Where there is any conflict or inconsistency between the provisions of this Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the CPCA in writing.

- 9.3. The Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this Agreement (including those in relation to the Services) in accordance with any and all applicable Laws regarding health and safety;
- 9.4. The Supplier shall and shall procure that the Supplier Personnel shall:
- 9.4.1. perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - 9.4.1.1. all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - 9.4.1.2. the CPCA's equality and diversity policy as provided to the Supplier from time to time;
 - 9.4.1.3. any other requirements and instructions which the CPCA reasonably imposes in connection with any equality obligations imposed on the CPCA at any time under applicable equality law;
 - 9.4.2. take all necessary steps, and inform the CPCA of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
 - 9.4.3. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the CPCA requests so as to enable the CPCA to comply with its obligations under the Human Rights Act 1998; and
 - 9.4.4. comply with all applicable anti-slavery and human trafficking laws, statues and regulations including the Modern Slavery Act 2015.

10. Data Protection

- 10.1. The Parties shall comply with all applicable requirements of the Data Protection Legislation. This Clause 10 is in addition to, and does not relieve, remove or replace, either Party's obligations under the Data Protection Legislation.
- 10.2. The Supplier shall:
- 10.2.1. process Personal Data, solely in accordance with the instructions from the CPCA, as detailed in Schedule 4 appended hereto (which may be specific instructions or instructions of a general nature as set out in this Agreement or otherwise notified by the CPCA to the Supplier during the Term);
 - 10.2.2. process the Personal Data only to the extent and in such manner as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
 - 10.2.3. implement appropriate technical and organizational measures to protect the Personal Data against unauthorized or unlawful processing and against

accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorized or unlawful Data Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 10.2.4. take reasonable steps to ensure the reliability of any Supplier Personnel who have access to the Personal Data;
 - 10.2.5. obtain prior written consent from the CPCA in order to transfer the Personal Data to any Sub-Contractor or other third parties for the delivery of the Services;
 - 10.2.6. ensure that Supplier Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the CPCA;
 - 10.2.7. notify the CPCA within five (5) working days if it receives:
 - 10.2.7.1. a request from a Data Subject to have access to that individual's Personal Data; or
 - 10.2.7.2. a complaint or request relating to the CPCA obligations under the Data Protection Legislation.
- 10.3. The Supplier shall provide the CPCA with full co-operation and assistance in relation to any complaint or request made, including but not limited to:
- 10.3.1. providing the CPCA with full details of the complaint or request;
 - 10.3.2. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the CPCA's instructions;
 - 10.3.3. providing the CPCA with (i) any Personal Data it holds in relation to a Data Subject (within the timescale required by the CPCA); and (ii) any information requested by the Data Subject or their representatives;
 - 10.3.4. permitting the CPCA or the CPCA's representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's Data Processing activities (and/or those of its agents, subsidiaries, and Sub-Contractors) and comply with all reasonable requests or directions provided by the CPCA to enable the CPCA to verify and or procure that the Supplier is in full compliance with its obligations under this Agreement;
 - 10.3.5. providing the CPCA with (i) a written description of the technical and organizational methods employed by the Supplier for processing Personal Data (within the timescales required by the CPCA); and (ii) information about how the Learner Files are stored including details of the location where the Learner

Files are kept and the arrangements for their security; the Supplier is required to notify the CPCA of any changes to this information;

10.3.6. not Processing Personal Data outside the European Economic Area without the prior written consent of the CPCA and, where the CPCA consents to a transfer, to comply with:

10.3.6.1. the obligations of a Data Controller by providing an adequate level of protection to any Personal Data that is transferred; and

10.3.6.2. any reasonable instructions notified to it by the CPCA.

11. Freedom of Information

11.1. The Supplier acknowledges that the CPCA is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

11.1.1. provide all necessary assistance and cooperation as reasonably requested by the CPCA to enable the CPCA to comply with its obligations under the FOIA and EIRs

11.1.2. transfer to the CPCA all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

11.1.3. provide the CPCA with a copy of all Information belonging to the CPCA requested in the Request for Information which is in its possession or control in the form that the CPCA requires within five (5) Business Days (or such other period as the CPCA may reasonably specify) of the CPCA's request for such Information; and

11.1.4. not respond directly to a Request for Information unless authorised in writing to do so by the CPCA.

11.2. The Supplier acknowledges that the CPCA may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier.

11.2.1. The CPCA shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the CPCA shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

- 11.3. Notwithstanding any other term of this Agreement, the Supplier consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 11.4. The CPCA shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the CPCA to enable the CPCA to publish this Agreement.

12. Safeguarding Children and Vulnerable Adults

- 12.1. The Supplier shall:
 - 12.1.1. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
 - 12.1.2. not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 12.2. The Supplier warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 12.3. The Supplier shall immediately notify the CPCA of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 12 have been met.

13. Confidential Information

- 13.1. Each Receiving Party agrees that during the Term and for a period of five (5) years thereafter, it shall maintain the Disclosing Party's Confidential Information in strict secrecy and confidence, and shall not disclose any of the Disclosing Party's Confidential Information to a third party, nor use it for any purpose other than as necessary in connection with this Agreement, without the express written consent of the Disclosing Party.
- 13.2. The Receiving Party agrees to use the same degree of care to prevent any unauthorized access, disclosure or publication of the Confidential Information of the Disclosing Party as the Receiving Party uses to protect its own Confidential Information of like nature but in no event less than a reasonable degree of care. Such care shall include appropriate

technical, physical and procedural controls to protect such information against destruction, loss, unauthorized disclosure to third parties or unauthorized access by employees or agents of Receiving Party or third parties, whether by accident or otherwise.

13.3. Disclosures to Representatives.

13.3.1. The Receiving Party shall only disclose the Confidential Information of the Disclosing Party to those employees or agents of the Receiving Party who have a specific need to use such Confidential Information in connection with its related Purchase Order.

13.3.2. All employees or agents to whom the Receiving Party shall disclose any Confidential Information shall be advised of the existence and scope of this Agreement and shall be subject to legally binding nondisclosure restrictions that are at least as restrictive as the terms of this Clause 13.

13.4. Not Confidential Information.

13.4.1. Notwithstanding anything to the contrary in this Agreement, Confidential Information does not include, and the Receiving Party has no obligation under this Clause 13 with respect to any information that:

13.4.1.1. is lawfully and properly known by the Receiving Party at the time of its receipt, and not through a prior disclosure by the Disclosing Party, such prior knowledge being evidenced by corroborated written documentation of the same;

13.4.1.2. is at the time of disclosure or thereafter becomes published or otherwise part of the public domain without breach of this Agreement by the Receiving Party;

13.4.1.3. is subsequently disclosed to the Receiving Party by a third party who is not under an obligation to maintain the confidentiality of the information; or

13.4.1.4. is developed by the Receiving Party independently of any Confidential Information of the Disclosing Party, such independent development being evidenced by corroborated written documentation of the same;

13.5. Disclosure Required by Court Order.

13.5.1. In the event that the Receiving Party or any of its employees, agents or representatives is required by order of a court or other dispute resolution authority to disclose any of the Confidential Information, the Receiving Party shall promptly inform the Disclosing Party of such requirement in writing so that the Disclosing Party may seek a protective order or other appropriate remedy

or, in its sole discretion, waive compliance with the terms of this Agreement. The Receiving Party shall fully cooperate with Disclosing Party in connection with the Disclosing Party's efforts to obtain any such order or other remedy.

- 13.5.2. In the event that no such protective order or other remedy is obtained, or the Disclosing Party waives compliance with the terms of this Agreement, then the Receiving Party may: (a) furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required; and (b) exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information so disclosed.

13.6. Ownership; Return/Destruction.

- 13.6.1. All Confidential Information and all materials containing Confidential Information delivered to the Receiving Party by the Disclosing Party under this Agreement are and remain the sole and exclusive property of the Disclosing Party.

- 13.6.2. Upon written request of the Disclosing Party at any time during the Term or within six (6) months thereafter, the Receiving Party shall, at its own cost and expense, promptly:

13.6.2.1. return to the Disclosing Party all such materials (in the medium provided by Disclosing Party);

13.6.2.2. destroy all copies of the foregoing or any portion thereof, in whatever form or medium stored; and

13.6.2.3. either destroy or redact all Confidential Information of the Disclosing Party from all documents, samples, summaries, extracts, records or other materials that contain any of the Confidential Information of the Disclosing Party, in whatever form or medium stored; *provided, however*, that the Receiving Party may retain one (1) copy of the foregoing materials in secured storage for record-keeping purposes and shall retain any such materials as required by applicable law or regulations.

14. Indemnification

- 14.1. The Supplier shall indemnify the CPCA and keep the CPCA indemnified against any and all losses, liabilities, claims, actions, damages, proceedings, demands, costs, charges and expenses resulting directly or indirectly from any act, default or omission by the Supplier, its Sub-Contractors or Supplier Personnel, including without limitation, any act, default or omission which is in breach of this Agreement and arising from or incurred, directly or indirectly, by reason of any infringement or alleged infringement of any IPR of a third party in connection with the receipt of the Services and shall accordingly maintain in force during the term of this Agreement, appropriate Insurance Policies with a reputable insurance company, to enable the Supplier to fulfil its obligations under this Agreement.

- 14.1.1. The Supplier shall provide the CPCA on request, copies of the Insurance Policies to demonstrate that the required insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

15. Limitations and Exclusions of Liability.

15.1. Neither Party excludes or limits its liability for:

- 15.1.1. death or personal injury due to negligence;
- 15.1.2. fraud; or
- 15.1.3. any other liability that cannot be excluded or limited under applicable law.

15.2. Subject to Clause 15.1, to the maximum extent permitted by applicable law, neither Party shall be liable for any collateral, special, consequential, indirect or punitive damages, losses, or expenses arising under this Agreement or in connection with the performance thereof, whether such claims are founded in tort (including negligence) or contract and regardless of whether such Party was aware of the possibility of such damages, losses or expenses.

15.3. Subject to Clause 15.1, the maximum liability of the Supplier under or otherwise in connection with this Agreement or its subject matter shall not exceed twice the total value of this Agreement or Five Million Pounds Sterling (**£5,000,000**) whichever is the greater.

16. Status

16.1. The Parties hereby acknowledge and agree that the Supplier is an independent contractor providing the Services.

16.2. The Supplier shall exercise its own professional judgment, and the CPCA shall neither direct the manner nor the method by which the Supplier delivers the Services, except as set forth in this Agreement.

16.3. The Parties hereto do not intend to create an employment, joint venture, partnership or agency relationship between them:

- 16.3.1. The CPCA shall not provide any insurance (including, but not limited to, medical, dental, disability, liability, property, worker's compensation or unemployment insurance) or benefits (including, but not limited to, overtime payments, pensions, sick leave or payment, vacation time, or profit-sharing) for the Supplier or any Supplier personnel.

- 16.3.2. The CPCA shall not be responsible for paying any taxes or contributions on behalf of Supplier and the Supplier warrants that the Supplier will fulfil all applicable obligations regarding such taxes or contributions.
- 16.3.3. The Supplier hereby indemnifies the CPCA against any liability, assessment or claim (including all reasonable costs and expenses and any penalty, fine or interest accrued or payable by the CPCA in connection with or in consequence of any such liability, assessment or claim) made by any competent authority against the CPCA in respect of any income tax, national insurance, social security or similar contributions or any other taxation whatsoever, relating to the delivery of the Services (where such recovery is not prohibited by law).
- 16.3.4. The Supplier shall be solely responsible for compensating the Supplier Personnel, Sub-Contractors, agents and representatives who are involved in delivering the Services to the CPCA under this Agreement.

17. Business Continuity

- 17.1. The Supplier will have business continuity arrangements in place so that in the event of a failure of or disruption of the Services, such arrangements will:
 - 17.1.1. ensure that the CPCA can continue to provide its functions;
 - 17.1.2. prevent loss of data;
 - 17.1.3. prevent or so far as possible minimize any impact on any service levels set in the Specification; and
 - 17.1.4. ensure that normal provision of the Services begins as soon as possible.

18. Termination

- 18.1. The CPCA may without liability terminate this Agreement for any reason by giving not less than one (1) months' written notice to the Supplier
- 18.2. The CPCA may terminate this Agreement with immediate effect by giving written notice to the Supplier in the event of the following:
 - 18.2.1. if the Supplier is in breach of any material obligation under this Agreement, provided that if the breach is capable of remedy, the CPCA may only terminate this Agreement under this Clause 18.2 if the Supplier has failed to remedy such breach within thirty (30) days of receipt of notice from the CPCA to do so;
 - 18.2.2. if there is an Insolvency Event;

- 18.2.3. If the Supplier has a change in its control which the CPCA believes will have a substantial impact on the performance of this Agreement; or
 - 18.2.4. If the CPCA is of the genuine belief that there is a risk of reputational damage to the CPCA should the Supplier continue to provide the Services. Such risk to be determined by the CPCA in its sole discretion.
- 18.3. If this Agreement is terminated by the CPCA pursuant to Clause 18.2 above, such termination shall be at no loss or cost to the CPCA and the Supplier hereby indemnifies the CPCA against any such losses or costs which the CPCA may suffer as a result of any such termination.
- 18.4. The Supplier may terminate this Agreement in the event the CPCA commits a payment default, by giving the CPCA thirty (30) days' prior written notice.
- 18.4.1. In the event the CPCA remedies the payment default within the thirty (30) day notice period, the Supplier's notice to terminate this Agreement shall be deemed to have been withdrawn.

19. Monitoring

- 19.1. The Supplier shall allow the CPCA and its auditors access at all reasonable times and on reasonable notice to all premises of the Supplier to enable the CPCA and/or its auditors to:
- 19.1.1. inspect work being done as part of this Agreement;
 - 19.1.2. inspect all records and information relating to this Agreement;
 - 19.1.3. have access to any Supplier Personnel; and,
 - 19.1.4. inspect all resources and systems used by the Supplier in connection with this Agreement.
- 19.2. For a period of six (6) years, or such other period as the Parties may agree, following the expiry or termination of this Agreement, the Supplier shall allow the CPCA and its auditors reasonable access from time to time as may be reasonably required for the purposes of examining records and information relating to this Agreement.
- 19.3. The Supplier shall provide the CPCA with:
- 19.3.1. the reports and information as set out in the Specification; and,
 - 19.3.2. such other information as the CPCA may reasonably require from time to time or as a consequence of the expiry or termination of this Agreement;
- and agrees that the costs of so doing are included in the Fees.

19.4. The Supplier will co-operate fully with any enquiry or investigation made by the CPCA's internal or external auditors or any other quality or performance inspectors that in any way concerns this Agreement or the Services.

19.5. The CPCA may use information given by the Supplier under this Agreement to prevent and detect fraud and money-laundering and may share such information with other organisations that handle public funds for the same purpose.

20. Force Majeure

20.1. Neither Party shall be liable for failure to perform its obligations under this Agreement if such failure results from a Force Majeure Event.

20.2. If the CPCA is affected by circumstance of a Force Majeure Event, the CPCA shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure Event have ceased. The suspension shall not give rise to any claim by the Supplier against the CPCA nor entitle the Supplier to terminate this Agreement.

20.3. If either Party is subject to a Force Majeure Event, it shall not be in breach of this Agreement provided that:

20.3.1. it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;

20.3.2. it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and

20.3.3. it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

20.4. If the Force Majeure Event prevails for a continuous period of more than two (2) months, either Party may terminate this Agreement by giving ten (10) Business Days' written notice to the other Party.

20.4.1. The Agreement will terminate on the expiry of this notice period. Such termination shall be without prejudice to the rights of either Party in respect of any breach of this Agreement occurring prior to such termination.

21. Dispute Resolution

21.1. If any dispute arises out of this Agreement the Parties will first attempt to resolve the matter informally through designated senior representatives of each Party.

21.2. If the Parties are not able to resolve the dispute informally within a reasonable time not exceeding two (2) months from the date the informal process is requested by notice in

writing, they will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

22. Sub-Contracting and Assignment

22.1. The Supplier shall not Sub-Contract any of its obligations under this Agreement without the prior written consent of the CPCA. Where such permission is granted, the Supplier shall ensure that:

22.1.1. the provisions of this Agreement are reflected in its contractual arrangements with its Sub-Contractors and are enforced against them; and

22.1.2. such Sub-Contracts contain provisions that enable the CPCA to enforce the terms of the contract awarded by the Supplier to the Sub-Contractor, if in the sole opinion of the CPCA it is necessary to do so.

22.2. The CPCA shall be entitled to:

22.2.1. assign, novate or dispose of its rights and obligations under this Agreement either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

22.2.2. transfer, assign or novate its rights and obligations where required by Law.

22.2.3. transfer, assign or novate its rights to a successor body or organisation.

22.3. The Supplier shall remain responsible and liable for any and all acts and omissions of its Sub-Contractors as though they were its own.

23. Variation

23.1. This Agreement may not be varied without the express written agreement of both Parties.

23.2. Any such variation shall be recorded either in writing on a Variation to Agreement Form as set out in Schedule 3 appended hereto or other such form as agreed by the Parties.

24. No Waiver

24.1. The failure by a Party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect the right of that Party to subsequently enforce that provision

25. Severability

25.1. If any provision of this Agreement becomes invalid, illegal or unenforceable, the Parties shall endeavour, acting in good faith, to agree the terms of a provision which may be substituted for the invalid, illegal or unenforceable provision. The invalidity, unenforceability or illegality of any provision will not affect the remaining provisions of this Agreement.

26. Assignment

26.1. Except as provided under this Agreement, the Supplier shall not assign or otherwise transfer any of its rights, interests or obligations under this Agreement to a third party without the prior written consent of the CPCA.

27. Third Party Rights

27.1. Except as expressly provided elsewhere in this Agreement a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement

28. No Publicity

28.1. The Supplier shall not communicate by any means with the press or broadcasting media about any matters connected with this Agreement, without the prior written consent of the CPCA Service Manager.

28.2. The Supplier shall not advertise its provision of the Services to the CPCA nor use the CPCA logo, without the prior written consent of the CPCA Service Manager.

29. Entire Agreement

29.1. This Agreement constitutes the entire agreement between the Parties in respect of the subject matter of this Agreement and supersedes any prior written or oral agreement between them relating to that subject matter and the Parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated herein.

30. Counterparts

30.1. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

31. Governing Law

31.1. The laws of England and Wales shall govern the interpretation, construction and validity of this Agreement and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

The Parties have executed this Agreement to be effective as of the Effective Date.

Signed

for and on behalf of **Cambridgeshire and Peterborough Combined Authority**

Name:

Position:

Date:

Signed

for and on behalf of **[SUPPLIER NAME]**

Name:

Position:

Date:

SCHEDULE 1

SPECIFICATION

SCHEDULE 2

SUPPLIERS TENDER

SCHEDULE 3

VARIATION TO AGREEMENT FORM

AGREEMENT TITLE:	
-------------------------	--

VARIATION NO:		DATE	
----------------------	--	-------------	--

BETWEEN:

(CPCA) and **[INSERT NAME OF SUPPLIER]**

The Agreement is varied as follows:

[INSERT DETAILS OF VARIATION]

Start Date:

Extension of Time/Proposed Completion Date:

Costs:

The Agreement including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED:

FOR: CPCA

FOR THE SUPPLIER:

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date:

SCHEDULE 4

PROCESSING PERSONAL DATA

The Supplier shall comply with any further written instructions, with respect to processing Personal Data, issued by the CPCA and any such instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>(this should be a high-level short description of what the processing is about i.e. its subject matter)</i>
Duration of the processing	<i>(clearly set out the duration of the processing including details)</i>
Nature and purposes of the processing	<i>(please be as specific as possible but make sure you cover all intended purposes, the nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc the purpose might include employment processing, statutory obligation, recruitment, assessment etc</i>

Type of Personal Data	<i>(examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc)</i>
Categories of data Subject	<i>(examples include: staff, (including volunteers, agents and temporary workers), customers, clients, suppliers, patients, students, pupils, members of the public, users of a particular website etc)</i>
Plan for Return	<i>(describe how long the data will be retained for, how it will be returned or destroyed)</i>