

Dated

201[]

NORTHUMBERLAND NATIONAL PARK AUTHORITY

and

[]

**AGREEMENT RELATING TO THE SUPPLY OF
EXHIBITION LOANS TRANSPORT SERVICES**

wardhadaway

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THIS AGREEMENT is made on

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BETWEEN:

- (1) **NORTHUMBERLAND NATIONAL PARK AUTHORITY** of Eastburn, South Park, Hexham, Northumberland, NE46 1BS (the "**Authority**"); and
- (2) [] registered with company number [] and having its registered office is at [] (the "**Supplier**").

1. GENERAL PROVISIONS

1.1. Definitions and Interpretation

In this Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Affiliates"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Approval"	the written consent of the Authority;
"Authority Representative"	the representative appointed by the Authority from time to time in relation to this Agreement;
"Authority Policies"	the policies of the Authority as amended and added to from time to time as set out in Schedule 5 (Authority Policies);
"Business Continuity Plan"	has the meaning set out in clause Error! Reference source not found. ;
"Change of Control"	if a person who Controls any body corporate ceases to do so or if another person acquires Control of it;
"Commencement Date"	means 2 nd January 2017;
"Commercially Sensitive Information"	the Supplier's information (if any) listed in Schedule 6 (Commercially Sensitive Information) comprised of information: (a) which is provided by the Supplier to the Authority in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret;
"Confidential Information"	information relating to the Authority (including pupils/students, employees, sub-contractors and consultants of the Authority), the subject matter of this

Agreement, users of the Services or supplies provided under this Agreement, and which is in the Supplier's possession, custody or control (however it was conveyed or on whatever media it is stored), including information subject to legal professional privilege, commercially sensitive information, trade secrets and all intellectual property rights or Know-How of the Authority and all Personal Data;

"Contracting Authority"	any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;
"Contract Manager"	a person designated by the Supplier to act as the duly authorised representative of the Supplier for all purposes connected with this Agreement. For the avoidance of doubt, the Contract Manager will be Key Personnel under clause 13;
"Contract Period"	the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of this Agreement in accordance with the Law or the provisions of this Agreement;
"Contract Price"	the price (exclusive of any applicable VAT) payable to the Supplier by the Authority under this Agreement, as set out in Schedule 3 (Price and Payment), for the full and proper performance by the Supplier of its obligations under this Agreement inclusive of all disbursements and expenses but before taking into account the effect of any adjustment of as otherwise provided under this Agreement;
"Control"	has the same meaning as set out in section 1124 of the Corporation Tax Act 2010;
"Crown"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments;
"Data Processor"	has the same meaning as set out in section 1(1) of the DPA;
"Default"	any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;
"Dispute Resolution"	the procedure detailed at clause 43.2;

Procedure"

"DPA" the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government departments in relation to such legislation;

"EIR" the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"Employment Regulations" the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any other enactment concerning the subject matter of those Regulations;

"Equipment" the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Agreement;

"Exit Plan" has the meaning set out in clause **Error! Reference source not found.**;

"Expiry Date" means 30th September 2017;

"FOIA" the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure" any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire, flood, violent storm or any serious adverse weather, pestilence, explosion, malicious damage, armed conflict; acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Supplier's or any Sub-contractor's organisation; or

(b) the failure by any Sub-contractor to perform its obligations under any sub-contract;

"Fraud" any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement;

“Good Practice”	Industry	standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Information”		has the meaning given under section 84 of the FOIA;
"Insurances"		all or any of the insurances required to be maintained by the Supplier pursuant to this Agreement as set out in Schedule 4 (Insurance);
“Intellectual Rights”	Property	patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names and website addresses, trade or business names, rights in Know-How and Confidential Information, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Key Personnel”		the individuals (if any) identified in paragraph 2 of Schedule 2 (Supplier Solution) together with any and all individuals notified by the Authority to the Supplier from time to time in accordance with clause 13.2;
"Know-How"		all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Authority's possession before the Commencement Date;
“Law”		any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply;
“Month”		calendar month;
“Party”		a party to this Agreement;
"Personal Data"		has the meaning set out in section 1(1) of the DPA

including sensitive personal data defined in section 2 of the DPA and means personal data of which the Authority is a Data Controller and which is disclosed to the Supplier pursuant to this Agreement, whether as the Authority's Data Processor or as a separate Data Controller;

"Premises"	the location where the Services are to be supplied, as set out in Schedule 1 (Requirements);
"Process"	has the meaning given to it in section 1(1) of the DPA and "Processing" shall be construed accordingly;
"Property"	the property, other than real property, issued or made available to the Supplier by the Authority in connection with this Agreement;
"Quality Standards"	the quality standards that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
"Receipt"	The [physical or] electronic arrival of the invoice at the address of the Authority detailed at clause 42.3.1 or at any other address given by the Authority to the Supplier for the submission of invoices;
"Regulatory Bodies"	those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly;
"Relevant Conviction"	a conviction that is relevant to the nature of the Services;
"Relevant Transfer"	the transfer of a business or service provision change to which the Employment Regulations apply;
"Replacement Supplier"	any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of this Agreement, whether those Services are provided by the Authority internally and/or by any third party;
"Request for Information"	a request for information under the FOIA or the EIR;

"Requirements"	those requirements of the Authority as set out in Schedule 1 (Requirements);
"Schedule"	a schedule attached to, and forming part of, this Agreement;
"Services"	the services to be supplied by the Supplier as specified in the Requirements;
"Staff"	all persons employed by the Supplier to perform its obligations under this Agreement together with the Supplier's servants, agents, suppliers and Sub-contractors used in the performance of its obligations under this Agreement;
"Sub-contract"	any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities, goods or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
"Sub-contractor"	the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Tender"	the document(s) submitted by the Supplier to the Authority in response to the Authority's invitation or request for quotation to suppliers for formal offers to supply it with the Services;
"Variation"	has the meaning given to it in clause 36 (Variation);
"Variation Procedure"	the procedure detailed at clause 36;
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2. Interpretation

The interpretation and construction of this Agreement shall be subject to the following provisions:

- 1.2.1. references to clauses and Schedules are references to the clauses and Schedules of this Agreement;
- 1.2.2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.3. words importing the masculine include the feminine and the neuter;
- 1.2.4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.5. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.8. headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

2. DUE DILIGENCE

- 2.1. The Supplier acknowledges that it:
 - 2.1.1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority and has entered into this Agreement in reliance on its own due diligence alone and not on any representations or information made available by the Authority;
 - 2.1.2. has received all information required by it in order to determine whether it is able to provide the Requirements in accordance with the terms of this Agreement; and
 - 2.1.3. has raised all relevant due diligence questions with the Authority before the Commencement Date.
- 2.2. Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent such exclusion is prohibited by law.

3. **CONTRACT PERIOD**

- 3.1. This Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date, unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated, unless otherwise extended by agreement of the Parties.

4. **SUPPLY OF SERVICES**

4.1. **The Services**

- 4.1.1. In consideration for the payment of the Contact Price, the Supplier shall supply the Services with effect from the Commencement Date:

4.1.1.1. promptly and in any event in accordance with timescales set out in the Requirements;

4.1.1.2. in accordance with the Requirements;

4.1.1.3. with reasonable skill and care in accordance with Good Industry Practice; and

4.1.1.4. in accordance with all applicable law,

in a manner that does not cause disrepute to the Authority.

- 4.1.2. The Authority may inspect and examine the manner in which the Supplier supplies the Services at any time.

- 4.1.3. Subject to clause 4.3.2, time in relation to the supply of the Services shall be of the essence, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

- 4.1.4. Except where otherwise provided in this Agreement, the Services shall be provided by the Staff or the Sub-contractors at such place or places as set out in the Requirements or as otherwise reasonably directed by the Authority or its duly authorised person.

- 4.1.5. In the event that not all of the Services are provided within the timescale specified in the Requirements then the Authority shall be entitled to withhold payment of the Contract Price for such Services until such time as they are provided.

4.2. **Provision and Removal of Equipment**

- 4.2.1. The Supplier shall provide all the Equipment necessary for the supply of the Services.

- 4.2.2. The Supplier shall not deliver any Equipment nor begin any work at the Premises without obtaining prior Approval.

- 4.2.3. All Equipment brought onto the Premises shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any

Equipment unless the Supplier is able to demonstrate that such loss or damage was caused by the Authority in default of any of its obligations in this Agreement. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.

- 4.2.4. The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5. The Supplier shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
 - 4.2.5.1. remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with this Agreement; and
 - 4.2.5.2. replace such item with a suitable substitute item of Equipment.
- 4.2.6. On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

4.3. **Manner of Carrying Out the Services**

- 4.3.1. The Supplier shall at all times comply with the Quality Standards. To the extent that the standard of Services has not been specified in this Agreement, the Supplier shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under this Agreement in accordance with the Law and Good Industry Practice.
- 4.3.2. The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 4.3.3. The Supplier shall employ sufficient instructed and supervised employees to ensure the Services are provided in accordance with the Requirements.
- 4.3.4. The Supplier shall ensure that a sufficient reserve of trained and competent employees is available to perform the Services during staff holidays or absence due to sickness or otherwise.
- 4.3.5. The Supplier shall procure that Staff shall at all times during their engagement in the provision of the Services remain servants of the Supplier and the Supplier shall not be relieved of any statutory or other responsibilities in relation to the Staff by virtue of this Agreement.

4.3.6. Relevant Convictions

4.3.6.1. The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (DBS) procedures or otherwise) is employed or engaged in any part of the provision of the Services without Approval.

4.3.6.2. For each member of Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Authority owes a special duty of care, the Supplier shall (and shall procure that any relevant Sub-contractor shall and shall provide evidence upon request that such obligations have been met):

- a) carry out a police check;
- b) conduct thorough questioning regarding any Relevant Convictions; and
- c) obtain a valid enhanced disclosures check and such other checks as may be carried out through the Disclosure and Barring Service before the Supplier or any Sub-contractor engages the member of Staff in the provision of the Services;

and the Supplier shall not (and shall ensure that any Sub-contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

4.3.6.3. The Supplier shall monitor the level and validity of the checks under this clause 4.3 for each member of staff. The Supplier shall use its reasonable endeavours to procure that the Authority is advised and kept informed at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff receives a Relevant Conviction or whose previous Relevant Convictions or inappropriate record become known to the Supplier.

4.3.6.4. 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 who will be employed or engaged by the Supplier in provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulation made thereunder, as amended from time to time.

4.3.7. The Authority reserves the right to reject Staff whom they consider acting reasonably to be unsuitable for the duties proposed. Where Staff are

rejected the Supplier shall supply alternative Staff. In addition, the Authority Representative may (but not unreasonably or vexatiously) instruct the Supplier to take disciplinary action against or to remove from work in or about the provision of the Services any person employed by the Supplier and the Supplier shall immediately comply with such instruction, and in the case of a removal from work shall, as soon as it is reasonably practicable thereafter provide a substitute.

- 4.3.8. The Supplier shall ensure that any employees to whom reference is made by name in the paragraph 3 of Schedule 2 (Supplier Solution) are actively involved in the provision of the Services or are only replaced with employees acceptable to the Authority Representative. The Supplier acknowledges that if it is ever the intention of the Supplier to change the partners and/or employees committed to provide the Services as provided for in the Requirements it shall first give notice of such intention to the Authority Representative explaining the reasons for such change together with full details of any proposed replacement partner and/or employee. The Authority shall be under no obligation to approve or accept any such replacement. If any of the partners or employees cease, in the reasonable opinion of the Authority, to provide and be responsible for the provision of the Services and the quality of those Services then the Authority may terminate this Agreement in accordance with clause 22 (default, disruption and termination) paying only for the Services properly provided up to the date of such delivery and/or termination.
- 4.3.9. The Supplier shall procure that the Authority is advised and kept informed at all times of any:
- 4.3.9.1. disciplinary incident relating to the Staff involving visitors or the Authority's staff or property; and
 - 4.3.9.2. incidence of serious misconduct involving the Staff.
- 4.3.10. The Supplier shall only employ Staff for the purposes of this Agreement who:
- 4.3.10.1. fulfil any minimum training and qualification requirements of the Authority as set out in the Requirements and also all training and qualification requirements that may be deemed necessary by the Authority Representative, legislation, or any special bodies or associations;
 - 4.3.10.2. are in good health and have a standard of oral and personal hygiene acceptable to the Authority; and
 - 4.3.10.3. are medically and physically fit in so far as the requirements of the work are concerned.
- 4.3.11. The Supplier shall not employ in or about the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health of themselves or the Authority's staff or visitors

at risk. In all such cases, the Supplier is required to notify the Authority Representative of each particular incident. The Supplier may receive and will accept such instruction as to the immediate and future working capability of the affected employee, upon the Premises. Such instruction may necessitate the need for further investigation, which shall be the duty and responsibility of the Supplier at his own expense.

4.4. Authority Policies

The Supplier shall ensure that provision of the Services shall at all times comply with the Authority Policies, rules, procedures and standards (including any racial discrimination and equal opportunities policies).

5. NOT USED

6. NOT USED

7. NOT USED

8. MONITORING OF CONTRACT PERFORMANCE

8.1. The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the standard of the performance by the Supplier.

8.2. Remedies in the event of inadequate performance

8.2.1. Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under this Agreement, then the Authority shall notify the Supplier, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with 22.2 (Termination on Default).

8.2.2. In the event that the Authority is of the reasonable opinion that there has been a material breach of this Agreement by the Supplier, then the Authority may, without prejudice to its rights under clause 22.2 (Termination on Default), do any of the following:

8.2.2.1. without terminating this Agreement, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Services;

8.2.2.2. without terminating the whole of this Agreement, vary this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

- 8.2.2.3. terminate, in accordance with clause 22 (Termination on Default), the whole of this Agreement.
- 8.2.3. Without prejudice to its right under clause 12.3 (Recovery of Sums Due), the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 8.2.4. If the Supplier fails to supply any of the Services in accordance with the provisions of this Agreement and such failure is capable of remedy, then the Authority shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.
- 8.2.5. In the event that:
- 8.2.5.1. the Supplier fails to comply with clause 8.2.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- 8.2.5.2. the Supplier persistently fails to comply with clause 8.2.4 above,
- the Authority may terminate this Agreement with immediate effect by notice in writing.

9. **DISRUPTION**

- 9.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority or the activities of users of the Premises.
- 9.2. The Supplier shall immediately inform the Authority if any events occur which affect or might affect the Supplier's ability at any time to perform its obligations under this Agreement.
- 9.3. If the Supplier is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business caused by the Authority or any other Authority subcontractor or agent, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

10. **AUTHORITY RESPONSIBILITIES**

Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting

counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Supplier.

11. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

11.1. Without prejudice to any other right or remedy which the Authority may have, if any Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of, this Agreement then the Authority may (whether or not any part of the Services have been provided) do any one or more of the following:

11.1.1. at the Authority's option, give the Supplier the opportunity at the Supplier's expense to either remedy the failure together with any damage resulting from such failure (where such failure is capable of remedy) or to supply replacement Services and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled;

11.1.2. suspend the performance or the delivery of the Services;

11.1.3. carry out at the Supplier's expense any work necessary to make the Services comply with this Agreement;

11.1.4. without terminating this Agreement, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Services in accordance with this Agreement;

11.1.5. terminate this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

11.1.6. charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

11.2. In the event that the Supplier:

11.2.1. fails to comply with clause 11.1 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

11.2.2. persistently fails to comply with clause 11.1 above,

the Authority may terminate this Agreement with immediate effect by giving the Supplier notice in writing.

12. PAYMENT AND CONTRACT PRICE

12.1. Contract Price

12.1.1. In consideration of the Supplier's performance of its obligations under this Agreement, the Authority shall pay the Contract Price in accordance with clause 12.2 (Payment and VAT) or in accordance with such other arrangement as agreed by the Parties.

12.1.2. The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Agreement.

12.1.3. The Supplier shall, where it offers the same or substantially the same Services to third parties during the Contract Term at a lower price than the Contract Price, charge the Authority the lower price in substitution for the Contract Price.

12.2. Payment and VAT

12.2.1. The Authority shall pay all sums due to the Supplier within thirty (30) days of Receipt of a valid invoice, submitted monthly in arrears.

12.2.2. The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

12.2.3. The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.

12.2.4. The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 12.2.5 shall be paid by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

12.2.5. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement under clause 22.2 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

12.3. Recovery of Sums Due

- 12.3.1. Wherever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Agreement or under any other agreement or contract with the Authority.
- 12.3.2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 12.3.3. The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- 12.3.4. Unless otherwise specified in this Agreement, all payments due shall be made within a reasonable time in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

12.4. **Payment of Sub-contractors**

Where the Supplier enters into a Sub-contract with a supplier or contractor for the purpose of performing this Agreement it shall cause a term to be included in such a Sub-contract that requires payment to be made of undisputed sums by the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-contract requirements.

13. **KEY PERSONNEL**

- 13.1. In respect of the supply of Services, the Supplier shall make available the Key Personnel. The Supplier shall provide, in Schedule 2 (Supplier Solution), a list of the names and business addresses of all those regarded by the Supplier as key personnel. The Supplier shall, upon request of the Authority from time to time, provide a list of the names and business addresses of all other persons who may be at any time concerned with the provision of the Services or any part of such provision. In each case, the Supplier shall specify the capacities in which such personnel are so concerned and shall provide such other particulars and evidence of identity and other supporting evidence as the Authority shall reasonably require.
- 13.2. The Authority may, at any time by written notice to the Supplier, request that any person concerned with the provision of the Services, or any part of such provision be designated a key person and the Authority and the Supplier shall discuss and agree, in good faith, such request accordingly. Once agreed such persons shall become Key Personnel for the purposes of this Agreement.
- 13.3. Where practicable the Supplier shall and shall procure that any Sub-contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.
- 13.4. Where practicable the Supplier shall provide the Authority with at least one (1) month's written notice of its intention to replace any member of Key Personnel.

- 13.5. The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-contractor. The Authority may interview the candidates for Key Personnel positions before they are appointed.
- 13.6. The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Supplier shall ensure that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 13.7. The Authority may also require the Supplier to remove any Key Personnel that the Authority considers (acting reasonably) in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

14. **SUPPLIER'S STAFF**

- 14.1. The Supplier shall ensure that, where appropriate, Staff are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.

14.2. **Employment Regulations**

The Supplier and the Authority hereby acknowledge and agree that the provision of the Services pursuant to this Agreement will not give rise to a Relevant Transfer and that no employees of the Authority are intended to transfer to the Supplier as a result of the commencement of the provision of the Services.

15. **OFFERS OF EMPLOYMENT**

For the duration of this Agreement and for a period of twelve (12) months thereafter neither the Authority nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

16. **STAFFING SECURITY**

- 16.1. Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Supplier.
- 16.2. The Supplier shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Authority at all times when any Staff is on duty for the provision of the Requirements.
- 16.3. The Supplier shall inform the Authority Representative of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.
- 16.4. The Contract Manager or his deputy shall consult the Authority Representative and such other of the Authority's own supervisory staff as may from time to time be specified by the Authority Representative as often as may reasonably be necessary for the efficient provision of the Requirements in accordance with this Agreement.

16.5. The Supplier shall ensure that his Staff carry out their duties and behave while on the Premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Staff shall not cause any unreasonable or unnecessary disruption to the routines, practices and procedures of the Authority's visitors or any of the Authority's staff or any other contractors.

17. **SECURITY**

17.1. The Authority shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.

17.2. The Supplier shall comply with all security requirements of the Authority while on the Premises and shall ensure that all Staff comply with such requirements.

18. **NOT USED**

19. **PROTECTION OF INFORMATION**

19.1. The Parties acknowledge that English law does not permit the Authority to allow the Supplier to access or use its Confidential Information unless the Authority complies, and can demonstrate that it complies, with certain requirements. Those requirements are found in the DPA and the law of confidence.

19.2. **Data Protection Obligations of the Authority**

19.2.1. The Supplier shall (and shall procure that any of its Staff involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arises in connection with the Agreement.

19.2.2. Notwithstanding the general obligation in clause 19.2.1 where the Supplier is processing Personal Data as a Data Processor for the Authority, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

(a) provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Authority is complying with its obligations under the DPA;

(b) promptly notify the Authority of any breach of the security measures required to be put in place pursuant to clause 19.2.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.

19.2.3. The provisions of this clause 19 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

19.3. Confidentiality

19.3.1. Subject to clause 19.3.2, the parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their Staff or representatives from making any disclosure to any person or any matters relating hereto.

19.3.2. Clause 19.3.1 shall not apply to any disclosure of information:

19.3.2.1. required by any applicable law;

19.3.2.2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this Agreement;

19.3.2.3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 19.3.1;

19.3.2.4. by the Authority of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;

19.3.2.5. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

19.3.2.6. by the Authority to any department, office or agency of the Government; and

19.3.2.7. by the Authority and in respect of which the Supplier has given its prior written consent to disclosure.

19.4. Freedom of Information

19.4.1. The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Supplier's expense) to enable the Authority to comply with these Information disclosure requirements.

19.4.2. The Supplier shall and shall procure that its Sub-contractors (if any) shall:

19.4.2.1. transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within three (3) working days of receiving a Request for Information;

19.4.2.2. provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) working days (or such other period as the Authority may specify) of the Authority's request; and

- 19.4.2.3. provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 19.4.3. The Authority shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - 19.4.3.1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
 - 19.4.3.2. is to be disclosed in response to a Request for Informationand in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 19.4.4. The Supplier acknowledges that the Authority may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part I of the Freedom of Information Act 2000 be obliged under the FOIA, or the EIR to disclose Information:
 - 19.4.4.1. without consulting with the Supplier; or
 - 19.4.4.2. following consultation with the Supplier and having taken its views into account.
- 19.4.5. The Supplier acknowledges that the list of Commercially Sensitive Information in Schedule 6 is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 19.4 or clause 19.5.

19.5. **Transparency**

- 19.5.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Authority to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement, to the general public.
- 19.5.2. The Authority may consult with the Supplier to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- 19.5.3. The Supplier acknowledges that the Authority is obliged to publish the details of payments made above £500 on a monthly basis.

19.6. Monitoring and review

- 19.6.1. The Authority is entitled, on giving at least two (2) days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Confidential Information by the Supplier.
- 19.6.2. The requirement under clause 19.6.1 to give notice will not apply if the Authority believes that the Supplier is in breach of any of its obligations under this Agreement.

20. WARRANTIES AND REPRESENTATIONS

20.1. The Supplier warrants and represents that:

- 20.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- 20.1.2. in entering this Agreement it has not committed any Fraud;
- 20.1.3. as at the Commencement Date, all information contained in the Tender (if applicable) remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of this Agreement and shall indemnify the Authority in respect of any extra costs occasioned by any discrepancies, errors or omissions therein;
- 20.1.4. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement;
- 20.1.5. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 20.1.6. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 20.1.7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement;
- 20.1.8. in the three (3) years prior to the date of this Agreement:
 - 20.1.8.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally

accepted accounting principles that apply to it in any country where it files accounts;

20.1.8.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

20.1.8.3. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

21. LIABILITY, INDEMNITY AND INSURANCE

21.1. Neither Party excludes or limits liability to the other Party for:

21.1.1. death or personal injury caused by its negligence;

21.1.2. fraud;

21.1.3. fraudulent misrepresentation; or

21.2. Subject to clauses 21.3 and 21.4, the Supplier shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under this Agreement or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

21.3. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under this Agreement.

21.4. The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

21.5. Subject always to clause 21.1, the Authority shall not be liable to the Supplier for any:

21.5.1. loss of profits, business, revenue or goodwill;

21.5.2. loss of savings (whether anticipated or otherwise); and/or

21.5.3. indirect or consequential loss or damage.

21.6. Subject always to clause 21.1, the liability of the Authority for Defaults shall be subject to the following financial limits:

21.6.1. the aggregate liability of the Authority for all Defaults resulting in direct loss of or damage to the Supplier's property under or in connection with this Agreement shall in no event exceed the Contract Price paid or payable by the Authority to the Supplier in the year in which the liability arises.

21.7. The Supplier shall take out and maintain or procure the maintenance of the Insurances in accordance with the provisions of Schedule 4 (Insurance).

22. DEFAULT, DISRUPTION AND TERMINATION

22.1. Termination on insolvency and change of control

22.1.1. The Authority may terminate this Agreement with immediate effect by notice in writing where:

22.1.1.1. a resolution is passed or an order made for the winding up of the Supplier (otherwise than for the purpose of a solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;

22.1.1.2. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

22.1.2. The Supplier shall notify the Authority immediately if the Supplier undergoes a Change of Control. The Authority may terminate this Agreement by notice in writing with immediate effect within six (6) months of:

22.1.2.1. being notified that a Change of Control has occurred; or

22.1.2.2. where no notification has been made, the date that the Authority becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

22.2. Termination on Default

22.2.1. The Authority may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier commits a Default and if:

22.2.1.1. the Supplier has not remedied the Default to the satisfaction of the Authority within [twenty-five (25)] Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

22.2.1.2. the Default is not, in the opinion of the Authority, capable of remedy; or

22.2.1.3. the Default is a material breach of this Agreement.

22.2.2. In the event that through any Default of the Supplier, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

22.2.3. If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 60 Working Days of the date of such written notice, provided that the undisputed sums exceed ten thousand pounds (£10,000.00), the Supplier may terminate this Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 12.2 (Recovery of Sums Due).

22.3. **Break**

The Authority shall have the right to terminate this Agreement at any time by giving one (1) months' written notice to the Supplier.

22.4. **Disruption**

22.4.1. The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Authority, its employees, third parties or any other supplier employed by the Authority.

22.4.2. The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.

22.4.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under this Agreement.

22.4.4. If the Supplier's proposals referred to in clause 22.4.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this Agreement may be terminated with immediate effect by the Authority by notice in writing.

22.4.5. If the Supplier is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business of the Authority, the Supplier may request a reasonable allowance of time.

22.5. **Recovery upon Termination**

22.5.1. On the expiry or termination of this Agreement for any reason, the Supplier shall:

- 22.5.1.1. immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-contractors, which was obtained or produced in the course of providing the Services;
 - 22.5.1.2. assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and
 - 22.5.1.3. promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Supplier to conduct due diligence.
- 22.5.2. If the Supplier fails to comply with clause 22.5.1.1, the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-contractors where any such items may be held.
- 22.5.3. Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clauses 22.5.1.2 and 22.5.1.3 free of charge.

23. CONSEQUENCES OF EXPIRY OR TERMINATION

- 23.1. Where the Authority terminates this Agreement under clause 22.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where this Agreement is terminated under clause 22.2 (Termination on Default), no further payments shall be payable by the Authority to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause 23.
- 23.2. Save as otherwise expressly provided in this Agreement:
- 23.2.1. termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 23.2.2. termination of this Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses 12.2 (Payment and VAT), 12.3 (Recovery of Sums Due), 19.4 (Freedom of

Information), 21 (Liability, Indemnity and Insurance), 22.5 (Recovery upon Termination), 23 (Consequences of Expiry or Termination), 27 (Prevention of Corruption), 28 (Records and Audit Access), 34 (Cumulative Remedies) and 43.1 (Governing Law and Jurisdiction).

24. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 24.1. Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcement or publicise this Agreement or any part thereof in any way, except with the written consent of the other Party.
- 24.2. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with clause 24.1.
- 24.3. The Supplier shall not do anything, or permit or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

25. HEALTH AND SAFETY

- 25.1. The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement.
- 25.2. While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- 25.3. The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 25.4. The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Agreement.
- 25.5. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.
- 25.6. The Supplier and its Staff shall follow a system of accident recording in accordance with the Authority's accident recording procedure and the Supplier's own accident reporting procedures.
- 25.7. All notifiable accidents shall immediately be brought to the attention of the Authority Representative.
- 25.8. The Supplier shall comply with the Control of Substances Hazardous to Health (COSHH) Regulations (as amended), COSHH hazard management control and the Authority Policies.

26. ENVIRONMENTAL REQUIREMENTS

- 26.1. The Supplier shall perform the Services under this Agreement in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 26.2. The Supplier shall be mindful of, and wherever possible address, sustainability issues when supplying the Services. The Supplier shall also have regard to and comply with the Authority's own sustainability and corporate social responsibility policies, standards and targets when supplying the Services.

27. PREVENTION OF CORRUPTION

- 27.1. The Supplier shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority (including its award to the Supplier, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Supplier is drawn to the criminal offences under the Bribery Act 2010.
- 27.2. The Supplier warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with this Agreement.
- 27.3. The Service Provider shall, if required by the Authority, certify to the Authority in writing compliance with this Clause 27 by the Supplier and all persons who are supplying services in connection with this Agreement.
- 27.4. The Supplier shall have an anti-bribery policy which shall be disclosed to the Authority on request to prevent any Supplier Party or personnel from committing an offence under the Bribery Act 2010 and shall enforce it where appropriate.
- 27.5. If the Supplier, its Staff or any person acting on the Supplier's behalf, engages in conduct prohibited by clauses 27.1 or 27.2, the Authority may:
- 27.5.1. terminate this Agreement with immediate effect by giving notice in writing to the Supplier and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and/or
 - 27.5.2. recover in full from the Supplier any other direct or indirect loss sustained by the Authority in consequence of any breach of those clauses.

28. RECORDS AND AUDIT ACCESS

- 28.1. The Supplier shall keep and maintain, during the Contract Period and for thirty-six (36) months after the expiry of the Contract Period or following termination of this Agreement (or as long a period as may be required by the Authority), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, and the amounts paid by the Authority.
- 28.2. The Supplier shall keep the records and accounts referred to in clause 28.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 28.3. The Supplier shall on request afford the Authority, the Authority Representative, the Auditor and/or any person engaged by the Authority to carry out an ISO 27001 audit access to such records and accounts (which may include working papers if reasonably requested) as may be required by the Authority from time to time.
- 28.4. The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for thirty-six (36) months after the date of termination or expiry of this Agreement to the Authority and the Auditor.
- 28.5. The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.
- 28.6. Subject to the Authority's rights in respect of Confidential Information as set out in clause 19.6. The Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including but not limited to:
- 28.6.1. all information requested by the Authority within the scope of the audit;
 - 28.6.2. reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
 - 28.6.3. access to the Staff.
- 28.7. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 28, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

29. DISCRIMINATION

- 29.1. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex, religion or belief, sexual orientation, pregnancy or maternity status, gender reassignment or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully

discriminate within the meaning and scope of the Equality Act 2010 or any other relevant legislation, or statutory modification or re-enactment thereof.

- 29.2. The Supplier shall take all reasonable steps to secure the observance of clause 29.1 by all Staff.

30. PREVENTION OF FRAUD

- 30.1. The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Authority.

- 30.2. The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 30.3. If the Supplier or its Staff commits Fraud in relation to this Agreement or any other contract with the Authority, the Authority may:

30.3.1. terminate this Agreement with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

30.3.2. recover in full from the Supplier any other direct or indirect loss sustained by the Authority in consequence of any breach of this clause 30.

31. TRANSFER AND SUBCONTRACTING

- 31.1. The Supplier shall not assign, novate, sub-contract or in any other way dispose of this Agreement or any part of it without prior Approval. Sub-contracting any part of this Agreement shall not relieve the Supplier of any of its obligations or duties under this Agreement.

- 31.2. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

- 31.3. Where the Authority has consents to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Authority, be sent by the Supplier to the Authority as soon as reasonably practicable.

- 31.4. The Authority may assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:

31.4.1. any Contracting Authority;

31.4.2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

31.4.3. any private sector body which performs the functions of the Authority;

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Agreement.

- 31.5. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 31, affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 31.6. The Authority may disclose to any transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Agreement. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Agreement and for no other purpose and shall take all reasonable steps to ensure that the transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 31.7. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Agreement.

32. **FORCE MAJEURE**

- 32.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of six (6) Months, either Party may terminate this Agreement with immediate effect by notice in writing.
- 32.2. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 32.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 32 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

33. **WAIVER**

- 33.1. The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.

33.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 42 (Notices).

33.3. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

34. **CUMULATIVE REMEDIES**

Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

35. **FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party, to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement,

36. **VARIATION**

36.1. Subject to the provisions of this clause 36, the Authority may request a variation to the Requirements provided that such variation does not amount to a material change to the Requirements. Such a change is hereinafter called a "**Variation**".

36.2. The Authority may request a Variation by notifying the Supplier in writing of the Variation and giving the Supplier sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Supplier shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Supplier accepts the Variation it shall confirm the same in writing.

36.3. The Supplier shall accept the Variation unless it is prohibited from so doing by Law.

36.4. Other than where the Variation is a Variation under clause 12.4, in the event that the Supplier is unable to accept the Variation to the Requirements, the Authority may;

36.4.1. allow the Supplier to fulfil its obligations under this Agreement without the Variation;

36.4.2. terminate this Agreement with immediate effect, except where the Supplier has already delivered all or part of the Services or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Requirements; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

37. SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated, provided that the original intent of this Agreement and the Parties can be achieved.

38. SUPPLIER'S STATUS

At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agreement.

39. CONFLICTS OF INTEREST

39.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

39.2. The Authority reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Agreement. The actions of the Authority pursuant to this clause 39 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

40. ENTIRE AGREEMENT

40.1. This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause 40 shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

40.2. In the event of, and only to the extent of, any conflict between the clauses of this Agreement, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

40.2.1. the clauses of this Agreement;

40.2.2. the Schedules; and

40.2.3. any other document referred to in the clauses of this Agreement.

41. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause 41 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

42. **NOTICES**

42.1. Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

42.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 42.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

42.3. For the purposes of clause 42.2, the address of each Party shall be:

42.3.1. For the Authority:

Head of Corporate Services and Monitoring Officer

Address:

Northumberland National Park Authority
Eastburn
South Park
HEXHAM
NE46 1BS

For the attention of: Stuart Evans
Tel: 01434 605555
Email: stuart.evans@nnpa.org.uk

42.3.2. For the Supplier:

[]

Address:

[]

For the attention of: []
Tel: []
Email: []

42.4. Either Party may change its address for service by serving a notice in accordance with this clause 42.

43. **DISPUTES AND LAW**

43.1. **Governing Law and Jurisdiction**

Subject to the provisions of clause 43.2, the Authority and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

43.2. **Dispute Resolution**

43.2.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the immediate line manager of the Authority Representative and the Contract Manager.

43.2.2. Nothing in the Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

43.2.3. If the dispute cannot be resolved by the Parties pursuant to clause 43.2.1 the Parties may refer it to mediation pursuant to the procedure set out in clause 43.2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Supplier does not agree to mediation.

43.2.4. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of this Agreement at all times.

43.2.5. The procedure for mediation and consequential provisions relating to mediation are as follows:

43.2.5.1. A neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the request to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator.

43.2.5.2. The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a

programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

43.2.5.3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

43.2.5.4. If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

43.2.5.5. If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

44. COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

45. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full original of this Agreement for all purposes.

46. EXECUTION

The Authority shall be entitled to authorise any person to execute this Agreement on behalf of the Authority and execution of this Agreement by any such authorised person shall be valid.

IN WITNESS of which this Agreement has been duly executed by the Parties:

For and on behalf of the Authority:

Signature _____

Name and Title

Date _____
.....

For and on behalf of the Supplier:

Signature _____

Name and Title _____

Date _____
.....

SCHEDULE 1 – Requirements

[services (specification) required to be inserted]

SCHEDULE 2 – Supplier Solution

The Supplier will provide the Services in accordance with its proposals submitted (and replicated within Schedule 2 as follows). [insert tender response]

SCHEDULE 3 - Price and Payment

[To be agreed]

1. **Contract Price payable by the Authority (excluding VAT), payment profile and method of payment.**

Stage one [] plus VAT inclusive of disbursements, payable upon the successful delivery of exhibition loan items detailed in 9.5 to 9.8 (Groups A to D) of the Invitation to Tender.

Stage two [] plus VAT inclusive of disbursements, payable upon the successful return of exhibition loan items detailed in 9.5 to 9.8 (Groups A to D) of the Invitation to Tender.

Invoicing and Payment

The Supplier shall issue invoices after all of the stage 1 deliveries and stage 2 collections are completed. The Authority shall pay the Supplier within thirty (30) days of receipt of a valid invoice, submitted in accordance with this paragraph 2, the payment profile set out in paragraph 1 above and the provisions of this Agreement.

SCHEDULE 4 - Insurance

1. To comply with its obligations under clause 21 and as a minimum the Supplier shall ensure that:
 - 1.1. professional indemnity insurance is held by the Supplier and by any agent, Sub-contractor or consultant involved in the supply of the Services which has a minimum limit of indemnity of five million pounds (£5,000,000) for each individual claim or such higher limit as the Authority may reasonably require (and as required by Law) from time to time;
 - 1.2. public liability insurance adequate to cover all risks in the performance of this Agreement from time to time is held with a minimum limit of ten million pounds (£10,000,000) for each individual claim or such higher limit as the Authority may reasonably require (and as required by Law) from time to time; and
 - 1.3. employers' liability insurance is held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Services which has a minimum limit of indemnity of ten million pounds (£10,000,000) amount as may be required by Law from time to time,

for each individual claim or such higher limit.

SCHEDULE 5 Authority Policies

[If applicable, copies of Authority policies will be made available to the supplier]

[Eg Standing Orders Relating to Contracts /Financial Regulations if applicable]

SCHEDULE 6 Commercially Sensitive Information

[Supplier to list here any information disclosed to the Authority or connected to the Agreement which it considers to be Commercially Sensitive Information under the definition in clause 1.1, stating how long any confidentiality/commercial sensitivity will last.]

Information	Duration of commercial sensitivity