

**THIS AGREEMENT** is made on [REDACTED]

2018

**BETWEEN**

- (1) **NMRN OPERATIONS** a company limited by guarantee and incorporated under number 09988314 with registered charity number 1169061 whose registered office is at National Museum Of The Royal Navy, HM Naval Base, PP66, Portsmouth, Hampshire PO1 3NH (“the **Customer**”); and
- (2) [REDACTED] a company registered in England and Wales with number [REDACTED] whose registered office is at [REDACTED] OR IF A PERSON [REDACTED] of [REDACTED] (“the **Supplier**”).

**BACKGROUND**

The Customer wishes to purchase and the Supplier wishes to supply certain services subject to the following terms and conditions.

**NOW IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Definitions**

In this Agreement the following words and expressions shall have the following meanings:

**Applicable Data Protection Law** means all applicable data protection laws including the General Data Protection Regulation (EU) 2016/679 (“GDPR”), read in conjunction with and subject to the Data Protection Act 2018, in each case as amended, re-enacted or replaced from time to time;

**Charges** the Supplier’s charges for the Services as set out in Schedule 2 and any other sums due to the Supplier under this Agreement;

**Commencement Date** [the date of this Agreement;]

**Confidential Information** all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;

<b>Deliverables</b>	any documents, products and materials to be developed and provided by the Supplier as part of or in connection with the Services, including any products of the Services;
<b>Intellectual Property</b>	all inventions, patents, utility models, designs (including rights relating to semi-conductor topographies), database rights, copyright and related rights, rights in get up and trade marks (in each case whether registered or unregistered), together with all rights to the grant of and applications for the same and including all similar or analogous rights and all other rights in the nature of intellectual and industrial property throughout the world and all future rights of such nature; and
<b>Services</b>	the services described in Schedule 1, including the development and provision of any Deliverables.

## 1.2 Construction

- 1.2.1 In this Agreement, unless otherwise specified or the context otherwise requires:
- (a) words importing the singular only shall include the plural and vice versa;
  - (b) words importing the whole shall be treated as including a reference to any part;
  - (c) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
  - (d) reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term; and
  - (e) references to termination of this Agreement shall include its expiry.
- 1.2.2 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or similar expression shall be construed as illustrative and shall not limit the sense of the words preceding that term.

1.2.3 Headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

### 1.3 Other references

In this Agreement a reference to:

1.3.1 **this Agreement** means this agreement including all Schedules, Annexures, Exhibits and other attachments and recitals to this agreement;

1.3.2 **business day** means a day, other than a Saturday or a Sunday, on which banks are open for business in London;

1.3.3 **parties** means the Customer and the Supplier collectively, and “party” means either of them and their permitted assignees;

1.3.4 **person** includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);

1.3.5 **recorded delivery** means special or recorded delivery (or other “proof of delivery” or “proof of posting” service that Royal Mail may from time to time offer) and

1.3.6 **written** or **in writing** includes any non-transitory form of visible reproduction of words including email but not fax or any form of messaging via social media or text message.

## 2 DURATION

This Agreement shall come into effect on the Commencement Date and, subject to provisions for earlier termination, shall continue unless and until terminated by either party giving to the other at least [ ] months’ notice in writing.

## 3 SERVICES

3.1 The Supplier shall provide and the Customer shall receive the Services on the terms set out in this Agreement.

3.2 The Supplier shall:

3.2.1 co-operate with the Customer in all matters relating to the Services;

3.2.2 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer’s premises. The Customer reserves the right to refuse the Supplier access to the Customer’s premises which is not necessary for the performance of the Services;

- 3.2.3 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
- 3.2.4 obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
  - (a) the Services and their use by the Customer (including use of the Customer's equipment and software in conjunction with the Supplier's equipment and software); and
  - (b) use by the Supplier of the Deliverables and all documents, information and materials provided by the Supplier [or its agents, subcontractors, consultants or employees], including [computer programs, data, reports and specifications.
- 3.3 The Supplier may not charge for the time it spends assessing or responding to a request from the Customer for a change to the Services except with the prior written agreement of the Customer.
- 3.4 The Supplier acknowledges that:
  - 3.4.1 it may be providing the Services for the benefit of any company in relation to which the Customer is a "group undertaking" as defined in section 1161 of the Companies Act 2006 or for the benefit of any unincorporated charity controlled by the Customer or any such company; and
  - 3.4.2 any such company is a third party beneficiary which may enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999.

#### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
  - 4.1.1 use reasonable endeavours to co-operate with the Supplier in matters relating to the Services;
  - 4.1.2 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services;
  - 4.1.3 provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary, in order for the Customer to carry out the Services in a timely manner; and
  - 4.1.4 inform the Supplier of all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises.

- 4.2 Actual or potential non-compliance by the Customer with any of its obligations in this clause and elsewhere shall only relieve the Supplier from performance under this Agreement:
  - 4.2.1 to the extent that it restricts or precludes performance of the Services by the Supplier, and
  - 4.2.2 if the Supplier has notified details to the Customer in writing promptly after the actual or potential non-compliance has come to its attention.

## 5 **PERFORMANCE OF THE SERVICES**

- 5.1 The Supplier shall:
  - 5.1.1 perform the Services with reasonable skill and care and in accordance with generally recognised commercial practices and standards in the industry for similar services;
  - 5.1.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
  - 5.1.3 ensure that the Services conform in all respects and at all times with any specification or description for the Services agreed by the parties and comply with all applicable legislation;
  - 5.1.4 ensure that the Deliverables are of satisfactory quality; and
  - 5.1.5 meet any agreed performance dates and time for performance by the Supplier shall be of the essence of this Agreement.
- 5.2 If the Supplier is in material breach of clause 5.1, the Customer may (without prejudice to any other rights it may have, including termination for material or repeated breach under clauses 14.1.1 and 14.1.2):
  - 5.2.1 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
  - 5.2.2 purchase substitute services from elsewhere;
  - 5.2.3 hold the Supplier accountable for any loss and additional costs incurred; and
  - 5.2.4 have all sums previously paid by the Customer to the Supplier under this Agreement refunded by the Supplier less a reasonable charge for provision of the Services up to the date of the breach.
- 5.3 The Customer's rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the Supply of Goods and Services Act 1982 and any other statute.

5.4 During the term of this Agreement and for a period of one year afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:

5.4.1 public liability insurance with a limit of at least [[ ] million (£[ ]) per claim]; and

5.4.2 professional indemnity insurance with a limit of at least [[ ] million (£[ ]) for claims arising from a single event or series of related events in a single calendar year.

5.5 The provisions of this clause 5 shall extend to any substituted or remedial services provided by the Supplier.

## 6 CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services, the Customer shall pay to the Supplier the Charges. Unless specified in Schedule 2, the Customer shall be under no obligation to reimburse to the Supplier costs and expenses incurred by the Supplier in the performance of the Services.

6.2 Where Services are provided on a time and materials basis:

6.2.1 the Supplier's standard daily fee rates for each person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);

6.2.2 all materials shall be supplied at cost unless specified in Schedule 2;

6.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's personnel unless it has the Customer's prior written consent to do so;

6.2.4 the Supplier shall ensure that the Supplier's personnel complete time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice;

6.2.5 each invoice shall set out the time spent by each of the Supplier's personnel and be accompanied by timesheets; and

6.2.6 the Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve. The Supplier shall allow the Customer and its agents to inspect and take copies of such records at all reasonable times on request.

6.3 All Charges are expressed exclusive of VAT. The Customer shall pay to the Supplier, in addition to the Charges, the amount of VAT (if any) which is properly chargeable by the Supplier to the Customer on or in respect of the Charges.

- 6.4 Unless otherwise specified in Schedule 2, the Charges and any reimbursable costs and expenses shall be invoiced monthly in arrears. Invoices for agreed expenses shall be payable only if accompanied by a detailed breakdown of the expenses and relevant receipts.
- 6.5 Payment of invoices in relation to which there is no bona fide dispute shall be made in full within 90 days of the date of invoice. Payment of invoices in relation to which there is a bona fide dispute shall be made within 45 days of settlement of the dispute. The time for payment of the Charges shall not be of the essence of this Agreement.
- 6.6 the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

## 7 **CONFIDENTIALITY**

- 7.1 Each party shall use the Confidential Information of the other party disclosed to it (by whoever disclosed) only for the proper performance of its duties under the Agreement and shall not without the disclosing party's written consent disclose or permit the disclosure of the Confidential Information except in confidence for the proper performance of its duties under the Agreement to those of its employees, officers and professional advisers who need to have access to it.
- 7.2 The provisions of clause 7.1 shall not apply to Confidential Information that:
- 7.2.1 the receiving party can prove was known to the receiving party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing party;
  - 7.2.2 is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf, provided that this clause 7.2.2 shall only apply from the date that the relevant Confidential Information enters the public domain;
  - 7.2.3 the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence; or
  - 7.2.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure.
- 7.3 If the receiving party has reasonable grounds to believe that the disclosing party is involved in activity that constitutes an offence under the Bribery Act 2010, it may

disclose relevant Confidential Information to the Serious Fraud Office (or other relevant government body) without informing the disclosing party of such disclosure.

- 7.4 Within three (3) days of receipt of a request to do so made at any time and in any event if the Agreement is terminated, the receiving party shall promptly return or destroy (at the option of the disclosing party) all Confidential Information of the disclosing party.

## **8 INTELLECTUAL PROPERTY**

- 8.1 As between the Supplier and the Customer, all Intellectual Property created in the course of the Services (including in the Deliverables) which subsists now or at any time in the future shall be the exclusive property of the Customer. To the extent that any Intellectual Property created in the course of the Services vests in the Supplier, the Supplier assigns (by way of assignment of present and future rights) without payment all such Intellectual Property to the Customer with full title guarantee. If the Supplier is unable to assign such Intellectual Property (because the laws in another country differ from English law and do not permit such assignment), the Supplier shall immediately on request execute all documents that may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant territory. Pending the above assignments and remaining formalities relating to such assignments, the Supplier shall hold all such Intellectual Property on trust for the Customer.

## **9 INDEMNITY**

- 9.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:

9.1.1 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property or other rights relating to or arising out of the use of anything created in the course of providing Services; or

9.1.2 any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

## **10 RISK AND TITLE IN THE DELIVERABLES AND OTHER MATERIALS**

- 10.1 Title to and risk of damage to or loss of the Deliverables shall pass to the Customer on delivery.

10.2 All documents, equipment, drawings, specifications and all other materials and data supplied by the Customer to the Supplier shall, at all times, be and remain as between the Customer and the Supplier the exclusive property of the Customer. They shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.

## 11 **ANTI-BRIBERY AND ANTI-CORRUPTION**

11.1 The Supplier shall:

11.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

11.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

11.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

11.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

11.2 Breach of this clause 11 shall be deemed a material breach.

11.3 For the purpose of this clause 11 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 11 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 12 **DATA PROTECTION**

12.1 Each Party shall comply with its respective obligations under Applicable Data Protection Law and shall not do or omit to do anything which would cause the other Party to breach Applicable Data Protection Law.

12.2 To the extent that any personal data is processed by the Supplier under this Agreement, the Supplier shall:

12.2.1 process the personal data only in accordance with this Agreement and the Customer's lawful instructions;

- 12.2.2 implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
- 12.2.3 only permit the personal data to be processed by persons who are bound by enforceable obligations of confidentiality;
- 12.2.4 remain entitled to appoint third party sub-processors. Where the Supplier appoints a third party sub-processor, it shall, with respect to data protection obligations: (i) ensure that the third party is subject to, and contractually bound by, at least the same obligations as Supplier; and (ii) remain fully liable the Customer for all acts and omissions of the third party;
- 12.2.5 not transfer or otherwise process the personal data outside the European Economic Area (“EEA”) without obtaining the Customer's prior written consent;
- 12.2.6 where consent is granted under clause 12.2.5, the Supplier may only process, or permit the processing, of the personal data outside the EEA under the following conditions: (i) the territory has the benefit of a European Commission finding that it provides adequate protection for the privacy rights of individuals; or (ii) the Supplier has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available; or (iii) the transfer otherwise complies with Applicable Data Protection Law;
- 12.2.7 notify the Customer without delay after becoming aware that it has suffered a personal data breach;
- 12.2.8 at the Customer's cost, permit the Customer (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data processing activities to enable the Customer to verify and/or procure that the Supplier is complying with its obligations under this clause 12
- 12.2.9 assist the Customer in responding to requests from data subjects who are exercising their rights under Applicable Data Protection Law;
- 12.2.10 assist the Customer in complying with its obligations pursuant to Articles 32-36 of the GDPR (or such corresponding provisions of Applicable Data Protection Law), comprising (if applicable): (i) notifying a supervisory authority that the Customer has suffered a personal data breach; (ii) communicating a personal data breach to an affected individual; (iii) carrying out an impact assessment; and (iv) where required under an impact assessment, engaging in prior consultation with a supervisory authority; and
- 12.2.11 unless applicable law requires otherwise, upon termination of this Agreement delete all personal data provided by the Customer to the Supplier.

12.3 Each Party acknowledges that the factual description of the subject-matter, duration of the processing, the nature and purpose of the processing, the type of personal data and the categories of data subjects shall be as set out in this Agreement. To the extent that the foregoing is not set out in this Agreement, the Parties shall keep a separate record the relevant particulars.

### 13 SAFEGUARDING

13.1 Both Parties warrant that they have adopted and will enforce an appropriate safeguarding policy and will make it available to the other Party on request.

13.2 The Supplier shall report immediately to the Customer any safeguarding incidents it becomes aware of in connection with the Services provided under this Agreement and shall also report without delay any other incidents it becomes aware of concerning its own activities (or otherwise) which could have a detrimental effect on the Customer's reputation.

13.3 The Supplier shall, if requested, assist the Customer to prepare any Serious Incident Report required to be filed with the Charity Commission or other report or notification required by another regulator or authority and shall assist the Charity Commission and any other relevant authorities with any subsequent enquiries.

### 14 TERMINATION

14.1 This Agreement may be terminated:

14.1.1 immediately by either party on written notice, if the other is in material breach of an obligation under this Agreement and in the case of any such breach capable of remedy has failed to remedy the breach within a period of 30 days after receipt of written notice to do so;

14.1.2 immediately by either party on written notice, if the other party repeatedly breaches any of the terms of this Agreement in such manner as reasonably demonstrates conduct which is inconsistent with an intention or ability to give effect to the terms of this Agreement.

14.1.3 immediately by either party on written notice:

(a) if the other party is dissolved or struck off the register of companies maintained by Companies House or it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business or it is removed from the Register of Companies or ceases to exist (whether or not capable of re-instatement or re-construction);

(b) if a meeting is convened, a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of the other party except for the purpose of a solvent reconstruction, reorganisation, merger or consolidation;

- (c) if a person becomes entitled to appoint or has appointed a receiver (including fixed charge or court appointed), administrative receiver, liquidator, administrator, manager, insolvency practitioner or similar officer over the whole or a substantial part of the undertaking, property or assets of the other party;
- (d) if the other party stops or suspends, or threatens to stop or 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;
- (e) if a statutory demand is presented against the other party (which is not the subject of a bona fide dispute) and remains unsatisfied for more than 21 days;
- (f) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts or enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other party;
- (g) if notice of intention to appoint an administrator is given by any person (including the other party's directors, the other party or any qualifying floating charge holder as defined in the Insolvency Act 1986), an application is made to court or an order is made for the appointment of an administrator or if an administrator is appointed or any step is taken by any person with a view to placing the other party into administration as defined by the Insolvency Act 1986; or
- (h) if any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in clauses (a) to (g) in relation to the other party.

14.2 For the purposes of this clause 13:

14.2.1 a breach shall be considered capable of remedy:

- (a) if the party in breach can comply with the provision in question in all respects other than as to the time of performance; and
- (b) if time of performance is not of the essence.

14.3 Termination of this Agreement for any reason, whether under this clause 13 or not, shall be without prejudice to the accrued rights and liabilities of the parties on the date of termination.

14.4 Upon the termination of this Agreement for any reason:

14.4.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all materials of the Customer referred to in clause 10.2; and

14.4.2 the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it. In the absence of agreement, the Customer shall pay for any such assistance at the Supplier's standard time and material rates.

## 15 GENERAL

### 15.1 Subcontracting and Assignment

15.1.1 The Supplier may not without the prior written consent of the Customer sub-contract to any other person the performance of any of the obligations undertaken by it.

15.1.2 The Customer may assign, transfer (in whole or in part), charge, declare a trust over or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

15.1.3 The Supplier may not without the prior written consent of the Customer assign, transfer (in whole or in part), charge, declare a trust over or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

### 15.2 Force Majeure

15.2.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent that its performance is interrupted or prevented by any act or omission beyond its reasonable control.

15.2.2 Such delay or non-performance shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for sixty (60) days or more, the party not affected may, at its option and if in its opinion it is reasonable for it to do so, terminate this Agreement by giving fourteen (14) days written notice of such termination to the other party.

### 15.3 Amendments

No amendment of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

#### 15.4 **Waivers and Remedies**

- 15.4.1 Except as otherwise stated in this Agreement, the rights and remedies of each party under this Agreement:
- (a) are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
  - (b) may be waived only in writing and specifically.
- 15.4.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right.
- 15.4.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement.
- 15.4.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

#### 15.5 **Severance**

- 15.5.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - (b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

#### 15.6 **Entire Agreement**

- 15.6.1 This Agreement:
- (a) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement; and
  - (b) supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the parties relating to such subject matter.
- 15.6.2 Each party acknowledges to the other that it has not been induced to enter into this Agreement by, nor has it relied upon, any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other party or any other person save for those contained in this Agreement. Accordingly, each of the parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other party in

respect of any such representation, promise, assurance, warranty or undertaking.

15.6.3 This clause shall not exclude any liability which either party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

15.6.4 In the event of a conflict between any of the terms of this Agreement, the conflict shall be resolved according to the following descending order of priority, (i) the clauses of this Agreement, then (ii) the Schedules.

### **15.7 Survival Of Obligations**

Notwithstanding any provision of this Agreement to the contrary, the provisions of clauses 6, 7, 8, 9, 10, 11, 14.3, 14.4, and 15 and any other clauses which expressly or impliedly survive termination of this Agreement for any reason whatsoever shall continue in full force and effect after termination.

### **15.8 No Partnership/Agency**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### **15.9 Rights of Third parties**

Subject to clause 3.4, a person who is not a party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

### **15.10 Notices**

15.10.1 All notices between the Parties with respect to the Agreement shall be in writing and signed by or on behalf of the Party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or special or recorded delivery (or other "proof of delivery" or "proof of posting" service that Royal Mail may from time to time offer) or (iii) on sending if sent by fax or email (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Agreement or such other address as the addressee may from time to time have notified for the purpose of this condition.

15.10.2 Any notice or communication given under the Agreement shall not be validly served if sent by text messaging via mobile phone.

**15.11 Governing Law**

The Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual claims or disputes) shall be governed by and construed in accordance with the laws of England and Wales.

**15.12 Jurisdiction**

In relation to any legal action or proceedings (a) arising out of or in connection with the Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with the Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

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

Signed for and on behalf of )  
**[The Supplier]:** ) \_\_\_\_\_  
(Signature of director)  
Director

\_\_\_\_\_  
(name of director)

Signed for and on behalf of )  
**NMRN OPERATIONS:** ) \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(name)

## **SCHEDULE 1**

### **Services**

The services to be provided by the Supplier are:

[REDACTED]

## **SCHEDULE 2**

### **Charges and other sums payable**

#### **Charges**

[Details of charges and when payable if not monthly in arrears]

#### **[Costs and expenses]**

*[set out position – or leave out]*

#### **[Increase in charges]**

[The Supplier may with the prior written consent of the Customer review and increase any of the Charges with effect from [each anniversary] of the Commencement Date] by a percentage not greater than the increase in the retail prices index over the 12 month period up to date on which notice of increase is given. The Supplier shall give the Customer written notice of any such increase not less than 30 days before the date that the increase takes effect.]