

**DATED:**

Reference: MSA –

**FRAMEWORK SERVICES AGREEMENT**

between

**Smart Co Consulting Ltd**

and

**XXX**

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This agreement is dated [DATE]

#### Parties

- (1) **Smart Co Consulting Limited**, a company incorporated and registered in England and Wales (registered number 06824790) whose registered office is at 5 New Broadway, Hampton, Middlesex TW12 1JG (Registered in England and Wales ("**Smart Co**") (**Supplier**))
- (2) XXXX incorporated and registered in England and Wales with company number XXX whose registered office is at XXXX (**Customer**)

#### BACKGROUND`

- (A) Smart Co is a specialist provider of Consultancy & IT Implementation Services.
- (B) The Customer wishes to obtain, and Smart Co wishes to provide the Services as detailed in this agreement.
- (C) This agreement sets out the process by which the Customer appoints Smart Co to provide the Services pursuant to a Statement of Work (SoW) and the terms and conditions that will apply to the supply of such Services by Smart Co.

#### Agreed terms

##### 1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement:

**Affiliate:** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

**Applicable Laws:** all applicable laws, statutes, regulation [and codes] from time to time in force.

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

**Business Hours:** the period from [9.00 am to 5.00 pm] on any Business Day.

**Change Order:** means the document to implement changes to a SoW as defined in the Change Control section of this Agreement.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Statement of Work.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Smart Co in connection with the Works.

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

**Deliverables:** any output of the Works to be provided by Smart Co to the Customer as specified in a Statement of Work [and any other documents, products and materials provided by Smart Co to the Customer in relation to the Works (excluding Smart Co's Equipment)].

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-

up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mandatory Policies:** the Customer's business policies and codes as may be attached **OR** listed in 0, as amended by notification to Smart Co from time to time.

**Milestone:** a date or event by which a part or all of the Works is to be completed, as set out in a Statement of Work.

**Reference Charges:** the standard charges for the Services or the framework for calculating them as set out in a Statement of Work.

**Services:** the available services as set out in **Error! Reference source not found.** which Smart Co may perform for the Customer, where so agreed

**Services Worksheet** means the worksheet used to detail the particular Services which have been completed/provided by Smart Co during the period indicated therein and which shall be charged to the Customer in accordance with the Charges and provisions of this Agreement and applicable SoWs.

**SoW Charges:** the sums payable for the Works as set out in a Statement of Work.

**Statement of Work:** a detailed plan, agreed in accordance with clause 3, describing the services to be provided by Smart Co, the timetable for their performance and the related matters listed in the template statement of work set out in Schedule 2.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by Smart Co to the Customer and used directly or indirectly in the supply of the Works, including any such items specified in a Statement of Work but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax or any equivalent sales tax chargeable in the UK or elsewhere.

**Works:** the specific Services which are agreed to be provided by Smart Co under a Statement of Work, including services which are incidental or ancillary to the Works.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.4 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and all subordinate legislation thereto.
- 1.6 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time

including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020 from time to time

1.7 A reference to **writing** or **written** includes fax and email.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. Commencement and duration**

2.1 This agreement shall commence on 12<sup>th</sup> June 2020 and shall continue, unless terminated earlier in accordance with this Agreement. Such notice shall expire on the completion of 36 months or all Statements of Work entered into before the termination date, whichever is the later.

2.2 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 2.1 such notice shall terminate this agreement with 4 calendar months' notice.

2.3 The Customer may procure any of the Services by agreeing a Statement of Work with Smart Co. Smart Co shall provide the Works from the date specified in the relevant Statement of Work.

## **3. Statements of Work**

3.1 Each Statement of Work shall be agreed in the following manner:

- (a) the Customer shall ask Smart Co to provide any or all of the Services and provide Smart Co with as much information as Smart Co reasonably requests in order to prepare a draft Statement of Work for the Services requested;
- (b) following receipt of the information requested from the Customer Smart Co shall, as soon as reasonably practicable either:
  - (i) inform the Customer that it declines to provide the requested Services; or
  - (ii) provide the Customer with a draft Statement of Work.
- (c) if Smart Co provides the Customer with a draft Statement of Work pursuant to clause 3.1(b)(ii), Smart Co and the Customer shall discuss and agree that draft Statement of Work; and
- (d) both parties shall sign the draft Statement of Work when it is agreed.

3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.

3.3 Smart Co may charge for the preparation and scoping of Statements of Work on a time and materials basis in accordance with Smart Co's daily fee rates as set out in Schedule 1 or in a SoW. Any such charges will be agreed between the parties in advance.

3.4 Once a Statement of Work has been agreed and Smart Co has commenced the Works, no amendment shall be made to it except in accordance with the Change Control or Variation sections of this Agreement.

3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

## **4. TUPE on entry**

If TUPE is applicable in relation to the Works under a Statement of Work each party shall be liable for its own legal obligations under TUPE in any given scenario. Smart Co shall not be liable to Customer for any costs or claims beyond that which it is liable for at law.

## **5. Supplier's responsibilities**

5.1 Smart Co shall provide the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects, subject to all assumptions and dependencies at time of preparation of the Statement of Work remaining valid and being fulfilled, respectively.

- 5.2 Smart Co shall use reasonable endeavours to meet the Milestones specified in a Statement of Work, but any such dates shall be estimates only and time for performance by Smart Co shall not be of the essence of this agreement.
- 5.3 Smart Co shall appoint a manager at its own discretion in respect of the Works to be performed under each Statement of Work, such person as may be identified in the Statement of Work. That person shall have authority to contractually bind Smart Co on all matters relating to the relevant Works (including by signing Change Orders). Smart Co shall use reasonable endeavours to ensure that the same person acts as Smart Co's manager throughout the term of the relevant Statement of Work but may replace that person from time to time where at its discretion it deems it reasonably necessary in the interests of Smart Co's business.
- 5.4 Smart Co shall observe all health and safety, data and physical security, or any other formal requirements that apply at any of the Customer's premises which have been formally communicated to it under this Agreement and are set out in 0, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

**6. Customer's obligations**

**6.1 The Customer shall:**

- (a) co-operate with Smart Co in all matters relating to the Works;
- (b) appoint a manager in respect of the Works to be performed under each Statement of Work, such person as may be identified in the Statement of Work. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Works (including by signing Change Orders);
- (c) provide, for Smart Co, its agents, subcontractors, consultants and employees, in a timely manner, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Smart Co to perform the Works, including any such access as is specified in a Statement of Work; the pricing in a Statement of Work shall already take into account all Customer provisions and no additional charges shall be payable by Smart Co in respect of these provisions;
- (d) provide to Smart Co in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Statement of Work or otherwise reasonably required by Smart Co in connection with the Works and ensure that they are accurate and complete ; the pricing in a Statement of Work shall already take into account all Customer provisions and no additional charges shall be payable by Smart Co in respect of these provisions;
- (e) inform Smart Co of all health and safety and security requirements that apply at any of the Customer's premises. The Customer's requirements in this regard are set out in 0.If the Customer wishes to make a change to those requirements which will materially affect provision of the Works, it may do so via the change control procedure set out under the Change Control provisions;
- (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Smart Co to provide the Works, including in relation to any necessary installation or use of Smart Co's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Works are to start;
- (h) where applicable, keep, maintain and insure any of Smart Co's Equipment in accordance with Smart Co's instructions from time to time and not dispose of or use Smart Co's Equipment other than in accordance with Smart Co's written instructions or authorisation; and

- (i) ensure any dependencies and additional responsibilities of the Customer as set out in the relevant Statement of Work are met in full
- (j) not treat any Smart Co personnel and sub-contractors, at any time, as employees or workers of the Customer. Smart Co personnel shall not be subjected to the direction or supervision of the Customer and the Customer shall not attempt to integrate any Smart Co Personnel into the Customer organisation and its internal resources and methods of working for its own employees and workers, including; the provision of email and phone facilities; inclusion on directories, access to company internet and intranet services; set scheduled hours of work; general personnel or HR policies and processes. Nothing within this clause shall affect the obligations of Smart Co personnel to comply with the Customer's policies and stated requirements under this Agreement.

6.2 If Smart Co's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Smart Co shall be allowed an extension of time to perform its obligations equal to the resulting delay caused by the Customer.

## 7. Fees for Solicitation and employment

7.1 The Customer shall be liable for the fee specified below in this section and shall immediately notify Smart Co if, at any time from the date on which any Works commence up to the expiry of 6 months after the completion of such Works, the Customer actively solicits for direct or indirect employment or engagement any person who is, or has been, engaged as an employee, consultant or subcontractor of Smart Co in the provision of those specific Works.

7.2 The fee payable by Customer to Smart Co under this section above shall be calculated as 25% of the then current annual remuneration of Smart Co's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor. Remuneration for this calculation shall include all guaranteed payments and emoluments and any bonus or commissions earned or part earned at that time, pro-rated to an annual equivalent.

## 8. Change control

8.1 Either party may propose changes to the scope or execution of the Works in accordance with the Schedule 3 change control provisions, but no proposed changes shall come into effect until a relevant **Change Order** in the form provided in Schedule 3 has been signed by both parties.

## 9. Charges and payment

9.1 In consideration of the provision of the Works by Smart Co, the Customer shall pay the SoW Charges.

9.2 The SoW shall detail whether the Charges are on a

- (a) time and materials basis, or
- (b) fixed price and deliverables basis; or
- (c) subscription or any other basis.

9.3 The SoW Charges exclude the following, which shall be payable by the Customer monthly in advance, following submission of an appropriate invoice:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Smart Co engages in connection with the Works; and
- (b) the cost to Smart Co of any materials or services procured by Smart Co from third parties for the provision of the Works as such items and their cost are set out in the Statement of Work **OR** approved by the Customer in advance from time to time.

9.4 Smart Co may increase the Reference Charges and any SoW Charges not calculated in accordance with the Reference Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such

increase shall take effect on the first anniversary of the date of this agreement, based on the latest available figure for the percentage increase in the Retail Prices Index. Any increase in the Reference Charges affect the calculation of the SoW Charges for Statements of Work or Change Orders entered into after the date the increase takes effect.

- 9.5 Smart Co shall complete Services Worksheets recording time/ Services / Deliverables/ Milestones, as applicable, in respect of the Works performed and present them in writing to the Customer prior to invoicing the Charges. The Customer shall duly authorise all accurate Services Worksheets, which constitutes the Customer's approval of the Works therein and for Smart Co to invoice the corresponding Charges. If the Customer has any queries or dispute with a Services Worksheet it shall notify Smart Co within 5 working days of submission. If Smart Co receives no such notification or the Customer otherwise fails to authorise within 5 days for any reason, the Services Worksheet is deemed accurate and approved.
- 9.6 If Smart Co's Services fail to meet the minimum standards or specifications which have been expressly agreed by the parties, the Customer shall notify Smart Co, in writing, of the same as soon as reasonably practicable but in any event no later than the five days from receipt of the Services Worksheet as above. Upon being so notified, Smart Co may elect to either a) remedy the failure within an acceptable period of time (to be determined by the parties acting reasonably in the circumstances) or; b) discount the Charges or; c) where there are future Charges agreed in a SoW but yet to be invoiced, issue service credits against future Charges by an appropriate amount relating to those specific part(s) of the Services which are deficient.
- 9.7 Smart Co shall invoice the Customer for the SoW Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Statement of Work. If no intervals or milestones are so specified, Smart Co shall invoice the Customer at the end of each month for Works performed during that month.
- 9.8 Unless otherwise specified in a SoW, the Customer shall pay each invoice submitted to it by Smart Co within 30 days of receipt to a bank account nominated in writing by Smart Co from time to time.
- 9.9 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Smart Co any sum due under this agreement on the due date:
  - (a) the Customer may be charged interest on the overdue sum from the due date until payment of the overdue sum. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
  - (b) Smart Co may suspend part or all of the Works until payment has been made in full.
- 9.10 All sums payable to Smart Co under this agreement:
  - (a) are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
  - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.11 All sums payable to Smart Co for the provision of Services under a SoW shall become due immediately on its termination, despite any other provision. This Clause is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 9.12 Smart Co may, without prejudice to any other rights it may have, set off any liability of the Customer to Smart Co against any liability of Smart Co to the Customer.
- 9.13 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
  - (a) the Customer shall notify Smart Co in writing as soon as reasonably practicable;
  - (b) the Customer shall pay the balance of the invoice which is not in dispute by the due date of the invoice;



- (c) to the extent that the Customer is obliged, following resolution of the dispute, to pay an amount, then Smart Co may charge interest in accordance with this Clause from the original due date until the date of payment;
- (d) once the dispute has been resolved, where either party is required to make a balancing payment (or Smart Co is required to issue a credit note), it shall do so within 30 days.

## 10. Intellectual property rights

### 10.1 In relation to the Deliverables:

- (a) Smart Co and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Customer Materials;
- (b) Smart Co grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables for the purpose of receiving and using the Works and the Deliverables; and

### 10.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all IPRs in the Customer Materials; and
- (b) grants to Smart Co a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the sole purpose of providing the Works to the Customer.

### 10.3 The Parties expressly agree that the fees for the transfer of all IPR ownership to the Customer under this Clause are included with the stated Charges and that no transfer of the IPR shall take place or be deemed to take place unless and until full payment in respect of the corresponding Works has been received by Smart Co.

### 10.4 Smart Co:

- (a) shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall not be in breach of the warranty at this clause to the extent the infringement arises from:
  - (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Works or any Deliverable;
  - (ii) any modification of the Works or any Deliverable, other than by or on behalf of Smart Co; and
  - (iii) compliance with the Customer's specifications or instructions

### 10.5 The Customer warrants that the receipt and use in the performance of this agreement by Smart Co, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party

### 10.6 If either party (**Claiming Party**) wishes to claim liability under these warranties from the other party (**Warranting Party**) under this clause 10, the Claiming Party shall:

- (a) notify the Warranting Party in writing of any claim against it in respect of which it wishes to rely on the warranties (**IPRs Claim**);
- (b) allow the Warranting Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Warranting Party shall obtain the Claiming Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Warranting Party with such reasonable assistance regarding the IPRs Claim as is required by the Warranting Party, subject to reimbursement by the Warranting Party of the Claiming Party's reasonable costs so incurred; and

- (d) not, without prior consultation with the Warranting Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Warranting Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Claiming Party into disrepute.

**11. Compliance with laws and policies**

11.1 In performing its obligations under this agreement, Smart Co shall comply with:

- (a) the Applicable Laws; and
- (b) the Mandatory Policies, provided that the Customer shall give Smart Co not less than 1 months' notice of any change to such policies.

11.2 Changes to the Works required as a result of changes to the Applicable Laws or the Mandatory Policies shall be agreed via the change control procedure set out in the Change control section above.

**12. Freedom of Information Act (FOIA)**

12.1 Smart Co acknowledges that the Customer may be subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

12.2 Smart Co shall and shall procure that any sub-contractor shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:

- (a) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer's request; and
- (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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 Environmental Information Regulations.

12.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this agreement, or any other agreement, whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

12.4 In no event shall Smart Co respond directly to a Request for Information unless expressly authorised to do so by the Customer.

12.5 Smart Co acknowledges that (notwithstanding other provisions of this Agreement) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning Smart Co or the Services in certain circumstances:

- (a) without consulting Smart Co; or
- (b) following consultation with Smart Co and having taken their views into account;
- (c) provided always that where (a) above applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give Smart Co advanced notice, or failing that, to draw the disclosure to Smart Co's attention after any such disclosure.

12.6 Smart Co shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

- 12.7 Smart Co acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Customer may be obliged to disclose it in accordance with this section.

**13. Data protection**

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

**14. Confidentiality**

- 14.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], except as permitted by this section.

- 14.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

**15. Limitation of liability**

- 15.1 Smart Co has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover Smart Co has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss

- 15.2 References in this section to liability include every kind of liability arising under or in connection with this agreement including [but not limited to] liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 15.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

- 15.4 Nothing in this agreement limits any liability which cannot legally be limited, including [but not limited to] liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 15.5 Subject to the above, Smart Co's total liability to the Customer under each SoW shall not exceed £1,000,000. **OR** 2 times the total value of the relevant Statement of Work, whichever is the lower.

- 15.6 In no event shall either Party be liable to the other under this Agreement for indirect, consequential, remote or unforeseeable loss or damage or any loss of profits, sales, anticipated savings, goodwill, or corruption of software, data or information;

15.7 Smart Co has given commitments as to compliance of the Services with relevant specifications under this Agreement. In view of these commitments, any terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

15.8 Unless the Customer notifies Smart Co that it intends to make a claim in respect of an event within the notice period, Smart Co shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## 16. Termination

16.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving [written] notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a reasonable period after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences or is resolved to commence or is subject to; any formal insolvency action or application or court action including, without limitation, the appointment of liquidators or administrators or receivers or entering creditors arrangements or filing any petitions for winding up.

16.2 For the purposes of this section, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement or any of its key obligations. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

Without affecting any other right or remedy available to it, Smart Co may at its discretion terminate this agreement or suspend services in whole or in part with immediate effect, by giving written notice to the Customer if the Customer fails to pay any undisputed amount due under this agreement on the due date for payment.

## 17. Consequences of termination

17.1 In the event of immediate termination of this Agreement under the above section 15:

- (a) all existing Statements at Work shall terminate automatically;
- (b) the Customer shall immediately pay to Smart Co all of Smart Co's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has been submitted, Smart Co may submit an invoice, which shall be payable immediately on receipt;
- (c) each party shall promptly return to the other any of the other's equipment in its possession.

17.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

**18. Force majeure**

- 18.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation: acts of God, flood, drought, earthquake, epidemic, pandemic or other natural disaster; terrorist attack, war, riots, armed conflict, imposition of sanctions, embargos; nuclear, chemical or biological contamination; any law or any action taken by a government or public authority, including without limitation imposing export or import or licence restrictions; collapse of buildings, fire, explosion or accident; labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); interruption or failure of utility services.
- 18.2 Provided it has complied with this section, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.3 The Affected Party shall: as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event with full details of the event and likely impact; and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 18.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 4 weeks' written notice to the Affected Party.

**19. Assignment and other dealings**

- 19.1 The Customer shall not assign or transfer any of its rights and obligations under this agreement without prior written consent (not to be unreasonably withheld) of Smart Co.
- 19.2 Smart Co may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement[, provided that Smart Co gives prior written notice of such dealing to the Customer].

**20. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**21. Entire agreement**

- 21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

**22. Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of a SoW, the provisions of the SoW shall prevail.

**23. Notices: to Smart Co:**

**To Customer:**

**24. Dispute resolution procedure**

24.1 If a complaint or dispute (a "**Dispute**") arises in connection with this Agreement, then, without prejudice to either party's other rights and remedies, Smart Co and the Customer shall operate the following escalation path to attempt to resolve such Dispute:

- (a) the Customer shall provide to the Smart Co Manager details of the Dispute and the Smart Co Manager shall attempt to resolve the Dispute to the satisfaction of the Customer and Smart Co;
- (b) in the event that within the five Working Days of the referral of the Dispute to Smart Co Manager the Customer is not satisfied that the Dispute is being resolved, the Customer may request that the Dispute is referred to Smart Co's director in charge of the business unit to which the Dispute most closely relates and such director shall attempt to resolve such Dispute; and
- (c) in the event that within five Working Days of the referral of the Dispute to Smart Co director the Customer is not satisfied that the Dispute is being resolved, the Customer may request that the Dispute is referred to Smart Co's Chief Executive Officer, who shall attempt to resolve the Dispute to the satisfaction of the Customer and Smart Co.

24.2 If the Dispute is not resolved the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (an "**ADR Notice**") to the other party requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR Notice.

24.3 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

**25. Governing law and jurisdiction**

This agreement shall be exclusively governed by the laws of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.

<b>Signed in agreement by:</b>		
Customer	Signature	Date
Name		
Position		
Smart Co	Signature	Date
Name		
Position		

**Schedule 1 Services**

[LIST OUT THE AVAILABLE SERVICES AND RATES.]

**Schedule 2 Statement of Work**

Works	
Contacts:	Customer manager: Smart Co Manager:
Start date and duration	
Detail of Works:	
Deliverables	
Milestones	
SoW Charges:	
Payment Terms:	
Customers' Equipment and Smart Co Equipment (where applicable)	
<b>Signed by a duly authorized representative of:</b>	
Signed by [NAME OF CUSTOMER REPRESENTATIVE] for and on behalf of the Customer.	
Signed by [NAME OF SUPPLIER REPRESENTATIVE] for and on behalf of Smart Co	

**Schedule 3: Change Control**



### **Change Control Procedures**

- 1.1 Discussion between the Customer and Smart Co concerning a Change shall result in:
  - 1.1.1 no further action being taken; or
  - 1.1.2 a request to change this Agreement by the Customer; or
  - 1.1.3 a recommendation to change this Agreement by Smart Co.
- 1.2 Where discussion between the Customer and Smart Co results in a verbal request to change this Agreement by the Customer or a verbal recommendation to change this Agreement by Smart Co then Smart Co shall, unless otherwise agreed, submit two copies of a Change Control Note signed by Smart Co to the Customer within five Working Days of the date of the request.
- 1.3 Each Change Control Note shall contain:
  - 1.3.1 the information required on the pro forma Change Control Note included at the end of this Schedule;
  - 1.3.2 the date of expiry of validity of the Change Control Note;
  - 1.3.3 a sequential number allocated by Smart Co; and
  - 1.3.4 provision for signature by the Customer and Smart Co.
- 1.4 Upon receipt of the Change Control Note the Customer may:
  - 1.4.1 request further information; or
  - 1.4.2 arrange for two copies of the Change Control Note to be signed by or on behalf of the Customer and return one of the copies to Smart Co; or
  - 1.4.3 notify Smart Co of the rejection of the Change Control Note.
- 1.5 Should the Customer request further information in accordance with 1.4.1 above then Smart Co shall provide such information as soon as reasonably practicable and in any event within five Working Days. The request for information and the information provided in response shall be deemed to be part of the Change Control Note. The Customer may approve or reject the Change Control Note upon receipt of new information in accordance with 1.4.3 above.
- 1.6 A Change Control Note signed by the Customer and by Smart Co shall constitute an amendment to this Agreement.

### PRO FORMA CHANGE ORDER

In the event the parties agree to amend any SoW or Works details, they will both complete and sign this Change Order, which will then form part of the Agreement:

Date of Change Control: .....

Details of Change		
Reasons for Change		
Impact of change (if any)		
Term (if applicable)		
Price £ (if applicable)		
Payment terms (if applicable)		
Requestor	Name Organisation	
<b>Signed by:</b>		
Customer	Signature	Date
Name		
Position		
Smart Co	Signature	Date
Name		
Position		



**Schedule 4: Mandatory Policies of Customer**

- [Modern Slavery and Human Trafficking Policy].
- [Corporate and Social Responsibility Policy].
- [Data and Privacy Policy].
- [Ethics and Anti-Bribery Policy].
- [Expenses Policy].
- [Health and Safety Policy].
- [Security Policy].

## Schedule 5: Data Protection Agreement

Between (1) CUSTOMER and (2) Smart Co

### BACKGROUND

- A The parties have identified a requirement to share the Personal Data for the Permitted Purpose
- B The parties have decided to create a framework for the ad-hoc sharing of the Personal Data.
- C The parties have agreed certain technical and organisational measures to ensure that the Personal Data is shared in a secure manner and managed as set out in Section 1 of Part B of this Agreement.

THE PARTIES AGREE:

### Definitions

1 In this Agreement:

<b>Controller</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Data Protection Laws</b>	means any applicable law relating to the processing, privacy and use of Personal Data, as applicable to either party or the Services, including: <ul style="list-style-type: none"> <li>(a) the Data Protection Act 2018 or the GDPR;</li> <li>(b) any laws which implement any such laws;</li> <li>(c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and</li> <li>(d) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);</li> </ul>
<b>Data Protection Supervisory Authority</b>	means any regulator, authority or body responsible for administering Data Protection Laws;
<b>Data Subject</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>GDPR</b>	means the General Data Protection Regulation (EU) 2016/679;
<b>International Organisation</b>	has the meaning given in the GDPR;
<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time;
<b>Personal Data Breach</b>	has the meaning given in the GDPR;
<b>Processing</b>	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processing</b> , <b>processed</b> , and <b>processes</b> shall be construed accordingly);
<b>Processor</b>	has the meaning given in applicable Data Protection Laws from time to time
<b>Personal Data</b>	means Personal Data received from or on behalf of Customer, or otherwise obtained in connection with the performance of Smart Co's obligations under this Agreement; and
<b>Sub-Processor</b>	means any agent, subcontractor or other third party engaged by Smart Co (or by any other Sub-Processor) for carrying out any processing activities in respect of the Personal Data.

1.1 Unless otherwise expressly stated in this Agreement Smart Co's obligations and the Customer's rights and remedies under this Agreement are cumulative with, and additional to, any other provisions of this Agreement.

## **2. Compliance with data protection laws**

The parties agree that the Customer is a Controller and that Smart Co is a Processor for the purposes of processing Personal Data pursuant to this Agreement. Smart Co shall ensure its Sub-Processors and each of Smart Co Personnel shall, at all times comply with all Data Protection Laws in connection with the processing of Personal Data and the provision of the Services and shall not by any act or omission cause Customer (or any other person) to be in breach of any of the Data Protection Laws. Nothing in this Agreement relieves Smart Co of any responsibilities or liabilities under Data Protection Laws.

## **3. Contractor indemnity**

Smart Co shall indemnify and keep indemnified Customer against:

- 3.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by Smart Co of its obligations under this Agreement, except and to the extent that, such liabilities have resulted directly from Customer 's instructions and all amounts paid or payable by Smart Co to a third party which would not have been paid or payable if Customer 's breach of this Agreement had not occurred.

## **4 Instructions**

Smart Co shall only process (and shall ensure Smart Co Personnel only process) the Personal Data in accordance with Section 1 of Part B of this Agreement, this Agreement and Customer 's written instructions from time to time except where otherwise required by applicable law (and in such a case Smart Co shall inform Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest). Smart Co shall immediately inform Customer if any instruction relating to the Personal Data infringes or may infringe any Data Protection Law.

## **5 Security**

Smart Co shall at all times implement and maintain appropriate technical and organisational measures to protect Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access. Such technical and organisational measures shall be at least equivalent to the technical and organisational measures set out in Section 2 of Part B of this Agreement and shall reflect the nature of the Personal Data.

## **6 Sub-processing and personnel**

- 6.1 Smart Co shall not permit any processing of Personal Data by any agent, subcontractor or other third party (except its own employees that are subject to an enforceable obligation of confidence with regards to the Personal Data) without the prior specific written authorisation of that Sub-Processor by Customer and only then subject to such conditions as Customer may require
- 6.2 Smart Co shall ensure that access to Personal Data is limited to the authorised persons who need access to it to supply the Services.
- 6.3 Smart Co shall, prior to the relevant Sub-Processor carrying out any processing activities in respect of the Personal Data, appoint each Sub-Processor under a binding written contract containing the same obligations as under this Agreement in respect of Personal Data that is enforceable by Smart Co and ensure each such Sub-Processor complies with all such obligations.
- 6.4 Smart Co shall remain fully liable to Customer under this Agreement for all the acts and omissions of each Sub-Processor and each of Smart Co Personnel as if they were its own.
- 6.5 Smart Co shall ensure that all persons authorised by Smart Co or any Sub-Processor to process Personal Data are reliable and:
  - 6.5.1 adequately trained on compliance with this Agreement as applicable to the processing;

- 6.5.2 informed of the confidential nature of the Personal Data and that they must not disclose Personal Data;
- 6.5.3 subject to a binding and enforceable written contractual obligation to keep the Personal Data confidential; and
- 6.5.4 provide relevant details and a copy of each agreement with a Sub-Processor to Smart Co on request.

## **7 Assistance**

- 7.1 Smart Co shall (at its own cost and expense) promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as Customer may require in relation to the fulfilment of Customer 's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws).
- 7.2 Smart Co shall (at its own cost and expense) provide such information, co-operation and other assistance to Customer as Customer reasonably requires (taking into account the nature of processing and the information available to Smart Co) to ensure compliance with Customer 's obligations under Data Protection Laws, including with respect to:
  - 7.2.1 security of processing;
  - 7.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
  - 7.2.3 prior consultation with a Data Protection Supervisory Authority regarding high risk processing;and
  - 7.2.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or any complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including (subject in each case to Customer 's prior written authorisation) regarding any notification of the Personal Data Breach to Data Protection Supervisory Authorities and/or communication to any affected Data Subjects.

## **8 Data subject requests**

Smart Co shall (at no cost to Customer) record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to Customer which relate (or which may relate) to any Personal Data promptly (and in any event within three days of receipt) and shall not respond to any

without Customer 's express written approval and strictly in accordance with Customer 's instructions unless and to the extent required by law.

## **9 International transfers**

Smart Co shall not process and/or transfer, or otherwise directly or indirectly disclose, any Personal Data in or to countries outside the EU or EEA or to any International Organisations without the prior written consent of Customer (which may be refused or granted subject to such conditions as Customer deems necessary).

## **10 Records**

Smart Co shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of Customer . Such records shall include all information necessary to demonstrate its and Customer 's compliance with this Agreement, the information referred to in Articles 30(1) and 30(2) of the GDPR and such other information as Customer may reasonably require from time to time. Smart Co shall make copies of such records available to Customer promptly (and in any event within three days) on request from time to time.

## **11 Audit**

Smart Co shall (and shall ensure all Sub-Processors shall) promptly make available to Customer (at Smart Co's cost) such information as is reasonably required to demonstrate Customer 's and Smart Co's compliance with their respective obligations under this Agreement and the Data Protection Laws, and allow for, permit and contribute to audits, including inspections, by Customer (or another auditor mandated by Customer ) for this purpose at Customer 's request from time to time. Smart Co shall provide (or procure) access to all relevant premises, systems, personnel and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior

notice (not being more than two Business Days) and provide and procure all further reasonable co-operation, access and assistance in relation to any such audit or inspection.

## **12 Breach**

- 12.1 Smart Co shall promptly (and in any event within 24 hours) notify Customer if it (or any of its Sub-Processors or Smart Co Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Personal Data.
- 12.2 Smart Co shall promptly (and in any event within 24 hours) provide all information as Customer requires to report the circumstances referred to in paragraph 12.1 (above) to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

## **13 Deletion/return**

- 13.1 Smart Co shall (and shall ensure that each of the Sub-Processors and Smart Co Personnel shall) without delay (and in any event within 3 days), at Customer's written request, either securely delete or securely return all the Personal Data to Customer in such form as Customer reasonably requests after the earlier of:
  - 13.1.1 the end of the provision of the relevant Services related to processing of such Personal Data; or
  - 13.1.2 once processing by Smart Co of any Personal Data is no longer required for the purpose of Smart Co's performance of its relevant obligations under this Agreement, and securely delete existing copies (except to the extent that storage of any such data is required by applicable law and, if so, Smart Co shall inform Customer of any such requirement).

## **14 Cost**

Smart Co shall perform all its obligations under this Agreement at no cost to Customer.

## **15 Termination**

- 15.1 Customer may terminate this Agreement for convenience on not less than 25 Business Days prior written notice to the other.
- 15.2 Either party may terminate this Agreement at any time by giving notice in writing to the other party if:
  - 15.2.1 the other party commits a material breach of this Agreement and such breach is not remediable;
  - 15.2.2 the other party commits a material breach of this Agreement which is not remedied within 5 Business Days of receiving written notice of such breach;
  - 15.2.3 any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled.
- 15.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if that other party:
  - 15.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 15.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the terminating party reasonably believes that to be the case;
  - 15.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 15.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 15.3.5 has a resolution passed for its winding up
  - 15.3.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it
  - 15.3.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within five Business Days of that procedure being commenced
  - 15.3.8 has a freezing order made against it;



15.3.9 is subject to any recovery or attempted recovery of items supplied to it by a contractor retaining title to those items;

- 15.4 The right of a party to terminate the Agreement shall not apply to the extent that the relevant procedure is entered into for the purpose of solvent amalgamation, reconstruction or merger (where applicable) where the solvent amalgamated, reconstructed or merged party agrees to adhere to this Agreement.
- 15.5 If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate this Agreement under this clause, it shall immediately notify the other party in writing.
- 15.6 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination.

## **16 Consequences of termination and exit**

- 16.1 After the expiry of this Agreement

16.1.1 Smart Co will either return or delete the Personal Data in accordance with Clause

- 16.2 Any clauses in this Agreement that are expressly stated to apply after the expiry of this Agreement shall continue in full force and effect after such expiry.

## **17 Assignment**

No party may assign any of its rights under this Agreement, in whole or in part, without the other's prior written consent (such consent not to be unreasonably withheld or delayed).

## **18 Succession**

This Agreement shall be binding upon, and ensure to the benefit of, each of the parties, their respective personal representatives and their respective successors in title.

## **19 Variation**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

## **20 Entire agreement**

- 20.1 The parties agree that this Agreement and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

## **22 Notices**

- 22.1 Notices under this Agreement shall be in writing and sent to a party's registered office as set out on the first page of this Agreement or email address set out below. Notices may be given, and shall be deemed received:

22.1.1 if delivered personally, at the time of delivery; or

22.1.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or

22.1.3 if sent by fax, on the day following transmission (subject to receipt of the appropriate confirmation of transmission); or

22.1.4 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the day two days after posting; or

22.1.5 if sent by airmail, five days from the date of posting.

- 22.2 This clause does not apply to notices given in legal proceedings or arbitration.

## **23 No partnership or agency**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

## **24 Severance**

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

## 25 Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

## 26 Compliance with law

Each party shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to them and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform their obligations under or in connection with this Agreement.

## 27 Conflicts within agreement

If there is a conflict between the terms contained in the main body of this Agreement and the terms of the schedules, appendices or annexes to this Agreement, the terms of the main body of the Agreement shall prevail.

## 28 Counterparts

- 28.1 This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original and such counterparts taken together shall constitute one and the same agreement.
- 28.2 Each party may evidence their signature of this Agreement by transmitting by email a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement.

## 29 Language

- 29.1 The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.
- 29.2 If this Agreement and any document relating to it is translated, the English version shall prevail.

## 30 Third party rights

No one other than a party to this Agreement shall have any right to enforce any of its provisions.

## 31 Governing law

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

AGREED by the parties on the date set out at the head of this Agreement

Signed by and on behalf of Smart Co	
Signed by and on behalf of Customer	

## PART B - Data processing and security details

**Section 1—Data processing details:** Processing of the Personal Data by Customer under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Section 1.

**Subject-matter of processing:** Personal data of

**Duration of the processing:** As required for employment processing and statutory obligation

**Nature and purpose of the processing:** The nature of the processing means any operation such as collection, storing and processing as required for employment and statutory obligation.

**Type of Personal Data:** Name, Address, Email Address, Telephone Number, DOB, NI Number, Limited Company details and documents, Bank Details, Right To Work/Passport, CV, References.

**Categories of Data Subjects:** Supplier / Contractor

## **Section 2—Minimum technical and organisational security measures**

Without prejudice to its other obligations, the Customer shall implement and maintain at least the following technical and organisational security measures to protect the Personal Data:

- Head Office in London houses IT infrastructure;
- Have RDP server access available to limited users to access systems;
- H/O infrastructure sits behind configured firewalls;
- User accounts have security by means complex passwords which are changed regularly;
- User account access restrictions also in place;
- Email and SharePoint provisioned via hosted Microsoft 365;
- Database provided by First Choice Software and is located on site.

In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Personal Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise processed, the Customer shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.