

# **Terms and Conditions for Professional Services**

**Brexit advice and consultancy to  
GHE**

**Dr Steve Webster, Delta-  
innovation Ltd.**

States   
of Jersey

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**THIS AGREEMENT** is made on 02 November 2018 and shall expire on 31 December 2018

- (1) The Delegated Accounting Officer of Department of Growth, Housing and the Environment (the Authority), is Daniel Houseago) whose registered office is situated at Cyril Le Marquand House, Jersey, JE4 8UL.

AND

- (2) Dr Steve Webster of Delta-innovation Ltd, (the Contractor) whose registered office is situated at Equipoise House, Bedford, MK40 3LE.

Signed for and on behalf of  
The Contractor

Signed:



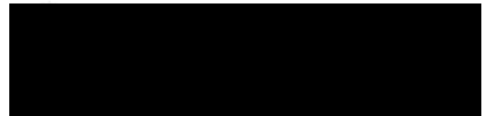
Name: S. J. WEBSTER

Position: DIRECTOR

Date: 01/11/2018

Signed for and on behalf of  
The Authority

Signed:



Name: DAN HOUSEAGO

Position: GROUP DIRECTOR, ECONOMIC  
PARTNERSHIPS

Date: 2/11/2018

## 1. Definitions and Interpretation

1.1. In these terms and conditions the following words shall have the following meanings:-

- (a) "Authority" means the Beneficiary placing the Order or, if a Third Party Beneficiary places the Order, the Beneficiary to which the Third Party Beneficiary supplies goods and/or services;
- (b) "Beneficiary" means any or all of –
  - a. the States of Jersey and all agencies thereof;
  - b. any statutory successor to any of the above;
  - c. and "Beneficiaries" shall be construed accordingly;
- (c) "Authority's Authorised Representative" means the person or persons appointed by the States of Jersey to act on its behalf for the purpose of managing the Contract;
- (d) "Commencement Date" means 01 September 2018;
- (e) "Commercially Sensitive Information" means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:
  - a. which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or
  - b. that constitutes a trade secret.
- (f) "Commercially Sensitive Information Schedule" means the Schedule containing a list of the Commercially Sensitive Information.
- (g) "Confidential Information" means all information which is obtained by the Consultant from the Authority pursuant to the Contract;
- (h) "Consultant" means the person, firm or company to whom this Contract is issued to by the Authority
- (i) "Consultant's Authorised Representative" means the person appointed by the Consultant to act on its behalf for the purpose of managing the Contract;
- (j) "Contract" means the contract between the Authority and the Contractor comprising the Order, these terms and conditions and schedules hereto, the Specification, and for the avoidance of doubt all other terms, conditions or

warranties other than any terms, conditions or warranties implied by law in favour of the Authority or the Beneficiaries are excluded from the contract between the Authority and the Contractor unless expressly accepted in writing by the Authority;

- a. "Expiry Date" means then end date of the Contract subject to such extension as may be awarded in accordance with these conditions;
  - b. "FOIL" means the Freedom of Information (Jersey) Law 2011 and any subordinate legislation made under this Law from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
  - c. "Information" has the meaning given under Article 1 of the Freedom of Information (Jersey) Law 2011.
- (k) "Parties" shall mean both the Authority and the Consultant;
- (l) "Rates/Fees" means the financial remuneration for the Services as detailed in Schedule 2 to the Contract;
- (m) "Requests for Information" shall have the meaning set out in the FOIL or any apparent request for information under the FOIL.
- (n) "Services" means the services to be supplied by the Consultant as described in Schedule 3;
- (o) "Specification" means the description, standards, methods and techniques to be used in executing the Services as specified in Schedule 3;
- (p) "Tender" means the Consultant's tender start dated;
- (q) "Term" means 01 September 2018 – 31 December 2018;
- (r) "Working Day" means Monday to Friday excluding bank holidays.
- (s) Where appropriate, the singular includes the plural and vice versa. Words importing one gender include all other genders.
- (t) Persons include companies and all other legal entities.
- (u) Unless otherwise stated, any reference to a provision of any legislation is a reference to that provision as amended, extended or re-enacted by any subsequent legislation.
- (v) The headings in these terms and conditions are for convenience only and will not affect its interpretation.

## **2. Appointment and Length of Appointment**

**2.1.** The Authority hereby appoints the Consultant to provide the Services from the Commencement Date of 01/09/2018 to 31/12/2018 or in accordance with Schedule 3.

## **3. Consultant's Obligations**

**3.1.** The Consultant shall provide the Services -

- (a) with reasonable care and skill;
- (b) in accordance with the Specification;
- (c) in accordance with all written instructions of the Authority's Authorised Representative;
- (d) with due regard to all relevant health and safety legislation and code of practice;
- (e) so as to serve and promote the interests of the Authority.

**3.2.** The Consultant will act upon all written instructions issued by the Authority's Authorised Representative as soon as reasonably practicable, including but not limited to any variation in relation to an addition, modification, deferment, omission, reduction from or substitution of any of the Services.

**3.3.** The Consultant will ensure that the Services are carried out by appropriately qualified personnel who are acceptable to the Authority's Authorised Representative and will replace immediately any person who the Authority's Authorised Representative reasonably requires replacing.

**3.4.** No provision of the Contract will operate to exclude or restrict the Consultant's liability under statute or common law for any goods that the Consultant supplies, or has supplied, for use on, or incorporation in to the Services.

**3.5.** Any sub-consultants directly appointed by the Consultant will be under the direct control and supervision of the Consultant at all times and the Consultant will be and remain liable under the Contract for all work subcontracted by him and for acts defaults or neglects of any sub-contractor his agents and servants.

**3.6.** The Consultant will keep the Authority's Authorised Representative fully and promptly informed in writing of all matters in relation to the Services which may have programme, cost or contractual implications.

- 3.7. The Authority and Consultant agree and acknowledge that the Authority has relied on, and will be relying on, the Consultant's expertise in carrying out the Services and also on the accuracy of all statements made and advice given by the Consultant in connection with the Services.
- 3.8. The Consultant shall comply at its own expense with any statutory requirements and industry standards.
- 3.9. The Authority will provide the Consultant with all the facilities, resources, information and access to the Authority's premises that are reasonably necessary to carry out the Services.
- 3.10. The Consultant's Authorised Representative shall be empowered to act on behalf of Consultant and shall be available for consultation with the Authority's Authorised Representative at all reasonable times.
- a) Unless expressly agreed in any work order, the Consultant shall be entitled to assume that all information given to it in the course of providing the Services is complete, accurate and not misleading (unless it is evident on the face of such information and without further enquiry that it is incomplete, inaccurate or misleading) and the Consultant shall not audit or verify any such information.
- b) In respect of the Services performed by the Consultant under each work order, the Consultant shall have no responsibility to update any deliverable for events occurring after completion of the Services (which, unless provided otherwise herein, will be on the date on which the final deliverable is delivered or signed), nor to monitor its continuing relevance or suitability for your purposes.
- c) In formulating its conclusions, the Consultant may discuss ideas with the Authority orally or show it drafts of deliverables for its comment. The Consultant does this on the basis that it will not rely on any drafts or oral comments or advice unless their content is finalised and confirmed to the Authority in writing in the final deliverables. Accordingly, the Consultant will not be responsible if the Authority chooses to act, or refrains from acting, on the basis of any drafts or oral comments or advice. If the Authority wishes to rely or act on oral comments, or advice, it should let the Consultant know in order that the Consultant may deal with them in the final version of any deliverables. Further, deliverables prepared by the Consultant and any other advice and recommendations the Consultant provides to the Authority are for the Authority's exclusive use and must be used solely for their stated purpose. They must not be used for any other purpose and, save where publication is agreed by the parties or permitted by law, they must not be recited or referred to in any document, copied or made available (in whole or

in part) to any other person. Notwithstanding the foregoing, if the Consultant provides oral advice to the Authority pursuant to any work order for "ad hoc" advice, it shall confirm that advice to the Authority in writing within 1 working day of such ad hoc oral advice having been given. If the Consultant, acting reasonably, considers that such oral advice requires an internal quality assurance process and/or that further work is necessary before definitive advice can be given, it shall inform the Authority accordingly within 1 working day of such oral advice having been given, and provide the Authority with a timescale to give written confirmation of that advice.

#### **4. Price and Payment**

- 4.1. In order for the invoice to be valid, it will have to be certified correct by the Authority's Authorised Representative upon receipt, and in line with the payment profile detailed in Schedule 2.
- 4.2. The Authority will pay the Consultant for each contractually correct invoice (within thirty (30) days following receipt).
- 4.3. In the event of the Authority's Authorised Representative disputing any invoices, the Authority will have liability to pay only the undisputed invoices until such a time as the dispute is resolved.

#### **5. Expenses**

- 5.1. The Consultant will only be entitled to be reimbursed for reasonably incurred expenses (as detailed within Schedule 2) that have been submitted to, and approved by, the Authority's Authorised Representative. Approved expenses will be reimbursed within thirty (30) days following receipt by the Authority.
- 5.2. Supporting evidence must be provided with expense claims and the Authority reserves the right not to pay the approved incurred expenses if relevant supporting evidence is not provided.

#### **6. Termination**

- 6.1. If at any time after three calendar months after the Commencement Date of the Contract, either party considers that the continuance of the Contract is not in its best interest, it may terminate the Contract by giving the other party one month's notice in writing.
- 6.2. The Authority's Authorised Representative may, by notice in writing to the Consultant, terminate the Contract with immediate effect without liability for compensation or damages, in the following occurrences -
  - (a) if the Consultant refuses or neglects to execute the Services or any part of them, or commits any breach of any obligation imposed upon it by this



Contract, or refuses or neglects within a reasonable time to comply with any instructions given to it by the Authority's Authorised Representative; or

- (b) in the event of any substantial change in legal status, or of circumstances occurring which will materially affect the contractual relationship between the parties, or the rights of the Authority to sue, or otherwise recover monies due, or enforce any other right arising under the Contract; or
- (c) if at any time progress on any part of the Services appears to the Authority's Authorised Representative to be unnecessarily delayed by any cause within the reasonable control of the Consultant and such delay and the cause thereof if capable of remedy will not be remedied within seven days (7) after an instruction in writing requiring the same is given to the Consultant by the Authority's Authorised Representative; or
- (d) if the Consultant through death or incapacity or being a firm owing to its dissolution is unable to provide the Services hereby agreed; or
- (e) if the Consultant refuses or neglects to comply with the Authority's Equal Opportunities Policy or commits any breach of any obligation imposed on it by such Policy or refuses or neglects within reasonable time to comply with any instructions given to it by the Authority in regard to such Policy; or
- (f) if the Consultant fails to maintain its professional indemnity insurance or such insurance becomes unavailable during the provision of the Services; or
- (g) if the Consultant, being an individual or a partnership, has a petition for bankruptcy presented to the courts becomes bankrupt, or makes a composition, or arrangement with his creditors, or has a proposal in respect of himself or his firm for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 as amended by the Enterprise Act 2002 or the equivalent Jersey legislation, or where an application for bankruptcy is made against any individual partner of the firm, or where the partnership has a provisional liquidator receiver or manager of its business duly appointed, or where the partnership is dissolved save for the purposes of bona fide reconstruction on terms acceptable to the Authority, or where a substantial change in the partners occurs; or
- (h) if the Consultant, being a company, has a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986 or the equivalent

Jersey legislation, or has an application made under the Insolvency Act 1986 or equivalent Jersey legislation to the Court for the appointment of an administrator, or has a petition for a winding-up order made or except for the purposes reconstruction a resolution for voluntary winding-up passed, or professional liquidator, or receiver or manager of its business or undertaking duly appointed, or has an administrative receiver, as defined in the Insolvency Act 1986 or equivalent Jersey legislation, appointed or possession taken by or on behalf of the holders of any debentures secured by a floating charge or has a lien enforced or arrestment order made against it or served on any of its debtors on behalf of any of its creditors or commits any act of insolvency as defined in the Insolvency Act 1986 or equivalent Jersey legislation.

6.3. The Authority reserves the right under the Contract to seek recourse against the Consultant in the event of professional negligence or wilful misconduct in the Consultant's performance of the Services.

6.4. In the event of the Authority terminating the Contract in accordance with clause 6.1. the Consultant will be entitled to payment for work completed with a percentage of the fee apportioned in relation to work in progress.

## **7. Conflict of Interest**

7.1. The Consultant may without the prior written consent of the Authority's Authorised Representative undertake other consultancy assignments which do not conflict with its obligations under the Contract.

## **8. Confidentiality**

8.1. The Parties shall not either during the term of the Contract or at any time after its termination disclose the Confidential Information to any person not authorised by the Authority's Authorised Representative (in the case of Confidential Information it has provided to the Consultant) and the Consultant's Authorised Representative in the case of Confidential Information it has provided to the Authority) to receive it and shall not utilise any Confidential Information to the detriment or prejudice of the party who has provided it to the other.

8.2. All correspondence, documents, data and other property or information provided to the Consultant by the Authority or as a result of its work under the Contract shall be regarded as the Authority's property. On termination hereof the Consultant shall make arrangements to deliver to the Authority's Authorised Representative all such correspondence, documents, data and other property and information remaining in its possession or under its control as soon as practicable and will certify that all such items have been so delivered and that no such items remain in its possession.

Notwithstanding the foregoing, the Consultant shall be entitled to retain one copy of any such Confidential Information so it is in compliance with its legal, regulatory or compliance obligations, provided that it keeps such information confidential in accordance with the terms of the Contract.

**8.3.** The obligations in clauses 8.1. and 8.2. above shall not apply to -

- (a) any information in the Parties' possession which comes into the public domain other than by breach of the Contract;
- (b) any information which was in the public domain at the time of the communication to the Parties; or
- (c) any information which was in the Parties' possession, required by law to be disclosed, or known prior to disclosure by one party to the other.
- (d) Which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIL pursuant to Part 5 of that law.

## **9. Announcements**

**9.1.** The Consultant shall not publish any literature, deliver any lecture, or make any communication to the press relating to the business of the Authority or on any matter with which the Authority may be concerned unless it has previously and on each occasion obtained the prior written permission of the Authority's Authorised Representative. The copyright in any publication or report by the Consultant relating to the business of the Authority or to any matter with which the Authority may be concerned shall belong to the Authority absolutely and beneficially, unless otherwise agreed in writing in any particular case.

## **10. Risk, Indemnity and Insurance**

**10.1.** The Consultant shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Consultant, or any other loss which is caused directly or indirectly by the Consultant's negligence or breach of its contractual obligations in relation to the Services. The indemnity in the foregoing sentence shall, except in respect of death or personal injury, be subject to the limitation of the Consultant's liability set out in clause 10.2. below.

**10.2.** In relation to each work order under which the Consultant performs the Services, the aggregate liability of either the Consultant or the Authority for any breach of contract, default, act, omission or negligence in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other, whether arising under contract, tort (including negligence) or otherwise in connection with this Contract shall in no event exceed the greater of £1 million (one million pounds sterling) or 10 times the fees payable to the Consultant under that work order, subject to an aggregate liability cap for the Contract in respect of all work orders entered into by the Parties of £10 million. In no event shall either the Consultant or the Authority be liable to the other for indirect or consequential loss or damage or loss of profits, business, revenue, goodwill or anticipated savings. Nothing in this Contract shall exclude or restrict any liability arising from fraud or other liabilities that cannot lawfully be limited or excluded.

**10.3.** Without prejudice to any other rights or remedies which the Authority may possess, the Consultant warrants that it will have and keep in force (for a minimum of 6 (six) years following the expiration or earlier termination of the Contract) professional indemnity insurance and public liability insurance and if applicable employer's liability insurance to cover any claim made against it by the Authority in relation to the Services including (but not limited to) any loss arising out of the breach of clause 3.

**10.4.** The Consultant shall upon the request of the Authority provide a broker's verification that the Consultant has and is maintaining adequate professional indemnity insurance to cover its liabilities under this Contract.

## **11. Intellectual Property**

**11.1.** The Consultant hereby assigns with full title guarantee to the Authority all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed by a on behalf of the Service Provider in the provision of the Services ("the Products") provided that such assignment shall not include items not prepared or developed for the purposes of this Contract.

**11.2.** The Consultant shall provide the Authority with copies of all materials relied upon or referred to in the creation of the Products with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.

**11.3.** The Consultant shall have no right (save where expressly permitted under the Contract or with the Authority's prior written consent) to use any

trade marks, trade names, logos or other intellectual property rights of the Authority.

- 11.4.** The Consultant shall indemnify The Authority against all loss damage costs and expenses for which The Authority is or becomes liable as a result of any infringement or alleged infringement by the Supplier of any third party's intellectual property rights.

## **12. Work Orders**

- 12.1.** For each engagement to carry out the Services that the Authority may commission from time to time under the Contract where the fee payable to the Consultant is expected to be greater than £5,000, the Authority and Consultant will enter into a work order in the form set out in Schedule 2. Such work order will be a separate and independent contract from the Contract. The Consultant will perform the Services under each such work order subject to the terms set out in the Contract. Any Services to be carried out by the Consultant where the fee is expected to be less than £5,000 shall be provided by the Consultant to the Authority under another, separate, work order covering such advice and also ad hoc advice, which shall be for a 12 month period. Having regard to the individual circumstances of the Services to be performed under individual work orders, additional and/or amended terms may apply to such Services, which will be agreed between the Consultant and the Authority and set out in the relevant work order. Examples of services which will require additional clauses include modelling services and taxation advice.

## **13. Licensing**

- 13.1.** The Consultant agrees to arrange on behalf of the Authority, licences for use by the Authority, at the expense of the Consultant, of any items provided by the Consultant or on its behalf in performance of the Services and which remain the intellectual property of third parties.

## **14. Notices**

- 14.1.** Any notice required to be given under the Contract may be given by being personally delivered at or sent by pre-paid first class post to the address of the relevant party as given in the Contract or such other address as shall be notified in writing to the other party in accordance with this clause, or by email to the email address provided or by fax if appropriate. In the case of personal delivery, delivery shall be deemed to be the day of such delivery, and in the case of post delivery shall be deemed to have been effected two Working Days after the date of posting.

## **15. Sub Contracts**

**15.1.** The Consultant shall not, without the prior written consent of the Authority's Authorised Representative enter into any sub-contract for the performance of any part of the Contract.

## **16. Assignment**

**16.1.** The Consultant shall not assign or otherwise transfer the Contract or any of its rights or obligations hereunder, whether in whole or in part, without the prior written consent of the Authority's Authorised Representative.

## **17. Third Party Rights**

**17.1.** Notwithstanding any other provision herein contained, nothing in the Contract confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts on any person who is not a party to the Contract.

## **18. Tax Requirements**

**18.1.** The Consultant shall bear exclusive responsibility for discharging all income tax and social security contribution liabilities arising out of or incidental to its performance of the Services under the Contract. In the event that the Authority is held liable for any such payments then the Consultant shall compensate the Authority in full on demand for any liability which it suffers in connection with them.

## **19. Status of the Consultant as an Independent Contractor**

**19.1.** During the term of the Contract, where the Consultant is an independent contractor he/she will not be the servant of the Authority.

**19.2.** In such capacity the Consultant shall bear exclusive responsibility for the payment of his national insurance contributions as a self-employed person and for discharge of any income tax (or other tax) liability arising out of remuneration for his work performed by him under the Contract.

## **20. Force Majeure**

**20.1.** Notwithstanding any other provision of these conditions neither party shall be liable for any failure or delay in the performance of the Contract caused by means beyond their reasonable control including without limitation, strikes (except by the Consultants staff), lock outs, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, fire, flood and storm.

**20.2.** If the Consultant is unable to perform the Services and obligations under the Contract as a direct result of a force majeure event, that party shall give to the other written notice of the inability stating the reason in question within two (2) days of the inability arising. The operation of the Contract shall be suspended during the period (and only during the period) in which the reason continues save in respect of confidentiality. Forthwith upon the reason ceasing to exist the party relying on it shall give written notice to the other of this fact whereupon the Contract shall continue in operation. If the reason continues for a period of ten (10) days, the party not claiming relief under this clause 20 may terminate the Contract forthwith upon giving written notice of such termination to the other party.

## **21. Cost**

**21.1.** Each of the parties shall pay any costs and reasonable expenses incurred by it in connection with the Contract.

## **22. Variation**

**22.1.** Any amendment to the Contract shall only be valid if made in writing and signed by the parties hereto.

## **23. Severance**

**23.1.** If any provision of the Contract shall be declared invalid, unenforceable or illegal by the Courts of any jurisdiction to which it is subject such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of the Contract.

## **24. Audit and Accounts**

**24.1.** For the purpose of the examination and certification of the Beneficiary's accounts the Comptroller and Auditor General and the Beneficiary or its auditors may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanation as he considers necessary in relation to the Contractor which is not a function exercisable under this contract.

## **25. Entire Contract**

**25.1.** The Contract embodies the entire understanding of the parties in respect of the matters contained or referred to in it and is the only subsisting Contract between the Authority and the Consultant relating to the Services.

25.2. There are no promises, terms, conditions or obligations either oral or written expressed or implied other than those contained in the Contract.

25.3. The Contract does not create a partnership.

## **26. Waiver**

26.1. The failure of a party hereto to exercise or enforce any right conferred upon it under the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the enforcement thereof at any time.

## **27. Health and Safety**

27.1. The Consultant acknowledges that it has been supplied with a copy of the Authority's rules regarding health and safety. The Consultant agrees to comply with these rules, and any additional rules made known to the Consultant from time to time by the Authority together with all applicable statutory rules and regulations regarding these matters. The Authority will be responsible for procuring that its employees and agents also comply with these rules and regulations.

27.2. Either party shall notify the other as soon as practicable of any health and safety hazards of which it becomes aware.

## **28. Data Protection**

28.1. The Parties shall comply with the Data Protection (Jersey) Law 2005 (as amended or replaced) or any applicable equivalent legislation in the Consultants jurisdiction (if outside Jersey) and Schedule 6 of this Contract.

28.2. The provisions of this clause 28 and Schedule 6 will continue in perpetuity.

28.3. The Consultant is to ensure that its sub-consultants or consultants are bound by the requirements of this clause 28 and Schedule 6.

## **29. Cyber Essentials Scheme / Information Security Management System**

29.1. The Consultant acknowledges that the Authority is required to reduce the levels of cyber security risk in its supply chain and seeks compliance where appropriate to Cyber Essentials Security/Information Security System model.

29.2. If requested to do so by the Authority, before entering into this Contract the Consultant will, within 15 Working Days of the date of this



Contract, develop (and obtain the Authority's written approval of) a Security Management Plan and an Information Security Management System. After Authority approval the Security Management Plan and Information Security Management System will apply during the Term of this Contract. Both plans will comply with the Authority's security policy and protect all aspects and processes associated with the delivery of the Services .

- 29.3.** The Consultant will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Consultant will help the Authority to mitigate any losses and restore the Services to operating efficiency as soon as possible.

Responsibility for costs will be at the:

- 29.4.** Consultant's expense if the Malicious Software originates from the Consultant software or the Service Data while the Service Data was under the control of the Consultant, unless the Consultant can demonstrate that it was already present, not quarantined or identified by the Authority when provided

- 29.5.** Authority's expense if the Malicious Software originates from the Authority software or the Service Data, while the Service Data was under the Authority's control

### **30. Freedom of Information**

- 30.1.** The Consultant acknowledges that the Authority is subject to the requirements of the FOIL and shall assist and cooperate with the Authority (at the Consultant's expense) to enable the Authority to comply with Information disclosure requirements.

- 30.2.** The Consultant shall and shall procure that its sub-consultants shall:

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within 5 Working Days (or

such other period as the Authority may specify) of the Authority requesting that Information; and

- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Article 13 of the FOIL or any subordinate legislation made under the Law.

**30.3.** The Authority shall be responsible for determining at its absolute discretion whether Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIL;
- (b) is to be disclosed in response to a Request for Information, and

in no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Authority.

**30.4.** The Consultant acknowledges that the Authority may, acting in accordance with the FOIL be obliged under the FOIL to disclose Information:-

- (a) without consulting with the Consultant, or
- (b) following consultation with the Consultant and having taken its views into account.

**30.5.** The Consultant shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure for the term of this Agreement or as otherwise agreed and shall permit the Authority to inspect such records (including but not limited to audit records of disposed information) as requested from time to time.

**30.6.** The Consultant acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 8(c).

### **31. Ethics and Anti-Corruption**

**31.1.** The Consultant warrants to the Authority that all financial statements and invoices rendered to the Authority, under the Contract, properly reflect the fact that of all activities and transactions made or undertaken by the Consultant in providing the Services may be relied upon as being complete and accurate in any further recording or reporting by the Authority.

**31.2.** The Consultant must not offer to any person any gift to persuade or reward them for doing or not doing anything relating to the award of the Contract or any other contract with the Authority. Nor must the Consultant offer any gift to any person to persuade or reward them for special treatment to the Consultant once the Contract has been awarded.

**31.3.** If the Consultant does offer any gift or reward or commit any offence under the Corruption (Jersey) Law 2006 or Part 7 of the States of Jersey Law 2005, the Authority will have the right to determine the Contract and recover from the Consultant any losses arising from the termination.

## **32. Equal Opportunities**

**32.1.** The Consultant will not unlawfully discriminate within the meaning and scope of any statutory instrument, byelaw or legislation of Jersey relating to equal opportunities which may be in force or come into force until certification of completion of the whole of the Services by the Authority's Authorised Representative.

**32.2.** Without prejudice to the generality of sub-clause 33(a) the Consultant is to comply with the Authority's Equal Opportunities Policy, a copy of which has been provided to the Consultant by the Authority.

**32.3.** The Consultant shall take all necessary steps to secure the observance of the provisions of sub-clauses 33(a) and (b) above by all its employees, servants, agents or sub-consultants employed in the execution of this Contract.

**32.4.** The Consultant shall respond to any request from the Authority for information on approved questions, as that term is defined in the States of Jersey Law 2005.

## **33. Jersey Living Wage**

**33.1.** The Consultant will ensure that all Relevant Staff employed or engaged by the Consultant are paid an Equivalent Hourly Wage which is equal to or exceeds the Jersey Living Wage.

**33.2.** The Consultant will ensure all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the Jersey Living Wage.

**33.3.** The Consultant will provide to the Authority such information concerning the Jersey Living Wage and the performance of its obligations under this Clause 31 as the Authority may reasonably require and within the deadlines it reasonably imposes.

#### **34. Precedence of Contract Documents**

34.1. The Contract comprise the individual work order, these terms and conditions, the Specification and the Tender. In the event of conflict these documents will be construed in the following order of precedence, the first having the highest precedence -

- These Terms and Conditions;
- The Specification/ Scope of Work
- The States of Jersey Purchase /Work Order
- The Tender/ Request for Quotation

#### **35. Governing Law**

35.1. The Contractor submits to the jurisdiction of the Jersey courts and agrees that the Contract is to be governed and construed according to Jersey law.

35.2. For the avoidance of doubt, nothing in this Contract shall prevent either party from complying with all applicable legislation in force from time to time in relation to the Services.

#### **36. Dispute Resolution**

36.1. During any dispute, including a dispute as to the validity of the Contract, it is mutually agreed that the Consultant shall continue its performance of the provisions of the Contract (unless the Authority or any Beneficiary requests in writing that the Consultant does not do so).

36.2. If any dispute arises out of the Consultant (other than in relation to any matter in which the Authority has a discretion which is exercised in accordance with the terms of the Contract and which shall be final and conclusive) the Parties will use all of their respective reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve such dispute the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate mediation a Party shall give notice in writing (a "Mediation Notice") to the other Party requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator in the event that the Parties shall not be able to agree such appointment by negotiation. The mediation shall commence within 28 days of the Mediation Notice being served. Neither

party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour. Thereafter paragraph 14 of the CEDR Model Mediation Procedure (or the equivalent paragraph of any other model mediation procedure agreed by the Parties) will apply. Neither Party will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Consultant will cooperate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

### **37. Timescales**

- 37.1.** Both parties shall perform all their obligations under the Contract in accordance with timescales specified in the Schedules and / or work order. In particular, the Consultant shall provide the Services prior to or on the delivery dates in Schedule 1.
- 37.2.** In the event that the Consultant fails due to its default to fulfil an obligation by the date specified in Schedule 1 for such fulfilment, the Consultant shall, at the request of the Authority and without prejudice to the Consultant's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the Consultant.
- 37.3.** In the event that any obligation of the Consultant specified in the Schedule 1 or Works Order is delayed as a result of a Default by the Authority, then the date associated with the relevant obligation(s) as specified in Schedule 1 or the Works Order (and the dates similarly associated with any subsequent obligations specified) shall be amended by a period of time equal to the period of such Authority Default (or such other period as the parties agree); and both parties shall use all reasonable endeavours to mitigate the impact of such delay to and to recover any resultant delay to the performance of the services.

## **Schedule 1 – Particular Conditions**

**(Note: Relevant clause numbers are shown in brackets)**

<b>1</b> Public Liability insurance (clause <b>8</b> (b))	<b>£1,000,000 (one million pounds)</b>
<b>2</b> Professional indemnity insurance (clause <b>8</b> (b))	<b>£1,000,000 (one million pounds)</b> save for claims in relation to specialist areas including, but not limited to, asbestos, pollution or contamination which shall be <b>£2,000,000 (two million pounds)</b> and may be subject to an annual aggregate limit.
<b>3</b> Parent company guarantee	<b>NOT required</b>

**Schedule 2- Fee & Payment Information**



### **Schedule 3 – Timelines / Project Plan / Scope of Work**

**Scope:** To undertake work within GHE relating to the impacts of and mitigations around Brexit including but not limited to:

- Providing input to meetings with the DIT regarding WTO extension;
- Contributing to the Brexit CRR Risk Assessment and narrative to accompany the D1ND analysis;
- Providing input to stakeholder meetings with agricultural and fisheries businesses;
- Providing input into relevant meetings with HMG within the UK;
- Providing input to Jersey's internal and external discussions and planning on changes in the trading environment resulting from the UK's departure from the EU;
- Providing ongoing input to the broader GHE Directorate's preparations for the UK's departure from the EU.

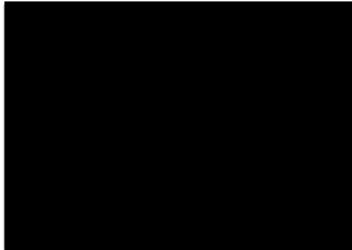
**Timelines:** The proposed work will take place during the months of September - December 2018



**Schedule 4 - Key Personnel & Addresses for Notices**

Dr Steve Webster

Delta-innovation Ltd,



**Schedule 5 - Invitation to tender & Contractors Response (incl. clarifications)**

Not used.

## **Schedule 6 – Data Protection**

### **INTRODUCTION AND SCOPE**

(A) With effect from 25 May 2018 (“the Effective Date”) save where expressly stated in this Data Processing Schedule, the obligations set out in the Data Protection (Jersey) Law 2018 shall repeal and replace the Data Protection (Jersey) Law 2005.

(B) Notwithstanding the terms of this Contract, except where indicated otherwise, from the Effective Date, the obligations of the Data Protection (Jersey) Law 2018 shall apply to the relationship between the parties and these additional terms shall take precedence over the terms in the Contract where they conflict.

### **1. DEFINITIONS AND INTERPRETATIONS**

1.1 The definitions in this Schedule are the same as set out in the Data Protection (Jersey) Law 2018 (the “DP18”) and in addition these following definitions shall apply:

“Privacy and Data Protection Requirements” all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, if relevant, DP18, the GDPR, the Regulation of Investigatory Powers (Jersey) Law 2005, the Electronic Communications (Jersey) Law 2000, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in Jersey or the United Kingdom, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in Jersey, England and Wales or a European Union judicial authority.

### **2. GENERAL**

2.1 Both Parties warrant that they will comply with their respective obligations under the Privacy and Data Protection Requirements and the terms of this Schedule.

2.2 For the purpose of this Contract, both Parties warrant to undertake the obligations relevant to them as Controller or Processor as defined under the DP18.

2.3 The Authority is the [Controller / Processor] and the Consultant is the [Controller / Processor].

2.4 Both Parties shall comply any registration requirements under the DP18 and will only process personal data as necessary to fulfil the terms of this Contract and for the duration of this Contract.

### **3. NATURE OF THE DATA**

3.1 The subject-matter of the processing of personal data covers the following types/categories of data:

- Name
- Address
- Contact information (e.g. phone number, email address)
- Bank details
- Insurance details
- Children
- Vulnerable adults
- Criminal Records or a person's criminal record or alleged criminal activity
- Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership
- Data revealing genetic or biometric data that is processed for the purpose of uniquely identifying a natural person
- Data concerning health
- Data concerning a natural person's sex life or sexual orientation
- \_\_\_\_\_

3.2 Persons affected (data subjects)

The data subjects whose personal data will be processed includes:

- Employees
- Consultants
- Members of the public
- \_\_\_\_\_

#### **4. CONTROLLER OBLIGATIONS**

4.1 The Controller warrants and represents that all instructions provided to the Processor in relation to the processing of personal data are lawful and shall as a minimum include:

- (a) The nature and purpose of the processing of the personal data;
- (b) The types of personal data to be processed; and
- (c) The categories of data subjects to whom the personal data relates.

4.2 The Controller shall only provide instructions to the Processor that are in accordance with the terms of the Contract and this Schedule. Such instructions shall be limited to the subject matter of providing professional services under the Contract.

4.3 The Controller acknowledges it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to the Processor to process personal data for the purposes of providing professional services as set out in the Contract.

4.4 The Parties acknowledge and accept that processing of third country or other international organisation's resident personal data shall be lawful only if and to the extent that either:

- (a) an adequacy decision is in place under Article 45 of the GDPR;
- (b) there are appropriate safeguards in place that meet the requirements of Article 67 of DP18; or
- (c) the transfer falls within the exceptions set out in Schedule 3 DP18.

#### **5. PROCESSOR OBLIGATIONS**

5.1 The Processor shall:

- (a) only carry out processing of personal data in accordance with the Controller's documented instructions, including where relevant for transfers of third country resident personal data or to an international organisation, in which case the Processor shall inform the Controller of that legal requirement (unless prohibited by law), and shall immediately inform the Controller if, in

the Processor's opinion, any instruction given by the Controller to the Processor infringes Privacy and Data Protection Requirements;

(b) notify the Controller without undue delay of any requests received from a Data Subject exercising their rights under Privacy and Data Protection Requirements and, taking into account the nature of the processing, assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, with fulfilling its obligations in respect of Data Subject rights under the Privacy and Data Protection Requirements, including responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of personal data, or for restriction of processing or objections to processing of personal data;

(c) take all security measures required in accordance with the Privacy and Data Protection Requirements (including where relevant, Article 21 and 22 DP18), and at the request of the Controller provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the personal data against unauthorised or unlawful processing and accidental loss; and detect and report personal data breaches without undue delay;

(d) where relevant for the processing of third country or other international organisation's resident personal data and taking into account the nature of the processing and the information available to the Processor, use all measures to assist the Controller in ensuring compliance with the Controller's obligations to;

- i. keep personal data secure (Article 21 DP18);
- ii. notify personal data breaches to the Authority (Article 20 DP18);
- iii. advise data subjects when there has been a personal data breach (Article 20(6) DP18);
- iv. carry out data protection impact assessments (Article 16 DP18); and
- v. consult with the Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 17 DP18).

(e) without undue delay, inform the Controller of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss,

alteration, unauthorised disclosure of, or access to, the personal data transmitted, stored or otherwise processed. The Processor accepts and acknowledges that the Controller shall direct in its sole discretion, any and all steps and measures taken to remedy a breach by the Processor under the Privacy and Data Protection Requirements, including but not limited to any communications with the Authority. The Processor agrees not to act in any way upon such disclosure without the prior written consent of the Controller;

(f) make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this Contract and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller as set out in paragraph 5 below; and

(g) in addition to the confidentiality obligations contained within the Contract, ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5.2 On expiry or termination of the Contract, the Processor shall immediately cease to use personal data and shall arrange for its safe return or destruction as shall be required by the Controller (unless otherwise prescribed by law).

## **6. AUDIT RIGHTS**

6.1 Upon the Controller's reasonable request, the Processor agrees to provide the Controller with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this Contract) which will enable it to verify and monitor the Processor's compliance with its data protection and security obligations under the terms of this Contract, within 14 days of receipt of such request, and to notify the Controller of the person within the Processor's organisation who will act as the point of contact for provision of the information required by the Controller. For this purpose, the Processor may present up-to-date attestations, reports or extracts thereof from independent bodies (e.g. external auditors, internal audit, the data protection

officer, the IT security department or quality auditors) or suitable certification by way of an IT security or data protection audit;

- 6.2 Where, in the reasonable opinion of the Controller, such documentation is not sufficient in order to meet the obligations of Article 21 DP18, the Controller will be entitled, upon reasonable prior written notice to the Processor and upon reasonable grounds, to conduct an on-site audit of the Processor's premises used (save for domestic premises), solely to confirm compliance with its data protection and security obligations under this Schedule
- 6.3 Any audit carried out by the Controller will be conducted in a manner that does not disrupt, delay or interfere with the Processor's performance of its business. The Controller shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the Contract.
- 6.4 The Processor shall be entitled to carry out an audit of the Controller on reciprocal terms as those set out in clauses 6.1, 6.2 and 6.3.

## **7. USE OF SUB-PROCESSORS**

7.1 The Processor will only engage a sub-processor with the prior consent of the Authority in writing and the Controller shall not unreasonably withhold their consent. If the Controller has a reasonable basis to object to Processor's use of a sub-processor, the Controller shall notify the Processor promptly in writing within ten (10) days after receipt of the Processor's notice. Sub-processing does in particular not include ancillary services, such as telecommunication services, postal / transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment.

7.2 Where the Processor uses a third party and where they are acting as a sub-processor in relation to the personal data the Processor shall:

- (a) in relation to third country or other international organisation's resident personal data, enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Schedule to the extent applicable to the nature of the services provided by such sub-processor, in particular providing sufficient guarantees to implement appropriate technical



and organisational measures in such a manner that the processing will meet the requirements of the Privacy and Data Protection Requirements;

(b) shall remain liable for any act or omission of a sub-processor that does not comply with the data protection obligations as set out in this Schedule; and

(c) where required by law, the Processor shall inform the Controller of any intended changes concerning the addition or replacement of a sub-processor with access to personal data and give the Controller the opportunity to object to such changes.

## **Schedule 7 Cyber Essentials Scheme Requirements**

Information on Cyber Essentials Scheme can be found at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526200/ppn\\_update\\_cyber\\_essentials\\_0914.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526200/ppn_update_cyber_essentials_0914.pdf)

Any Cyber Essential system development by the Consultant should also comply with the government's '10 Steps to Cyber Security' guidance, available at

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

## Schedule 8 Change Control Template

**Title of Change**  
**Change Request No**

**Initiator Details**

Name

Contact No

Date Raised

**Summary of Change Required (including benefits)**

Additional information may be supplied and attached to this form

Attachments:

**Reason for Change**

Type of Change

Priority (H, M, L)

Date Required

**Technical Impact Analysis**

Author

Contact No

Date

**Assumptions**

**Risks and likely effect of the change on the Authority resources and the provision of the Services**

**Title of Change**

**Attachments**

**Cost of changes**

**Impact on charges**

**Impact on service levels**

**Contract changes required**

**Timetable for implementation of change**

**Authorisation for Implementation of Change**

**To be completed by authorised signatories of both parties**

Authority Name	Authority Title	Date
Signature		

Supplier Name	Supplier Title	Date
Signature		

**COMMERCIALLY SENSITIVE INFORMATION SCHEDULE**

*[insert commercially sensitive information schedule as appropriate]*

