

**Order Form – Ref: Rushcliffe Borough Council
Waste Investigations Support & Enforcement Limited
("WISE", "we", "us" or "our")**


This Agreement contains our confidential and sensitive information and is being disclosed in confidence. None of this Agreement may be reproduced or further disclosed without our prior written consent, save to the extent required by law (that for the avoidance of doubt includes the Freedom of Information Act 2000 ("the Act") and the Environmental Information Regulations 2004 ("the Regulations") or to take professional advice from a professional adviser who is under strict duties to keep this Agreement confidential).

About us	
Name	Waste Investigations Support & Enforcement (WISE)
Registered company no.	12894391
Registered address	Unit 17, Uveco Business Centre, Wallasey, Wirral, CH45 6UH
Contact	[REDACTED]
Contact details	[REDACTED]

About the Customer	
Customer	Rushcliffe Borough Council (RBC)
Registered company no.	N/A
Registered address	Rushcliffe Borough Council, Rushcliffe Arena, Rugby Road, West Bridgford, Nottingham, NG2 7YG
Customer contact	[REDACTED]
Customer contact details	[REDACTED]
Site Name and address	Rushcliffe Borough Council, Rushcliffe Arena, Rugby Road, West Bridgford, Nottingham, NG2 7YG
Site Contact Name	[REDACTED]
Site Contact Position	[REDACTED]
Site Contact Phone Num	[REDACTED]
Site Contact Email	[REDACTED]
Invoice Address	Rushcliffe Borough Council, Rushcliffe Arena, Rugby Road, West Bridgford, Nottingham, NG2 7YG
Invoice Contact Name, Email and Phone number	as above

Services to be supplied

This customer detail and service sets out the working arrangements between RUSHCLIFFE BOROUGH COUNCIL and WISE for the management of Fixed Penalty Notices to offenders in contravention of the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005, the Highways Act 1980 and Anti-Social Behaviour Act 2003 and any other contraventions as agreed

Services Start Date	5 th January 2021																																																																								
Assignment Instruction	Please see Details of Service																																																																								
Initial Services Term	12 Months pilot																																																																								
Extended Services Term	One further period of 12 months																																																																								
Notice period	Either Party may give written notice to the other Party, not later than 60 days before the end of the Initial Services Term or the relevant Extended Services Term, to terminate this Agreement at the end of the Initial Services Term or the relevant Extended Services Term, as the case may be.																																																																								
Equipment Welfare	WISE will supply all officers with full uniform, encrypted body worn cameras (BWC) and electronic digital assistants (EDA). Rushcliffe Borough Council to provide a parking permit for each vehicle supplied by WISE. This will ensure the investigating officers can park legally whilst investigating dumped waste complaints.																																																																								
	<p>Hours:</p> <table border="1"> <thead> <tr> <th>Grade</th> <th>Hours</th> <th>Mon</th> <th>Tue</th> <th>Wed</th> <th>Thu</th> <th>Fri</th> <th>Sat</th> <th>Sun</th> </tr> </thead> <tbody> <tr> <td>2 x Waste Enforcement Officers</td> <td>08.00 -1800</td> <td>20</td> <td>20</td> <td>20</td> <td>10</td> <td>10</td> <td>10</td> <td>10</td> </tr> <tr> <td>Operational Support Team</td> <td>08.00 -1700</td> <td>9</td> <td>9</td> <td>9</td> <td>9</td> <td>9</td> <td>0</td> <td>0</td> </tr> <tr> <td colspan="2">Daily Hours</td> <td>29</td> <td>29</td> <td>29</td> <td>19</td> <td>19</td> <td>10</td> <td>10</td> </tr> <tr> <td colspan="7"></td> <td>Weekly Hours</td> <td>145</td> </tr> <tr> <td>Bank Holiday Arrangements</td> <td colspan="8">operated as per 7-day rota. Any changes will be agreed in advance. Christmas Day / New Years day no operation</td> </tr> <tr> <td>Induction</td> <td colspan="8">Dates and time to be confirmed</td> </tr> <tr> <td>Training</td> <td colspan="8">Law and Enforcement Training to be delivered by WISE</td> </tr> </tbody> </table> <p>*Please note officers hours will vary as requested in accordance to the volume of complaints received and an agreed deployment strategy*</p> <p>Duties: Investigating submitted dumped waste complaints, investigating fly posting complaints, completion of routine business waste inspections and issuing Fixed Penalty Notices for agreed offences throughout the Ward Areas of Rushcliffe Borough Council.</p>	Grade	Hours	Mon	Tue	Wed	Thu	Fri	Sat	Sun	2 x Waste Enforcement Officers	08.00 -1800	20	20	20	10	10	10	10	Operational Support Team	08.00 -1700	9	9	9	9	9	0	0	Daily Hours		29	29	29	19	19	10	10								Weekly Hours	145	Bank Holiday Arrangements	operated as per 7-day rota. Any changes will be agreed in advance. Christmas Day / New Years day no operation								Induction	Dates and time to be confirmed								Training	Law and Enforcement Training to be delivered by WISE							
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Rates	<p>Revenue Share</p>  <p>As example – All income owed to RBC from November 2020, December 2020 and January 2021, will be paid on or before the 10th working day in February 2021 and so on.</p> <p>All payments will be made to RBC using a self-billing VAT invoice.</p> <p>The Council is not liable should WISE not meet the expectations indicated; the agreement is based on nil cost to the Council.</p> <p>No fees are to be applied to the Council.</p>																																																																								
Fee increases / Decreases	N/A																																																																								
Liability Limit	£10,000,000																																																																								

Service
Requirements /
Details Of Service

General:

1. WISE will, on behalf of the Rushcliffe Borough COUNCIL investigate Environmental Crimes and issue Fixed Penalty Notices for offences relating to:
 - Section 33 Environmental Protection Act 1990.
 - Section 34 Environmental Protection Act 1990.
 - Section 46 Environmental Protection Act 1990.
 - Section 47 Environmental Protection Act 1990.
 - Section 87 Environmental Protection Act 1990.
 - Section 108 Environmental Protection Act 1990.
 - Section 43 Anti-Social Behaviour Act 2003.
 - Any other offences with the agreement of both parties.
2. Day to day management of the Service will be through nominated Rushcliffe Borough Council and WISE representatives. The named Officers are;

RBC – [REDACTED]

WISE – [REDACTED]
3. Operational Meetings will be held on a monthly basis to review practices and agree deployment strategies. This will be attended (In person / Video Call) by [REDACTED]
4. Two meetings per annum will be attended, The Environment Portfolio Holder, [REDACTED]
5. The initial services term will be delivered in accordance to the Council's Environmental Enforcement Strategy and guiding principles and WISE's Operating Procedures.
6. The 'key activities' of the initial services term will be to provide a visible focus across the borough of Rushcliffe to address the Council's key strategic priorities in tackling and deterring the following;
 - Fly Tipping.
 - Unauthorised transfer of Household Waste.
 - Presentation of Domestic Waste
 - Duty of Care Compliance of Commercial Waste
 - The Storage of Commercial Waste Receptacles.
 - Displaying adverts without permission (Fly Posting)

In terms of their day to day activities, WISE Waste Enforcement Officers will investigate every received complaint within a 24 hour period and ensure they visit every ward in the Borough a minimum of once each week, often undertaking more visits than this. All visits will be recorded by GEO fence technology and the Council will have access to this real time information.

7. Press releases and further marketing concerning the initiative will be agreed between both parties before release.
8. Any staff appointed for the pilot will be the sole responsibility of WISE and all staff related issues will be dealt with by WISE. WISE staff will be made aware of the Council's Employee Code of Conduct and other relevant policies to ensure they conduct themselves accordingly and recognise they are representing Rushcliffe Borough Council. They will be made aware their actions reflect on the Council.

9. Should Rushcliffe Borough Council have any concerns about the conduct/behaviour or attitude of any staff supplied by WISE for this pilot Rushcliffe Borough Council have the right to request that the individual is removed from the contract and WISE will comply accordingly following suitable investigations.
10. Quotas will not be set re numbers of FPNs to be issued and all staff are salaried.
11. Either party can terminate the arrangement by giving 30 days' notice if not satisfied for any reason.
12. All pilot payments by WISE will be made to Rushcliffe Borough Council, on a quarterly basis via BACS payment in arrears (10th day of the following month) Payments to be made quoting; Income code – TBC

Account Name:	
Account Number:	
Sort Code:	
Reference Number	
Email Address	

The Council has the discretionary authority to cancel any FPNs issued.
 WISE will honour all exemptions in the Council Enforcement Policy.

RUSHCLIFFE BOROUGH COUNCIL(Community Safety and Licensing Team) will:

1. Provide identity cards and relevant authorisation to all WISE Waste Enforcement Officers working to the direction of Rushcliffe Borough Council.
2. Ensure all dumped waste and fly posting complaints are sent to the WISE Operational Support Team each morning.
3. Ensure that all intelligence received from council officers, elected members, residents is logged as a complaint and then passed to WISE. This will ensure all complaints are correctly logged.
4. Provide a key point of contact for key Rushcliffe Borough Council departments (cleansing, commercial waste, bulky collections, business rates, council tax) to support WISE Waste Enforcement Officers when investigating offences.
5. Provide WISE with data on previous complaints, dumped waste hotspots and business who currently have a Waste Transfer Agreement with Rushcliffe Borough Council.
6. With support from WISE the Council may take prosecution proceedings for offences whereby the alleged offender has failed to discharge their liability from prosecution for the offence by paying an FPN.

WISE will:

1. Provide fully trained, Security Industry Authority (SIA) licence holding or fully vetted to DBS standard Enforcement Officers or equivalent as required to meet any legislation changes.
2. Ensure that the officers provided are of good character, polite, confident and able to converse successfully with all sections of society.

3. Provide a Waste Enforcement Team, supported by an Admin Team (Ops Support team) to investigate all received complaints.
4. Ensure that the Waste Enforcement Officers are fully trained in the techniques for investigations and issuing Fixed Penalty Notices, including the correct use of evidence pocket books (paper or electronic) to evidential standards and have a working knowledge of the relevant sections of PACE, interview techniques to obtain and record evidence. All officers to provide Section 9 Witness statements as part of prosecution file presentation.
5. Ensure that all received dumped waste complaints are investigated and Rushcliffe Borough Council cleansing team are informed to remove all dumped waste within 48hrs from receipt of complaint.
6. Provide all Waste Enforcement Officers with body worn cameras and ensure they are familiar with the protocol for their correct use, the footage gained from which is downloaded and retained for a period until either the fine from a Fixed Penalty Notice is discharged or the matter has been dealt with and concluded by a Court.
7. Provide a case management system to process FPNs, letters, complaints, prosecution files, BWC, ID verification, payment systems and full suite of management reports. This equipment and access to back up management system will be provided to key Rushcliffe Borough Council personnel to undertake enforcement following the same procedures. BWC will be operated in line with the Surveillance Camera Code of Practice.
8. Provide the Key Stakeholders of RUSHCLIFFE BOROUGH Council with "read only" access to WISE's systems in order to monitor the pilot.
9. Provide uniform and PPE agreeable to RUSHCLIFFE BOROUGH COUNCIL for all Waste Enforcement Officers. This must be worn at all times when completing enforcement activities.
10. Ensure that all Enforcement Officers uniforms are clean and tidy and they present themselves to the public in a smart and professional manner and their conduct at all times is beyond reproach.
11. Provide means of communication for all patrolling officers and supervisors (Mobile Telephones not radio's)
12. Provide transport for Enforcement Officers in order that all areas of the Borough can be covered.
13. Ensure Waste Enforcement Officers carry out enquiries to ensure accurate identity details have been obtained from alleged offenders by using WISE's ID Verification System facility before issue of FPN. Or contacting local Police where there is a refusal to provide personal details by the member of public to whom the FPN is to issued.
14. Ensure WISE Officers with access to Rushcliffe Borough Council buildings and IT conform to all Council Policies and Procedures (Post COVID).
15. Ensure that all authorisation cards and Rushcliffe Borough Council building access cards are returned to the Council within 24 hrs of an employee leaving the employment of WISE.
16. Ensure all Waste Enforcement Officers attend court and give oral evidence if required to do so.

17. Ensure the compilation of complete prosecution files are presented to the relevant contact officer before the expiration of a period of 93 days after the 28th day has elapsed unless prior consultation has taken place.
18. Implement engagement and education initiatives such as presentations to schools.
19. Ensure active participation in operations / initiatives of prevention and reduction of environmental crime especially in relation to fly tipping.
20. Provide feedback on areas where signage could be improved and where possible assist in implementing.
21. Provide statistical information on a monthly basis or as requested, to include performance monitoring data such as (final KPIs tbc) :
 - Investigation Hours
 - Hours spent in each Town / Ward Area
 - Investigations completed by Town / Ward
 - FPN's issued by Town / Ward
 - FPN's broken down by offence
 - FPN paid by offence
 - Payments rates overall and by offence
 - Appeals / Representations
 - FPN withdrawn – reason
 - FPN cancelled by Council
 - FPN – where offender resides
 - Verbal warnings – offence / number / area
 - Complaints Received
22. FPNs should not be issued to a person under the age of 18 or those suspected of suffering mental ill health or other exemptions applied under Rushcliffe Borough Council's Enforcement Policy.
23. FPNs should not be issued to offenders when fly tipping causes serious environmental impacts, is a very large event or is associated with a subject that has received multiple FPNs (3 or more in any 12 months), in these circumstances prosecution should be considered, and consultation take place with Rushcliffe BC EH Officers before an FPN is issued.
24. Fully document the details of any person who is issued a verbal caution or suitable advice in Pocket Book to evidential standards.
25. Ensure that the provision of warning letters to parents or appropriate adults responsible for those persons under 18 who have received verbal cautions.
26. Maintain a record of all persons who receive verbal warnings and suitable advice in cases where the issue of a Fixed Penalty Notice is not appropriate.
27. Names and addresses of those with physical disabilities will be forwarded to Rushcliffe Borough Council.
28. On dissolution of the partnership return Identity badges, authorisations, Pocket Books, building access cards to Rushcliffe Borough Council.

Customer care

The contractor's relationship with any members of the public shall be conducted in a professional, courteous, and helpful manner with due care and consideration given to

special situations and circumstances. The contractor must ensure its staff employed on the contract wear their agreed ID at all times. In the event of a complaint or dispute arising as to the contractor's representatives conduct it will be investigated by WISE and a report produced to the council in accordance with the following procedure.

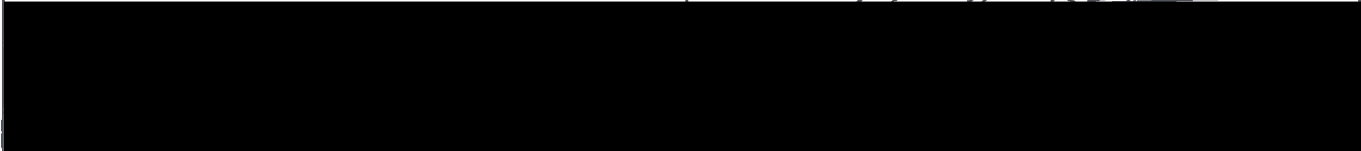
1. *On receipt of a complaint to the Council relating to a Waste Enforcement Officer behaviour/conduct, the council will:*
 - *Acknowledge receipt in writing to the complainant*
 - *Inform the complainant that WISE will formally investigate their complaint*
 - *Inform the complainant that they can expect a written response within 10 working days from the date it was recorded from WISE*
 - *Forward details of the complaint, relevant Fixed Penalty Notice, acknowledgement letter/ email to complainant and any other relevant information directly to the contractor, giving deadline for response.*
2. *On receipt of a complaint to WISE relating to a Waste Enforcement Officer behaviour/conduct, WISE will:*
 - *Immediately acknowledge receipt of complaint and confirm deadline to both the complainant and Council.*
 - *Fully investigate the complaint (Carried out under Managing Director - WISE). This will include both interviewing complainant and Waste Enforcement Officer subject to complaint.*
 - *Respond in writing/ email directly to the complainant within 10 working days of receipt of complaint.*
 - *Provide the Council with a written copy of the response and outcome of the investigation. This is to include any disciplinary action against the Waste Enforcement Officer and organisational learning for the contractor and/or the council.*
3. *The council and WISE will meet and discuss complaints to improve Service Delivery as part of the quarterly meetings.*

Execution

This Agreement consists of this Order Form and our latest version of the Terms and Conditions as at the date of the first Party to initially sign this Order Form. Each of us and you confirm that it has read this Agreement and agrees to be bound by its terms. Unless the context otherwise requires, definitions used in the Terms and Conditions have the same meaning in this Order Form. This Agreement shall be legally formed and we and you shall be legally bound when both we and you have signed this Order Form, or on your continued instruction to us once we have sent this Order Form to you.

For and on behalf of Waste Investigations Support & Enforcement

For and on behalf of the Customer



Date 10th December 2020

Date 10/12/20

TERMS AND CONDITIONS

(these "Terms and Conditions")

1. Definitions

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Accommodation"	any accommodation provided by you for use by us in the provision of the Services, including office accommodation, staff rest area, sluice facilities and storage rooms;
"Agreement"	these Terms and Conditions together with the relevant Order Form and any document referred to in these Terms and Conditions or the Order Form;
"Assignment Instruction"	the specification of the Services, as we will provide to you from time to time and as updated in accordance with Clause 20;
"Breach of Duty"	the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
"Business Day"	Monday through Sunday, including bank holidays except Christmas Day and New Years day on agreement;
"Business Hours"	07.00 am to 19.00pm on Business Days;
"Change"	any change to this Agreement including to any of the Services;
"Change Control Note"	has the meaning given to it in Clause 20.7
"Claims"	has the meaning given to it in Clause 1.1.1;
"Confidential Information"	any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it;
"Customer", "you" or "your"	the recipient of services from us under this Agreement, as stipulated in the Order Form;
"Customer Equipment"	any equipment, tools, devices and other such items and property supplied or made available to us by you for our provision of the Services, as agreed in writing between the Parties from time to time or as set out in the Assignment Instruction;
"Data Controller"	has the meaning set out in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) EU 2016/679;
"Data Processor"	has the meaning set out in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) EU 2016/679
"Data Protection Legislation"	the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) EU 2016/679 and all applicable laws and regulations relating to the

"Data Subject"	processing of personal data and privacy from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Data Subject"	has the meaning set out in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) EU 2016/679
"Equipment"	the equipment, devices, plant, materials, uniforms and such other items supplied and used by us in the provision of the Services and the performance of our obligations under this Agreement, excluding the Customer Equipment, as set out in the Order
"Event of Force Majeure"	has the meaning given to it in Clause 14.1;
"Extended Services Term"	has the meaning given to it in the Order Form;
"Fees"	the fees payable by you to us under this Agreement for our provision of the Services, as stipulated in the Order Form;
"Final Staff List"	the list of all our Personnel engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the date of the Service Transfer;
"Initial Services Term"	has the meaning given to it in the Order Form;
"Liability"	shall mean liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract);
"Liability Limit"	the value set out in the Order Form;
"Location(s)"	the location(s) at which we are to perform the Services, as stipulated in the Order Form;
"Order Form"	the written document you provide to us containing specific information relating to the particular services supplied or to be arranged to be supplied by us to you;
"Outgoing Services"	Not applicable;
"Outgoing Supplier"	Not applicable;
"Party"	us or you, and "Parties" means both of us and you;
"Personal Data"	has the meaning set out in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) EU 2016/679. ;
"Personnel"	all persons employed or engaged by us to provide the Services;

"Provisional Staff List"	a list prepared and updated by us of all our Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list;
"Rates"	Not applicable;
"Replacement Services"	any services which are identical or substantially similar to any of the Services and which you receive in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by you internally or by any third party;
"Replacement Supplier"	any supplier of Replacement Services appointed by you from time to time;
"Services"	the services we are to provide under this Agreement, as more particularly described in the Order Form;
"Services Data"	has the meaning given to it in Clause 10.1;
"Services Start Date"	the date on which we are to commence the provision of the Services, as stipulated in the Order Form;
"Services Term"	the duration of our provision of the Services under this Agreement, commencing on the Services Start Date, being the Initial Services Term and any Extended Services Term;
"Service Transfer"	NOT IN USE
"Staffing Information"	NOT IN USE
"Transferring Employees"	NOT IN USE
"TUPE"	NOT IN USE
"Weekly Hours"	where applicable, the number of man hours per week that we are to commit in the provision of the relevant Services to you, as set out in the Order Form;

- 1.2 references to "Clauses" are to clauses of these Terms and Conditions;
- 1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.4 a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;
- 1.6 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);
- 1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.8 any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.9 a reference to "writing" or "written" includes in electronic form and similar means of communication (except under Clause 15).

2. Agreement

- 2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in

whatever form and at whatever time. These Terms and Conditions apply to all Services.

- 2.2 Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4 The Order Form shall be in the form that we require from time to time. This Agreement shall be legally formed and the Parties shall be legally bound when we have received and signed the Order Form that has been signed by an authorised signatory of you and submitted by you to us. Submission by us to you of the Order Form shall be deemed to be an offer by us to provide Services (as specified in the Order Form) to you, subject to the provisions of this Agreement, and your counter-signature on the Order Form shall be considered acceptance of such offer, but the requirements for us to perform any of our obligations under this Agreement shall be conditional upon our receipt from you of any advance payment of Fees as required under this Agreement. If we never receive the signed Order Form from you once we have sent it to you, we will take your continued instructions following our sending of the Order Form to you as evidence of your acceptance of the terms of the Order Form and therefore entry into this Agreement.
- 2.5 If you provide to us a purchase order for your receipt of Services other than as set out in Clause 2.4, that purchase order (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6 In the event of a conflict between these Terms and Conditions and the Order Form, then the Order Form shall prevail over these Terms and Conditions.
- 2.7 Each contract entered into in respect of an Order Form constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as this Agreement.

3. Services

- 3.1 In consideration for the payment to us of the Fees by you, we shall provide the Services referred to in the Order Form.
- 3.2 We warrant that:
 - 3.2.1 we shall use our reasonable skill and care in providing the Services;
 - 3.2.2 our employees, agents and subcontractors have the necessary skill to provide any Services;
 - 3.2.3 any Services will be provided in a professional, competent and workmanlike manner;
 - 3.2.4 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement;
 - 3.2.5 we shall ensure that our employees, agents and subcontractors co-operate with, and make themselves available at all reasonable times for, discussion and meetings with, you and your employees, agents or subcontractors;
 - 3.2.6 we shall use our reasonable endeavours to ensure that whilst our employees, agents and subcontractors are on your premises they conform to your normal codes of staff and security practice as are advised to them in advance by you;
 - 3.2.7 we shall fully, frequently and promptly update you as to progress with use of the Services, including reporting on any concerns, issues, comments or queries that need to be addressed or resolved; and

- 3.2.8 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.
- 3.3 We do not warrant that the Services will meet your individual requirements. We are not responsible for any people, equipment, deliverables or services that we are not expressly stipulated to provide in this Agreement. You are responsible for any people, equipment, deliverables and services that you need to obtain from someone other than us. Except for any matter in relation to which we specifically agree to advise or do, we shall not be responsible, or have any Liability (subject to Clause 11.2) for advising on, or failing to advise on, or doing, or failing to do, anything else.
- 3.4 Subject to us performing the Services within the timeframes outlined in the Order Form with direction from Council Officers. Council Officers may specifically direct Services at a particular location / time to address a service issue.
- 3.5 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement. However, subject to Clause 11.2, we shall not have any Liability for any delays or failures to accurately perform our obligations:
- 3.5.1 if we have used those endeavours; or
- 3.5.2 if caused by any failure or delay on your part or on the part of your employees, agents or subcontractors or by any breach by you of this Agreement or any other agreement.
- If there is any slippage in time, we shall use our best endeavours to reschedule delayed tasks to a mutually convenient time.
- 3.6 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at our time and materials rates from time to time for:
- 3.6.1 any time reasonably incurred as a result of the hindrance or breach (Including any wasted time for which we had anticipated that our Personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and
- 3.6.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.
- 3.7 We shall not be obliged to provide any Services where such provision would following a joint decision based on reasonable opinion, expose our Personnel to the risk of physical injury. In the event that we consider there is such risk, we shall inform you of the nature of the risk, the Services we are not able to provide as a result of the risk and any consequential effect on the Fees or other terms of this Agreement. We will also, where reasonably possible, specify what actions you should take in order for us to be able to reinstate the provision of the Services. For the avoidance of doubt, we shall not have any Liability (subject to Clause 11.2) for any failure by us to provide Services pursuant to this Clause 3.7 and you shall not be entitled to terminate this Agreement pursuant to any such failure.
- 3.8 Except as specifically stipulated in this Agreement, we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time.
- 3.9 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services.
- 3.10 Where appropriate and agreed in writing between the Parties, we may appoint a manager at each Location, where such person shall have responsibility for the management of the Services at that Location and any Personnel we deploy to that Location.
- 3.11 We will
- 3.11.1 perform the Services at the Location; and
- 3.11.2 report to you promptly any concerns we have in respect of any Location.

- 3.12 For the avoidance of doubt, whilst your reasonable requests in relation to Personnel may be taken into consideration, you shall not be entitled to specify named individuals which you either do or do not wish to provide the Services.
- 3.13 Whilst we will provide the Services with reasonable skill and care, you hereby acknowledge that we do not, and cannot, guarantee the security of the Location(s) and that nothing in this Agreement shall be interpreted as a warranty by us that we do so guarantee.
- 3.14 We will comply with all health and safety legislation in force and all health and safety policies of the Council .
- 4. Personnel**
- 4.1 We shall:
- 4.1.1 where necessary, provide health checks for the Personnel at our own expense;
- 4.1.2 provide adequate training (including health and safety training) for all Personnel so that they are properly competent and aware of their duties;
- 4.1.3 on your reasonable request, procure that all Personnel engaged at a Location attend a health and safety induction course arranged by you at your cost; and
- 4.1.4 provide uniforms to all Personnel and ensure that such uniforms are kept clean and in proper repair.
- 4.2 The Personnel we provide shall have, where necessary, appropriate licences in places for their performance of the Services.
- 4.3 We shall be fully responsible for any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services by Personnel or any payment or benefit received by the Personnel in respect of the Services, where such recovery is not prohibited by law.
- 5. Equipment**
- 5.1 We shall be responsible for the procurement, provision, installation and maintenance of all Equipment used in connection with the Services other than the Customer Equipment. The Customer Equipment shall be provided, serviced and maintained by you.
- 5.2 The Equipment shall at all times remain our property and you shall have no right, title or interest in or to the Equipment.
- 5.3 The Customer Equipment shall at all times remain your property and we shall have no right, title or interest in or to the Customer Equipment.
- 5.4 We shall be fully responsible for ensuring that all proper and adequate training in the use of the Equipment is provided to the Personnel and that certificates confirming competency are authorised by us and, on your reasonable request, copied to you.
- 5.5 We shall ensure that any Equipment used in the provision of the Services is:
- 5.5.1 of satisfactory quality and fit for purpose; and
- 5.5.2 maintained in good working order in compliance with manufacturer's instructions and in compliance with any applicable legislation.
- 5.6 We shall ensure that portable appliance testing is carried out annually on all mobile electrical Equipment we use in the provision of the Services.
- 6. Your obligations**
- 6.1 You shall:
- 6.1.1 ensure that the terms of the Order Form, and any specification or instructions you provide to us for the Services, are complete and accurate;
- 6.1.2 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if we undertake any work at your premises;
- 6.1.3 inform us in writing a reasonable time before the commencement of any Services of any regulations relevant to us when working at any premises under your control;
- 6.1.4 be present and available at your premises at the required times to enable us to perform our obligations at the times we reasonably require under this Agreement;

- 6.1.5 sign a confirmatory note upon any of the Services (in whole or in part) having taken place if we reasonably require you to do so;
- 6.1.6 ensure that your employees, agents and subcontractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, us and our employees, agents and subcontractors and to enable us to promptly perform our obligations under this Agreement;
- 6.1.7 promptly provide to us such data, information and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement to the best of our ability;
- 6.1.8 promptly comply with all of our reasonable requests in connection with this Agreement;
- ;
- 6.1.9 have all rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and
- 6.1.10 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.
- 6.2 It is your responsibility to ensure that the Services are sufficient and suitable for your purposes and meet your individual requirements.
- 6.3 You are responsible for ensuring that you provide us with the information required to enable us to properly provide the Services. We shall not be responsible or, subject to Clause 11.2, have any Liability for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information.
- 6.4 You shall:
 - 6.4.1 at your cost, arrange for all security passes to the Location as required by us to perform the Services;
 - 6.4.2 at your cost, provide lighting, hot water, drainage, electricity and such other utilities as we may reasonably require for our performance of the Services;
 - 6.4.3 deliver to us keys or alarm codes or anything else required for access to the Location(s) together with written details and instructions in respect of anything which may be reasonably required by us for the proper performance of the Services at the Location(s); and
 - 6.4.4 prior to the commencement of the Services, inform us of any dangers or hazards, whether hidden or not, which we are likely to encounter during the performance of the Services.
- 6.5 You shall make such Accommodation as is necessary for our performance of the Services available to us at your cost from the Services Start Date until termination of this Agreement.
- 6.6 We acknowledge that the Accommodation is not available to us permanently, and that, subject to reasonable notice, we may be required to vacate any accommodation and relocate to alternative accommodation from time to time during the Services Term. We are not granted exclusive possession of any Accommodation.
- 6.7 You shall ensure that any Accommodation is fit for purpose and in good condition. If any Accommodation is damaged, destroyed or otherwise unusable, you shall provide suitable alternative accommodation.
- 6.8 We will:
 - 6.8.1 keep all Accommodation clean and tidy;
 - 6.8.2 not alter any Accommodation without your consent; and
 - 6.8.3 vacate all Accommodation on termination of this Agreement or on your reasonable request during the Services Term.
 - 6.8.4 Pay the cost of making good any damage caused by WISE, its Employees other than fair wear and tear

7. Not Used

8. Insurance

- 8.1 We shall maintain (and provide copies of) in force such insurance policies with reputable insurance companies as we consider reasonably necessary to cover our relevant potential liabilities in connection with this Agreement.

We shall, during the term of this Agreement, and for a period of one year thereafter:

- 8.1.1 do nothing to invalidate any insurance policy or to prejudice your entitlement under any insurance policy; and
- 8.1.2 procure that the terms of such policies are not altered in such a way as to diminish the benefit of the policies for you.

9. Confidentiality

- 9.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:

- 9.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
- 9.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 9.

Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

- 9.2 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

- 9.2.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
- 9.2.2 it does so subject to obligations equivalent to those set out in this Clause 9.

- 9.3 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 9.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

- 9.4 The obligations of confidentiality in this Clause 9 shall not extend to any matter which either Party can show:

- 9.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
- 9.4.2 was independently developed by it; or
- 9.4.3 was independently disclosed to it by a third party entitled to disclose the same; or
- 9.4.4 was in its written records prior to receipt.

- 9.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.

- 9.6 We may identify you as our client and the type of Services provided by us to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

- 9.7 On termination of this Agreement, each Party shall:

- 9.7.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
- 9.7.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
- 9.7.3 certify in writing to the other Party that it has complied with the requirements of this Clause 9.7, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

9.8 The provisions of this Clause 9 shall continue to apply after termination of this Agreement.

10. Data protection

- 10.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Schedule and may not be determined by the Contractor.
- 10.2 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 10.3 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 10.4 The Contractor shall, in relation to any personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with the Schedule unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Contractor does not process Personal Data except in accordance with this Agreement (and in particular the Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidentiality of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- (e) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the Contractor is required by Law to retain the Personal data.

- 10.5 Subject to clause F3.6, the Contractor shall notify the Council immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third party for disclosure of Personal data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 10.6 The Contractor's obligation to notify under clause F3.5 shall include the provision of further information to the Council in phases, as details become available.
- 10.7 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- (a) the Council with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Council following any Data Loss Event;
 - (e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

- 10.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- the Council determines that the processing is not occasional;
 - the Council determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10.9 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 10.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 10.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- notify the Council in writing of the Intended Sub-processor and processing;
 - obtain the written consent of the Council;
 - enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
 - provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 10.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 10.13 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard causes or similar terms forming part of an applicable certification scheme (which shall apply when Incorporated by attachment to this Agreement).
- 10.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 10.15 Neither Party excludes or limits its liability in respect of the terms of this Data Processing Addendum
- 10.16 Where applicable, the Parties agree that if, upon review following GDPR coming into force, the provisions of this Data Processing clause(F 3)do not comply with GDPR then both Parties agree to co-operate in good faith to re-negotiate the terms of this Data Processing Addendum to ensure compliance with GDPR.
- 11. Limitation of Liability**
- 11.1 This Clause 111 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services or deliverables in connection with this Agreement; or
 - otherwise in relation to this Agreement or entering into this Agreement.
- 11.2 Neither Party excludes or limits its Liability for:
- its fraud; or
 - death or personal injury caused by its Breach of Duty; or

- any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - any other Liability which cannot be excluded or limited by applicable law.
 - Its breach of Data Protection Legislation
- 11.3 Subject to Clause 11.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.
- 11.4 Subject to Clause 11.2, either party shall not have any Liability in respect of any:
- indirect or consequential losses, damages, costs or expenses;
 - loss of actual or anticipated profits;
 - loss of contracts;
 - loss of use of money;
 - loss of anticipated savings;
 - loss of revenue;
 - loss of goodwill;
 - loss of reputation;
 - loss of business;
 - ex gratia payments;
 - loss of operation time;
 - loss of opportunity;
 - loss caused by the diminution in value of any asset; or
 - loss of, damage to, or corruption of, data;
- whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 11.4.2 to 11.4.14 (inclusive) of this Clause 11.4 apply whether such losses are direct, indirect, consequential or otherwise.
- 11.5 Subject to Clause 11.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to the greater of:
- 110% of all amounts paid and total other sums payable, in aggregate, by you to us under this Agreement in the 12 months prior to the date on which the claim first arose; or
 - the Liability Limit.
- 11.6 The limitation of Liability under Clause 11.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 11.7 You acknowledge and accept that we only provide the Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 11.2), directly or indirectly, for any act or omission of, you or your employees, agents or subcontractors, or any third party.
- 12. Breach of warranty**
- 12.1 In the event that you breach any warranty given by you under this Agreement then, at our absolute discretion and without prejudice to our rights and remedies whether under this Agreement or at law, either:
- you shall indemnify us, and keep us indemnified, against all liabilities, costs, expenses, damages and losses) suffered or incurred by us in connection with such breach to a total aggregate liability of 110% of all amounts paid and total other sums payable in aggregate by us to you.
 - acting reasonably and in good faith, we and you shall negotiate an adjustment in the Fees that accounts for any liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with such breach.
- 13. Termination**

- 13.1 This Agreement shall commence on the date on which this Agreement is entered into and, unless terminated earlier in accordance with the termination provisions under this Agreement, shall continue in full force and effect for the Initial Services Term and shall automatically extend for the Extended Services Term at the end of the Initial Services Term and at the end of each Extended Services Term.
- 13.2 Without prejudice to any of our rights or remedies whether under this Agreement or at law, we may terminate this Agreement with immediate effect (or such other notice period as we see fit in our absolute discretion) by giving notice to you if you fail to pay any amount due under this Agreement on the due date for payment and such amount remains in default not less than seven days after being notified to make such payment.
- 13.3 By notice in writing to the other Party, either Party may immediately terminate this Agreement if the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order, or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 13.4 In the event of a material breach of this Agreement by either Party, the breaching Party shall have 30 days to remedy the material breach and, in the event that such breach has not or cannot be remedied, the non-breaching Party may terminate this Agreement on the provision of not less than 30 days' written notice to the breaching Party to be served not earlier than the end of the 30 day remedial period.
- 13.5 Either party can terminate the arrangement by giving 60 days' notice if not satisfied for any reason
- 13.6 In the event of a material or substantial breach by either Party which is incapable of remedy, the non-breaching Party may terminate the contract with immediate effect by notice in writing to the breaching Party.
- 13.7 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.
- 13.8 On termination of this Agreement for any reason:
- 13.8.1 we shall cease to provide the Services under this Agreement; and
- 13.8.2 you shall pay to us all amounts owing for services provided to us under this Agreement, whether invoiced or not.
- 13.9 Clauses 1, 6.1.9, 7, 8, 9, 11, 12, 13.5, 13.8, 13.9, 14.1, 14.6, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 shall survive any termination of this Agreement for any reason.
- 13.10 If you terminate this Agreement before the end of the Services Term (save in circumstances where you are entitled to terminate this Agreement in accordance with Clauses 13.3 or 13.4), you will indemnify us in respect of all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by us including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 13.10.1 any equipment, tools, vehicles or other accessories that we have obtained (whether by purchase, rental, hire purchase or otherwise) in order to provide the Services to you (including in respect of the termination of any hire contracts that we have entered into for such purposes);
- 13.10.2 any property or office space that we have occupied in order to provide the Services to you; and/or
- 13.10.3 any depreciation, redeployment, amortisation or capital losses we suffer as a result of such termination.
- 14. Force Majeure**
- 14.1 Subject to Clause 11.2, neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by an Event of Force Majeure, regardless of whether the circumstances in question could have been foreseen. An "Event of Force Majeure" means any cause outside of the Party's reasonable control, including act of God, actions or omissions of third parties (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions, loss at sea, earthquake, natural disaster, accident, collapse of building structures, failure of plant machinery or machinery or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation.
- 14.2 Each of the Parties agrees to inform the other upon becoming aware of an Event of Force Majeure, such information to contain details of the circumstances giving rise to the Event of Force Majeure.
- 14.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist and such Party shall be granted an extension of time for performance equal to the period of the delay.
- 14.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.
- 14.5 If the performance of any obligations is delayed under this Clause 14, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 14.6 If the Event of Force Majeure continues without a break for more than one month, either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall have any Liability (subject to Clause 11.2) to the other Party by reason of such termination.
- 14.7 If we have contracted to provide identical or similar services to more than one client and we are prevented from fully meeting our obligations to you due to an Event of Force Majeure, we may decide at our absolute discretion which contracts we will perform and to what extent.
- 15. Notices**
- 15.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 15.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 15.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 15.3 The provisions of this Clause 15 shall not apply to the service of any proceedings or other documents in any legal action.
- 16. Assignment**
- You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).
- 17. Severance.**

17.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

17.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18. Waiver

A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19. Third party rights

A person who is not a Party shall not have any rights under or in connection with this Agreement.

20. Change Control

20.1 In the event that we or you need to change this Agreement, you may at any time request, and we may at any time recommend, such Change only in accordance with this Clause 20.

20.2 Until such time as a Change is made in accordance with this Clause 20, we and you shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.

20.3 Any discussions which may take place between us and you in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.

20.4 Discussion between us and you concerning a Change shall result in any one of the following:

20.4.1 no further action being taken; or

20.4.2 a request to change this Agreement by you; or

20.4.3 a recommendation to change this Agreement by us.

20.5 Where we receive a written request for a Change from you, we shall, unless otherwise agreed between us and you, submit two copies of a Change Control Note signed by us to you within three weeks of the date of the request.

20.6 A recommendation of a Change by us shall be submitted by us directly to you in the form of two copies of a Change Control Note signed by us at the time of such recommendation. You shall give your response to the Change Control Note within three weeks of receipt.

20.7 A "Change Control Note" means the written record of a Change agreed or to be agreed by us and you and shall contain:

20.7.1 the title of the Change;

20.7.2 the originator and date of the request or recommendation for the Change;

20.7.3 the reason for the Change;

20.7.4 full details of the Change, including any specifications;

20.7.5 the price, if any, of the Change;

20.7.6 a timetable for implementation, together with any proposals for acceptance of the Change;

20.7.7 a schedule of payments if appropriate;

20.7.8 details of the likely impact, if any, of the Change on other aspects of this Agreement including:

(a) the timetable for the provision of the Change;

(b) the personnel to be provided;

(c) the Fees; and

(d) other contractual issues;

20.7.9 the date of expiry of validity of the Change Control Note; and

20.7.10 provision for signature by us and you.

20.8 For each Change Control Note submitted to you by us, you will, within the period of the validity of the Change Control Note:

20.8.1 allocate a sequential number to the Change Control Note; and

20.8.2 evaluate the Change Control Note and, as appropriate:

(a) request further information; or

(b) arrange for two copies of the Change Control Note to be signed by or on behalf of you and return one of the copies to us; or

(c) notify us of the rejection of the Change Control Note.

20.9 A Change Control Note signed by us and you shall constitute an amendment to this Agreement.

20.10 In the event that there is a change in legislation, regulations or bye-laws applicable to this Agreement, we reserve the right, without your approval, to make relevant amendments to the Assignment Instruction to comply with such legislative changes by giving to you reasonable notice; for the avoidance of doubt, this Clause 20 shall not apply in the event that we make such amendments.

21. No partnership

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

22. Dispute resolution

22.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it ("Dispute") then the Parties shall follow the procedure set out in this Clause 22:

22.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, a director of WISE and a director of the Customer shall attempt, acting reasonably and in good faith, to resolve the Dispute; and

22.1.2 if those persons set out in Clause 22.1.1 are for any reason unable to resolve the Dispute within 30 days of it being referred to them, 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 shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing ("ADR notice") to the other Party requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 Days after the date of the ADR notice.

22.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 23, which shall apply at all times.

22.3 If the Dispute is not resolved within 60 days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England in accordance with Clause 23.

23. Governing law and jurisdiction

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

23.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.