**DATED**

1. **BROMFORD and**

**(2) XXX**

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**CONSULTANCY AGREEMENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**THIS AGREEMENT** is made the XX 2020

# BETWEEN

1. **BROMFORD,** a company incorporated in England whose registered office is at 1 Exchange Court, Brabourne Avenue, Wolverhampton Business Park, Wolverhampton, WV10 6AU (“the **Company**”);

and

1. **XX**, company number XX, whose registered company address is XX (“the **Consultancy**”)

# RECITAL

The Company wishes to appoint the Consultancy to provide the services set out at Schedule 1 to the Company.

**IT IS AGREED** as follows:

# APPOINTMENT

The Company hereby engages the Consultancy on a non-exclusive, as required basis to provide the services detailed in schedule 1 attached to this Agreement to the Company and the Consultancy hereby agrees to provide such services upon the terms and conditions detailed below (“the **Services**”).

# PERIOD OF CONSULTANCY

* 1. This Agreement will commence with effect from XX 2020 and will continue until XX 2020 (“the Term”) when it will terminate without further notice from either party or until terminated earlier either by the Consultancy or the Company giving the other one week’s written notice or in accordance with clause 12 below.
  2. The Term may only be extended or renewed by the mutual agreement of the parties in writing.

# PROVISION OF THE SERVICES

* 1. The Consultancy’s obligation to provide the Services shall be performed by one or more Consultants (“the **Consultant**”) of the Consultancy as the Consultancy may consider appropriate, subject to the Company being reasonably satisfied that the Consultant has the required skills, qualifications and resources to provide the Services to the required standard.
  2. The Consultancy understands that the Company is not required to provide any particular level of work to the Consultancy, and the Consultancy shall be free to decline work offered by the Company; this Agreement is not intended to create any mutuality of obligation between the parties.
  3. The Consultancy shall have flexibility as to the allocation of hours worked in any week by the Consultant, provided this is with the agreement of the Company.
  4. The Consultancy will be expected to exercise discretion and control as to the method of performing the Services. Notwithstanding the above, the Consultancy shall, and shall procure that each Consultant shall, adhere to the reasonable requirements of the Company relating to work standards and service specifications, consistent with the fulfilment of the Consultancy’s obligations under the Agreement.
  5. The Consultancy shall procure that it shall provide the Services under this Agreement at such times as may be agreed between the Company and the Consultancy. The Consultancy shall be entitled to decide the manner in which the Services are provided subject to the proper performance of the Services and shall not take on any control over the Company’s staff or be integrated into the Company.
  6. Throughout the Term the Consultancy shall, and shall procure that the Consultant shall:
     1. perform the Services in accordance with the terms of this Agreement;
     2. provide the Services with reasonable skill and care and to the best of the Consultancy and the Consultant’s ability;
     3. perform such duties in relation to the Consultant’s provision of the Services as the Company may reasonably request;
     4. provide to the Company such written or oral advice or information regarding any of the Services as the Company may reasonably require;
     5. exercise such powers as may from time to time be vested in or given to the Consultant by the Company;
     6. not hold the Consultant out as an employee of the Company;
     7. not incur any expenditure in the name of or for the account of the Company or hold themselves out as having authority to bind the Company;
     8. comply with any statutory or other reasonable rules or obligations including but not limited to:
        1. those relating to health and safety while providing the Services and to take all reasonable steps to safeguard the Consultant’s own safety and the safety of any other person who may be affected by the Consultant’s actions in performing the Services;
        2. the requirements of data protection legislation;
        3. the Company’s Equality and Diversity, Bullying and Harassment and Whistleblowing policies;
        4. the Company’s Safeguarding policies;
        5. the Company’s Information Security Policy; Acceptable Use Policy; Data Protection Policy, and
        6. depending on the Services being delivered by the Consultant, sign the Company’s High Privilege Access Policy
     9. unless prevented by ill health or circumstances beyond the Consultant’s control be available, at reasonable times and upon reasonable notice, to the Company for the purposes of consultation and advice;
     10. attend such meetings with representatives of the Company and third parties as the Company may reasonably specify;
     11. not engage in any conduct detrimental to the interests of the Company or contrary to the instructions of the Company;
     12. provide the Services at the Company’s premises at or at such other premises as the parties agree from time to time are appropriate for the performance of the Services;
     13. be responsible for providing the equipment needed to provide the Services unless the Company requires specific equipment to be used in which case it will be provided to the Consultant. Such equipment must be returned to the Company on termination of this Agreement, or at any time during the Term of this Agreement if requested by the Company. Where a non-Company smart phone is used by the Consultant to deliver Services for the Company, data on the device will be containerised using the Company’s MDM solution; in the event that the device is lost or stolen the Company reserves the right to remotely wipe data belonging to the Company from the device.
  7. If the Consultant has held themselves out as possessing any relevant educational, vocational, professional and any other relevant qualifications, the Consultancy and the Consultant warrant that the Consultant holds these qualifications and undertakes to update and undergo any new training, at their own expense, as may be required to undertake the Services.
  8. The Consultancy will produce to the Company evidence that the Consultant has the right to remain and work in the United Kingdom. The Consultancy will also be responsible for carrying out any necessary Disclosure and Barring Service (“DBS”) checks and making the results of such checks available to the Company. In the event that the Consultancy is not registered to access the disclosure service provided by the DBS, the Consultancy will arrange for those checks to be made via an umbrella body authorised to carry out such checks. Any costs associated with complying with the requirements of this clause 3.8 shall be the sole responsibility of the Consultancy.
  9. The Consultancy may, with the prior written agreement of the Company, appoint a suitably qualified and skilled substitute to perform the Services in replacement of the Consultant (“the **Substitute**”). If the Company accepts the Substitute, the Consultancy shall continue to invoice the Company in accordance with clause 4.1 and shall be responsible for remuneration of the Substitute. For the avoidance of doubt, no fee shall be payable under this Agreement in respect of any period during which the Services are not provided by the Consultant or any Substitute.
  10. For the avoidance of doubt, if the Company accepts a Substitute, all references in this Agreement to the Consultant shall be deemed also to include a reference to the Substitute.

# FEES AND EXPENSES

* 1. The Company will pay the Consultancy a fee of XX (such fee to be exclusive of value added tax if applicable)), subject to the Consultancy complying with the Consultancy’s obligation to submit invoices under clause [4.3](#_bookmark0).
  2. The Company will pay 45 pence per mile for business miles but will not pay for travel between the Consultant’s home and the office at XX, subject to the Consultancy complying with the Consultancy’s obligation to submit invoices under clause [4.3](#_bookmark0).
  3. The Consultancy agrees to provide the Company with an invoice for fees and expenses due in respect of the Services supplied, on a two-weekly basis. The invoice shall specify the hours which the Consultant or any Substitute has worked during those two weeks, the Services provided and the fee payable. The Company agrees to pay such invoice within 30 days of it being received and approved by XX, or their nominated representative/replacement.
  4. The Company shall be entitled to deduct from the fees (and any other sums) due to the Consultancy any sums that the Consultancy may owe to the Company at any time.
  5. Payment in full or part of any of the fees or expenses under clause 4 shall be without prejudice to any claims or rights of the Company against the Consultancy in respect of the provision of the Services.

# RELATIONSHIP BETWEEN THE PARTIES

The Consultancy acknowledges to the Company that there is no intention on the part of the Consultancy, the Consultant(s) or the Company to create an employment relationship between any of those parties and that the responsibility of complying with all statutory and legal requirements relating to the Consultant(s), (including, but not limited to the payment of taxation, maternity etc payments and statutory sick pay) shall fall upon and be discharged wholly and exclusively by the Consultancy. In the event that any person should seek to establish any liability or obligation upon the Company on the grounds that any of its Consultants are an employee of the Company, the Consultancy shall upon demand indemnify the Company and keep them indemnified in respect of any such liability or obligation and any related proper and reasonable costs, expenses or other losses which the Company shall properly incur as a direct result of such liability.

# MUTUALITY OF OBLIGATION

The Company is not obliged to offer ongoing contracts or work to the Consultancy, following the completion of this Agreement, nor is the Consultancy obliged to accept such contracts of work if offered. Both parties agree and intend that there be no mutuality of obligation either during or following the Agreement, whatsoever.

# TAX AND LIABILITIES

* 1. The Consultancy shall be responsible for all taxes, national insurance or other contributions which may be payable in respect of the fees payable under this Agreement. The Consultancy agrees to indemnify the Company forthwith on demand by the Company in respect of any demands that may be made by the relevant authorities in respect of such tax, national insurance or other contributions, and any costs, claims, penalties, interest, expenses or proceedings arising out of or in connection with such taxes or contributions. If any payment under this clause 7.1 is subject to tax, the Company may demand in writing from the Consultancy such amount (after taking into account any tax payable in respect of such amount) as will ensure that the Company receives and retains a net sum equal to the sum it would have received and retained had the payment not been subject to tax.
  2. Upon the Company’s reasonable request, the Consultancy agrees to provide to the Company satisfactory evidence of registration with HM Revenue & Customs for tax and evidence that the Consultancy has paid, by the due date, all tax and national insurance contributions in respect of any monies paid to the Consultancy by the Company.
  3. Without prejudice to the termination provisions in clause 12, the Company may terminate this Agreement with immediate effect if:

1. The Consultancy fails to provide the information requested within the specified timeframe or provides information, which is inadequate, in the reasonable opinion of the Company; or
2. The Consultancy fails to demonstrate that the Consultant is complying with their obligations as set out in clause 7.

# INSURANCE AND LIABILITIES

* 1. The Consultancy accepts liability (on an indemnity basis) for any loss, damage, costs claims or expenses (including but not limited to legal fees) incurred by the Company resulting from the Consultancy or its Consultant’s negligence or default arising out of or in connection with the provision of the Services or any other activities undertaken by the Consultancy or its Consultant pursuant to or for any purpose related to this Agreement.
  2. The Consultancy shall ensure the provision of adequate professional indemnity insurance and other suitable policies of insurance in respect of the provision of the Services with reputable insurers acceptable to the Company and at a level of cover and on terms acceptable to the Company. The Consultancy shall provide evidence of such insurance coverage (and insurance premium being paid) to the Company upon request. If such insurances lapse for any reason during the Term, or if the terms and conditions of the insurances change, the Consultancy is required to notify the Company immediately and the Company may (if at any point the Consultancy is not covered by appropriate insurance) at its discretion take out such insurance and deduct the relevant premium from the fees payable to the Consultancy pursuant to this Agreement.

# CONFIDENTIALITY

* 1. The Consultancy or its Consultants shall neither during the period of this Agreement or at any time after its termination, divulge or communicate to any person, company, business entity or other organisation, or use for the Consultancy’s own purposes or for any purposes other than those of the Company or through any failure to exercise due care and diligence, permit or cause any unauthorised disclosure of any trade secrets or confidential information relating to the Company. These restrictions shall cease to apply to any information which shall become available to the public generally otherwise than through the default of the Consultancy or its Consultants.
  2. For the purposes of this Agreement, “confidential information” shall mean any information relating to the Company or the business, prospective business, technical processes, computer software, intellectual property rights or finances of the Company including without limitation details of suppliers and their terms of business, details of customers and their requirements, the prices charged to and terms of business with customers, marketing plans and sales forecasts, financial information, results and forecasts (save to the extent that these are included in published audited accounts), any proposals relating to the acquisition or disposal of a company or business or any part thereof or to any proposed expansion or contraction of activities, details of employees and officers and of the remuneration and other benefits paid to them, information relating to research activities, inventions, secret processes, designs, formulae and product lines, which comes into the possession of the Consultancy or its Consultants and which the Company regards, or could reasonably be expected to regard, as confidential, whether or not such information is reduced to a tangible form or marked in writing as “confidential”, and any and all information which has been or may be derived or obtained from any such information.
  3. The Consultancy acknowledges that all notes, memoranda, records, lists of customers and suppliers and employees, correspondence, documents, computer and other discs and tapes, data listings, codes, designs and drawings and other documents and material whatsoever (whether made or created by the Consultancy or its Consultants or otherwise) relating to the business of the Company (and any copies of the same), shall be and remain the property of the Company and shall be handed over by the Consultant to the Company on demand and in any event on the termination of this Agreement and the Consultancy shall certify that all such property has been so handed over and that no copies or extracts have been retained.

# INTELLECTUAL PROPERTY RIGHTS

The following definitions have the following meanings:

“**Inventions**” means inventions, ideas and improvements, whether or not patentable, and whether or not recorded in any medium.

“**Intellectual Property Rights**” means patents, rights to Inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

* 1. The Consultancy shall promptly disclose to the Company full details in writing of all Inventions and of all works embodying Intellectual Property Rights made wholly or partially by the Consultancy or its Consultants (whether during or after the Term) and which arise from the provision of the Services.
  2. The Consultancy acknowledges that all Intellectual Property Rights subsisting (or which may in the future subsist) in all such Inventions and works shall belong to the Company absolutely and that it will immediately assign the same to the Company, without charge and with full title guarantee. The Consultancy agrees promptly to execute all documents and do all acts as may in the opinion of the Company, be necessary to give effect to this term.
  3. To the extent that any Intellectual Property Rights arising from the provision of the Services are not vested in the Company in accordance with the above undertakings, the Consultancy will hold them on trust for the Company.
  4. The Consultancy acknowledges that it shall have no further right to any compensation from the Company in respect of any Intellectual Property Rights.
  5. The Consultancy hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which it has or will have in any existing or future works created by the Consultancy or its Consultants in or arising out of the provision of the Services.

# DATA PROTECTION

* 1. The Company may from time to time in the course of administering its activities need to process both personal data and sensitive personal data. The Consultancy agrees and acknowledges that this information will be used and processed fairly for the operation of the Company’s activities.
  2. The Company is registered in accordance with the requirements of the data protection legislation (including the General Data Protection Regulation). The Consultancy or its Consultants shall not at any time use personal data held by the Company for any purpose not described in its register entry or disclose such data to a third party or act otherwise in contravention of the data protection legislation.

# TERMINATION OF THE AGREEMENT

* 1. The Company may ***without notice*** in writing terminate this Agreement forthwith if:
     1. the Consultancy or the Consultant commits a serious breach of any of its or their obligations to the Company;
     2. the Consultancy or the Consultant fails, or continues to fail, or refuses to provide the Services to the standards or time scales reasonably required by the Company;
     3. the Consultancy or the Consultant acts in any way which materially prejudices the interests of the Company; or
     4. performance of the Services is prevented for an aggregate period of 30 days in any one period when services are requested or would otherwise have been requested because of the incapacity of the Consultant, and the Consultancy is unable to provide a suitable Substitute
  2. The Company may, in its absolute discretion and without compensation, suspend services under this Agreement temporarily if it considers it in the interests of the Company to do so.
  3. Upon termination of this Agreement, the Company shall pay the Consultancy fees and expenses up to the date of termination. The Company may, in its absolute discretion, pay the Consultancy compensation in lieu of any notice of termination.
  4. Upon expiry of this Agreement or on termination of this Agreement, the Consultancy or its Consultants shall return to the Company all property belonging to the Company, which is in the Consultancy’s possession or control and the Consultancy shall not without the written consent of the Company retain any copies thereof.

# NON-EXCLUSIVITY OF SERVICES

The Company hereby acknowledges that nothing in this Agreement shall be taken to restrict the Consultancy from providing any similar consultancy services to any other person or company provided that the Consultancy shall not during the period of this Agreement, without prior written consent of the Company, provide similar consultancy services to any person or company who is or are in competition with the business of the Company. The Company reserves the right to terminate this Agreement if the Consultancy provides such services to a competitor.

# OTHER BUSINESS INTERESTS OF THE CONSULTANCY

* 1. The Consultancy shall devote sufficient time and attention to permit the proper performance of the Services for the Term.
  2. Nothing in this Agreement shall prevent the Consultancy from being engaged, concerned or having a financial interest in any other business, trade or profession or occupation provided that the Consultancy shall not undertake any activity or be involved with any other business, trade, profession or occupation which in any way would or might constitute a conflict of interest with the Company and/or the Services.

# GENERAL

* 1. Any notice required by this Agreement to be given by either party to the other shall be in writing. Both parties are required to confirm receipt by return. Appropriate methods include by email and/or post.
  2. The Agreement may only be varied with the express written agreement of the parties.
  3. This Agreement contains the entire understanding between the parties and supersedes any previous agreements or undertakings.
  4. The terms of this Agreement shall be governed by English law and both the Consultancy and the Company submits to the exclusive jurisdiction of the English Courts.

Signed: …………………………………….. Date: ……………………………….

XX for and on behalf of XX

Signed Date:

XX, for and on behalf of Bromford

# SCHEDULE 1 THE SERVICES

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