

[Insert date]

Content Provision Agreement
relating to
the Heritage Gateway

The Historic Buildings and Monuments
Commission for England ⁽¹⁾ and
[Insert Local Authority name] ⁽²⁾

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THIS CONTENT PROVISION AGREEMENT (Agreement) is dated [●]

PARTIES

- (1) The Historic Buildings and Monuments Commission for England, otherwise known as English Heritage, whose head office address is 1 Waterhouse Square, 138-142 Holborn, London EC1N 2ST (**English Heritage**); and
- (2) [●] (**Authority**).

BACKGROUND

- (A) English Heritage has developed a cross-searchable, web-enabled platform through which to make available, from a single point, online access to historic environmental record resources that are separately hosted by English Heritage and selected third party organisations (the **Heritage Gateway**).
- (B) The Authority holds and maintains an electronic resource of such historic environmental records which may include links in various forms to reports and records belonging to third parties, such links having all necessary consents and permissions (**Records**).
- (C) English Heritage has agreed to make the Authority's Records available online through the Authority's participation in the Heritage Gateway on the terms set out in this Agreement.

OPERATIVE TERMS

In consideration of the respective undertakings and obligations of the parties as set out in this Agreement, the parties agree as follows:

1 Definitions and interpretation

- 1.1 In this Agreement the following words and phrases shall, unless the context otherwise requires, have the following meanings:

Business Day	a day which is not a Saturday or Sunday or a bank or national holiday in England;
Confidential Information	has the meaning set out in Clause 13.1;
Data Format Standards	has the meaning set out in Clause 2.3;
Database	any electronic database of Records maintained by the Authority;
Designated Website	has the meaning set out in Clause 3.1;
Destructive Elements	any harmful, malicious or hidden devices, procedures, routines or mechanisms which may cause any computer program to cease functioning or which may impair or otherwise adversely affect the operation of any software, firmware, hardware, computer, computer system, network or storage media, or prevent or hinder access to any program or data, or impair the operation of any program or the reliability of any data, including computer viruses and other contaminants;
Effective Date	[● Insert date of this Agreement or other date as appropriate];
English Heritage Software	the proprietary software used by English Heritage to provide and/or support the Heritage Gateway;

Force Majeure Event	the occurrence of any event beyond the reasonable control of a party to this Agreement (excluding any strike, lockout or industrial action involving that party's employees) which directly causes that party to be unable to comply with all or a material part of its obligations under this Agreement where that event does not arise from the act, omission or negligence of that party;
Intellectual Property Rights	all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights, domain names, moral rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;
Interface	an internet-based online interface and web service between the Designated Website and the Heritage Gateway enabling those Records which are held within the Online Database(s) residing on the Designated Website to be made available and searchable through the Heritage Gateway;
Liabilities	all liabilities, losses, demands, claims, damages, amounts agreed upon in settlement, costs and expenses (including all legal and other professional fees, expenses and disbursements);
Offline Database	any electronic database of Records maintained by the Authority which is not accessible online through the internet;
Online Database	any electronic database of Records maintained by the Authority which is accessible online through the internet.

- 1.2 In this Agreement, unless the context requires otherwise:
- 1.2.1 a reference to a document in the **agreed form** is to a document agreed by the parties and initialled by them or on their behalf for identification purposes;
 - 1.2.2 references to a Clause or Schedule are to a clause of, or schedule to this Agreement, references to this Agreement include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
 - 1.2.3 references to this Agreement or any other document are to this Agreement or that document as amended from time to time;
 - 1.2.4 words denoting the singular include the plural and vice versa;
 - 1.2.5 words denoting any gender include every gender;
 - 1.2.6 references to a **person** include any corporate or unincorporated body;
 - 1.2.7 the table of contents and headings in this Agreement do not affect its interpretation;
 - 1.2.8 **writing** or **written** does not include e-mail or any other form of electronic communication, other than fax where explicitly stated;
 - 1.2.9 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;
 - 1.2.10 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;

1.2.11 unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Agreement) and to any subordinate legislation made under it; and

1.2.12 the definitions contained in the Interpretation Act 1978 apply (unless a specific definition has been included or the context otherwise requires) in interpreting words and phrases used in this Agreement.

2 Content provision

2.1 Within 14 days of the Effective Date, the Authority shall provide English Heritage with a list of the Databases which the Authority wishes to be made available through the Heritage Gateway, together with a content summary of the Records comprised within such Databases, for English Heritage's approval.

2.2 The Authority may request English Heritage to provide a hosting service in respect of any Offline Database which the Authority itself does not currently have the ability to make available online through its own means. If English Heritage, in its sole discretion, agrees to provide a hosting service, the Authority shall be responsible for granting full access to the Offline Database to English Heritage, in such format as English Heritage shall specify, and English Heritage will use its reasonable endeavours to make the Offline Database available online. The Authority acknowledges that English Heritage gives no warranty that any Offline Database can be made available online or will be compatible with the Heritage Gateway, nor, once made available, that it will be continuously available without downtime or that it will operate error-free. The Authority shall ensure that it maintains an appropriate security back-up copy of any Offline Database prior to its being made available to English Heritage.

2.3 The Authority shall ensure that the approved Online Database(s) and the Records held within such Online Database(s) are formatted according to the digital formatting standards set out in Paragraph 2 of Schedule 1 and, optimally, also with the standards set out in Paragraph 1 of Schedule 1 (collectively **Data Format Standards**). The Authority acknowledges that Online Database(s) and/or Records which are not formatted exactly according to the Data Format Standards may not be compatible with the Heritage Gateway and may not be eligible for inclusion. The Authority must not provide or attempt to provide access via the Interface to any Online Database or Records which do not comply with the Data Format Standards since this could compromise the integrity of the data available through the Heritage Gateway and its correct functioning.

2.4 English Heritage reserves the right, from time to time, to modify the Data Format Standards, upon written notice to the Authority specifying the period of time (which shall not be less than 30 days) within which the Online Database(s) and/or Records must be made to comply with the revised Data Format Standards in order to continue to be included in the Heritage Gateway. The Authority shall use all reasonable endeavours to comply with any revised Data Format Standards and shall promptly notify English Heritage in writing if it is unable to comply, in which event access to the non-compliant Online Database(s) and/or Records may be terminated.

2.5 Prior to providing access to any approved Database(s) or Records, the Authority or any relevant sub-contractor shall submit the same to integrity testing, using the then-most current version of an industry-recognised commercially available anti-virus program, to ensure that the Database(s) and Records are free of Destructive Elements and, at English Heritage's request, supply English Heritage with a copy of the test results.

3 Development of Interface

3.1 Subject to approval of the proposed Online Database(s) by English Heritage and the Authority's compliance with the Data Format Standards, the Authority shall, within three months of the Effective Date, procure the provision of the Interface between the Heritage Gateway and a website operated by or on behalf of the Authority on which the approved Online Database(s) shall reside (**Designated Website**). The Authority shall notify English Heritage once the Interface has been enabled and of the URL address of the Designated

Website. Thereafter, if the Authority proposes to change the URL address of the Designated Website it shall provide not less than 30 days' prior written notice to English Heritage.

- 3.2 English Heritage has made available a guide to creating a compatible Interface annexed at Schedule 2 (**Resource Provider Toolkit**) which the Authority (or its contractors) may adopt when developing the Interface. The Authority is not bound to adopt the Resource Provider Toolkit and may choose to develop the Interface using its own bespoke methodology or by licensing a suitable interfacing solution from a third party provider. Whichever option the Authority adopts, the resulting Interface must, as a minimum, successfully pass messages (between the Heritage Gateway user and the relevant underlying dataset(s) being interrogated) that adhere to the Data Format Standards within the schemas in the Resource Provider Toolkit.
- 3.3 Where the Authority chooses to adopt the Resource Provider Toolkit, the Authority may need to develop its own detailed functional specifications (**Functional Specifications**) based on the Resource Provider Toolkit to provide the necessary technical instructions required by a software developer to construct the Interface. The Authority shall be responsible at all times for the clarity, accuracy, fitness, suitability and completeness of such Functional Specifications. The Authority also agrees and acknowledges that, regardless of English Heritage's provision of the Resource Provider Toolkit, all design risk remains with the Authority and all risk in the development and implementation of the Interface shall remain with the Authority. English Heritage makes no representations and gives no warranties, express or implied, nor shall any conditions be implied regarding the accuracy, completeness, suitability or fitness for purpose of the Resource Provider Toolkit.

4 Availability of Online Database(s)

- 4.1 Once the Authority has notified English Heritage that the Interface has been enabled and English Heritage has verified the same and integrated the Interface with the Heritage Gateway's cross-searching tool, English Heritage will, at the appropriate time, enable online access, through the Heritage Gateway, to the approved Online Database(s) residing on the Designated Website.
- 4.2 With effect from the date on which online access is enabled by English Heritage and for the remainder of the term of this Agreement, the Authority will use all reasonable endeavours to ensure that the Designated Website and the approved Online Database(s) residing on the Designated Website remain continuously available to users of the Heritage Gateway via internet connectivity. Such connectivity shall include multiple, diversely routed high-speed connections, a firewall for security and, optimally, a load balancer for traffic management and speed optimisation.
- 4.3 The Authority agrees to perform such maintenance and other actions as are reasonably required to maintain the approved Online Database(s) in full working order, including using the then-most current version of an industry-recognised commercially available anti-virus program to screen the Online Database(s) and Records on a regular scheduled basis for Destructive Elements. The Authority undertakes that, whenever possible, any significant maintenance of the Designated Website and/or Online Database(s) will be undertaken outside of the hours of 8am to 6pm. However, the Authority reserves the right to carry out any emergency maintenance work at any time, giving to English Heritage as much warning as reasonably possible.
- 4.4 The Authority shall ensure that it has an appropriate security procedure in relation to the approved Online Database(s), including performing scheduled back-ups and providing routine and emergency data recovery.

5 Authority's obligations

- 5.1 The Authority acknowledges that it is its sole responsibility to determine that the Heritage Gateway's cross-searching tool meets its operational needs and to satisfy itself that the approved Database(s) and Records are accurate, up-to-date and complete and ready for operational use in conjunction with the Heritage Gateway before they are so used.

- 5.2 For the avoidance of doubt, the construction, maintenance, validation, error correction, backup and reconstruction of the Database(s), Records, Designated Site and Interface shall all be at the Authority's own cost and expense, and the Authority shall also be responsible for identifying, acquiring, maintaining and complying with all licences and permissions necessary in respect of the same.
- 5.3 The Authority shall not:
- 5.3.1 display or use any link to the Heritage Gateway in a manner that causes the Heritage Gateway or any portion of its content to display within a frame, except as approved by English Heritage from time to time, or be associated with any advertising or sponsorship, or incorporate the Heritage Gateway or any portion of its content into or to any website or link the Heritage Gateway to any site other than the Designated Website;
 - 5.3.2 imply in any way, whether on the Designated Website or otherwise, that English Heritage is endorsing any products or services other than those of English Heritage;
 - 5.3.3 misrepresent its relationship with English Heritage nor present, whether on the Designated Website or otherwise, any false, inaccurate or misleading information concerning English Heritage or information which could harm or compromise the name, reputation or goodwill of English Heritage;
 - 5.3.4 attempt to gain access to, modify, merge, disassemble, decompile or reverse engineer the English Heritage Software; or
 - 5.3.5 use the Heritage Gateway, or allow the Heritage Gateway to be used, in any way not expressly provided for by this Agreement.
- 5.4 If the Authority learns about or is informed of any of the components, processes or methods of operating the Heritage Gateway or the English Heritage Software, it will treat that knowledge or information as English Heritage's confidential information and not use it for the benefit of any party other than English Heritage or convey it in any way to any third party or allow any third party to acquire it.
- 5.5 The Authority shall not interfere with, or attempt to interfere with, the proper working of the Heritage Gateway or English Heritage Software nor circumvent or attempt to circumvent the security measures used by English Heritage for the Heritage Gateway or English Heritage Software. The Authority shall not, nor attempt to, tamper with, hack into or otherwise disrupt the English Heritage Software or any other English Heritage computer system, server, website, router or internet-connected device.

6 Heritage Gateway service availability

- 6.1 English Heritage gives no warranty that the Heritage Gateway will be continuously available without downtime or that the Heritage Gateway will be error-free. English Heritage shall have the right to suspend the Heritage Gateway without notice to the Authority including without limitation:
- 6.1.1 to enable English Heritage to comply with an order or request from a governmental or other competent regulatory body or administrative authority;
 - 6.1.2 to enable English Heritage to carry out work to support and maintain (whether on a routine or ad hoc basis) or improve the Heritage Gateway; and/or
 - 6.1.3 due to circumstances beyond the reasonable control of English Heritage.
- 6.2 English Heritage shall use its reasonable endeavours to schedule downtime to minimise the impact on the Heritage Gateway and its users.
- 6.3 Whilst English Heritage will use its reasonable endeavours to ensure that modifications, enhancements or developments to the Heritage Gateway are compatible with the technical solutions adopted generally by those third party organisations whose records are made

available through the Heritage Gateway, English Heritage shall have no liability for any subsequent development or other costs incurred by the Authority which are associated with such modifications, enhancements or developments.

7 Authority's warranties

7.1 The Authority represents and warrants that:

7.1.1 it has the right to enter into this Agreement and to grant access to the Database(s) and Records as contemplated by this Agreement;

7.1.2 it has used all reasonable endeavours to ensure that the Records are accurate, up-to-date and complete;

7.1.3 the Database(s), Records, Designated Website and Interface:

(a) do not and will not infringe the Intellectual Property Rights, other proprietary rights or rights of privacy of any third party;

(b) do not violate any applicable law, statute, ordinance or regulation;

(c) do not contain anything that is defamatory, libellous, obscene, vulgar, offensive, distasteful, threatening or harassing; and

(d) do not introduce, produce or otherwise allow, provide or use any Destructive Elements; and

7.1.4 it shall, in the performance of its obligations under this Agreement, comply with all relevant legal, regulatory and other mandatory requirements for the time being in force (including any codes of practice issued by any governmental, regulatory or other competent authority).

7.2 In the event of any breach of any of the representations and warranties set out in Clause 7.1, in addition to (and not in lieu of) any other remedies available to English Heritage under this Agreement or otherwise, the Authority agrees promptly to take whatever action is necessary to remedy such breach at no cost or expense to English Heritage, and without interruption to English Heritage's ongoing business, time being of the essence.

8 Intellectual Property Rights ownership

8.1 All Intellectual Property Rights in the Heritage Gateway, English Heritage Software and any specifications, drawings, sketches, models, prototypes, samples, tools, designs, technical information or data, other proprietary information (whether written, oral or otherwise and including personal data as defined in the Data Protection Act 1998), or other material or products supplied or made available by or on behalf of English Heritage to the Authority, including the Resource Provider Toolkit, shall, as between the parties, at all times be and remain the exclusive property of English Heritage and such items shall not be used otherwise than as authorised by English Heritage in writing and will be returned promptly to English Heritage (together with all copies) at English Heritage's request

8.2 The Authority acknowledges that any rights granted by English Heritage to use or exploit any of English Heritage's Intellectual Property Rights will terminate immediately upon the termination of this Agreement for any reason. All goodwill in respect of English Heritage's Intellectual Property Rights shall remain with English Heritage at all times.

8.3 The parties acknowledge and agree that the Database(s) and Records are owned by or held by and/or used under licence to the Authority and the Authority confirms that it has all necessary rights and authority to grant English Heritage the rights and permissions in relation to the Database(s) and Records set out in clause 8.4 below. Nothing in the Agreement shall be construed as conveying any title or ownership in the Database(s) or Records to English Heritage.

- 8.4 The Authority hereby grants English Heritage a non-exclusive, non-transferable, worldwide, fully paid-up, royalty-free right and licence, during the term of this Agreement, to use the Interface and Designated Website and to use, electronically store, copy, reproduce, manipulate, extract, display, transmit, broadcast and distribute the Database(s) and Records for the purposes of making the Records available via the Heritage Gateway. The foregoing right and licence comprises the right for English Heritage to:
- 8.4.1 sub-license users of the Heritage Gateway to electronically download the Records through the Heritage Gateway and to print copies of the same; and
- 8.4.2 electronically download the Records itself through the Heritage Gateway and to print copies of the same in order to fulfil search requests made by enquirers of English Heritage's enquiry and research services at its public search room(s) PROVIDED THAT English Heritage shall not be entitled to store the records so downloaded on a permanent basis

9 Intellectual Property Rights infringement

- 9.1 The Authority undertakes to defend English Heritage from and against any claim or action that the Database(s), Records, Designated Website and/or Interface infringe the Intellectual Property Rights or any other rights of a third party (**IPR Claim**) and shall fully indemnify and hold harmless English Heritage from and against any Liabilities incurred by or awarded against English Heritage as a result of or in connection with that IPR Claim.
- 9.2 English Heritage agrees that:
- 9.2.1 English Heritage shall as soon as reasonably practicable notify the Authority in writing of any IPR Claim of which it has notice;
- 9.2.2 English Heritage shall not make any admission as to liability or agree to any settlement of or compromise any IPR Claim without the prior written consent of the Authority which consent shall not be unreasonably withheld or delayed; and
- 9.2.3 the Authority shall, on its written request and at its own expense, and on providing adequate security to English Heritage for any liability under the indemnity contained in Clause 9.1, be entitled to have the conduct of or settle all negotiations and litigation arising from any IPR Claim and English Heritage shall, at the Authority's request and expense, give the Authority all reasonable assistance in connection with those negotiations and litigation.

10 Indemnity

- 10.1 The Authority will indemnify and keep English Heritage indemnified against all Liabilities incurred or suffered by English Heritage howsoever arising as a result of or in connection with:
- 10.1.1 any claim made by any third party by reason of the provision of the Databases, Records, Designated Website and/or Interface or the performance of the Authority's obligations under this Agreement;
- 10.1.2 any unauthorised access to, or use or misuse of, the Heritage Gateway or English Heritage Software by the Authority or any of its employees, agents or contractors or by any third party if such access, use or misuse was permitted or facilitated by the Authority or any of its employees, agents or contractors; and/or
- 10.1.3 any infringement or alleged infringement of English Heritage's Intellectual Property Rights.

11 Limitation of liability

- 11.1 The express provisions of this Agreement are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course

of dealing or otherwise, all of which are hereby excluded to the maximum extent permitted by law.

- 11.2 Except as provided in Clause 11.5, neither party shall be liable to the other party by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement for any indirect or consequential loss or damage (including loss of profits, anticipated savings, opportunity, reputation or goodwill) whether caused by the negligence, breach of contract, tort or breach of statutory duty of that party, its employees or agents or otherwise, arising out of or in connection with this Agreement, but for the avoidance of doubt and subject to the other provisions of this Clause 11, each party shall be liable to the other party for direct losses.
- 11.3 Except as provided in Clause 11.5 any other liability (other than under Clauses 9 and 10 for which no cap on liability will apply) of the Authority to English Heritage in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with this Agreement is limited in respect of each incident or series of connected incidents to £1,000,000.
- 11.4 Except as provided in Clause 11.5 any other liability of English Heritage to the Authority in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with this Agreement is limited in respect of each incident or series of connected incidents to £500,000.
- 11.5 Notwithstanding any other provision of this Agreement, neither party excludes or limits its liability for:
- 11.5.1 fraud;
 - 11.5.2 fraudulent misrepresentation;
 - 11.5.3 death or personal injury caused by its negligence;
 - 11.5.4 breach of any 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
 - 11.5.5 any other liability which cannot lawfully be limited or excluded.

12 Insurance

Without prejudice to the Authority's obligations and liabilities pursuant to this Agreement, the Authority will take out and maintain in force for the duration of this Agreement, with reputable and substantial insurers, such policies of insurance as are sufficient for a local authority and to cover all potential liability of the Authority under this Agreement, to be evidenced by certificates of insurance made available to English Heritage within seven days of request.

13 Confidentiality

- 13.1 This Agreement and any information or material of a confidential nature supplied by (or on behalf of) one party (the **Disclosing Party**) to the other (the **Receiving Party**) or otherwise obtained by the Receiving Party (including any information relating to the business or financial or other affairs of English Heritage) (collectively **Confidential Information**) are strictly confidential and will not be disclosed (in whole or in part) by the Receiving Party to any other person without the Disclosing Party's prior written consent (except where the Receiving Party is required to disclose them by any government authority or pursuant to an order of a court of competent jurisdiction). The Receiving Party shall take all reasonable security precautions in the safekeeping of the Confidential Information and in preventing its unauthorised disclosure to third parties, applying no lesser security measures to it than to its own confidential information. The Receiving Party shall use the Confidential Information solely for the purposes authorised by this Agreement. The Receiving Party shall not use any Confidential Information for its own benefit, or that of any third party, nor shall it use any Confidential Information to English Heritage's detriment. The Receiving Party shall limit access to Confidential Information to those of its employees, agents and contractors who

reasonably and necessarily require access to the same for the performance of the Receiving Party's obligations under this Agreement and shall ensure that each such employee, agent and contractor is aware of the confidential nature of the Confidential Information and complies with the obligations set out in this Agreement as if named as a party hereto. The Receiving Party shall promptly notify the Disclosing Party in writing of any unauthorised use of disclosure of any Confidential Information.

13.2 The provisions of Clause 13.1 on use and disclosure of Confidential Information do not apply to information to the extent that such information:

13.2.1 is already in the possession of the Receiving Party at the time of its disclosure and not otherwise subject to obligations of confidentiality;

13.2.2 is or becomes publicly known, through no wrongful act or omission of the Receiving Party or breach of this Agreement;

13.2.3 is received without restriction from a third party free to disclose it without obligation to the Disclosing Party;

13.2.4 is developed independently by the Receiving Party without reference to the Confidential Information or other information of the disclosing Party; or

13.2.5 is disclosed as required by law.

13.3 The Authority will keep the terms of this Agreement confidential.

14 Freedom of information

14.1 Each party acknowledges that the other party is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**Regulations**) and each party shall assist and cooperate with the other (at its own expense) to enable the other party to comply with its obligations thereunder.

14.2 Where a party receives a **Request for Information** (as defined by FOIA and/or the Regulations) in relation to **Information** (as defined by FOIA) which it is holding on behalf of the other party, it shall (and shall procure that its sub-contractors shall):

14.2.1 transfer the Request for Information to the other party as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;

14.2.2 provide the other party with a copy of all Information in its possession or power in the form that the other party requires within five Business Days (or such other period as the other party may specify) of the other party requesting that Information; and

14.2.3 provide all necessary assistance as reasonably requested by the other party to enable that party to respond to a Request for Information within the time for compliance set out in FOIA or the Regulations (as the case may be).

14.3 Where a party receives a Request for Information which relates to this Agreement, it shall inform the other party of such Request for Information as soon as practicable after receipt and in any event within two Business Days of receiving such Request for Information.

14.4 If either party determines that Information (including Confidential Information) must be disclosed pursuant to Clause 14.3, it shall notify the other party of that decision at least two Business Days before disclosure.

14.5 Each party shall be responsible for determining at its absolute discretion whether any Information:

14.5.1 is exempt from disclosure under FOIA or the Regulations; and

14.5.2 is to be disclosed in response to a Request for Information.

14.6 Each party acknowledges that the other party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of FOIA, be obliged under FOIA or the Regulations to disclose Information:

14.6.1 without consulting with the other party; or

14.6.2 following consultation with the other party and having taken its views into account.

14.7 Each party acknowledges that any lists or schedules provided by it outlining Confidential Information, are of indicative value only and that the other party may nevertheless be obliged to disclose Confidential Information in accordance with Clause 14.6.

15 Term

This Agreement shall commence on the Effective Date and, subject to Clause 16, shall continue unless terminated by either party on not less than three months' prior written notice to the other.

16 Termination

16.1 This Agreement may be terminated immediately by notice in writing:

16.1.1 by either party if the other party is in material breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within seven days after written notice by the other party specifying the breach and requiring the same to be remedied;

16.1.2 by either party with immediate effect from the date of service on the other of written notice if a resolution is passed or an order is made for the winding up of the other (otherwise than for the purpose of solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations under this Agreement of the relevant party) or the other becomes subject to an administration order or an administrator, receiver or administrative receiver is appointed of all or part of the other's undertaking and assets;

16.1.3 by either party with immediate effect from the date of service on the other of a written notice if that other party ceases or threatens to cease to carry on its business or is unable to pay its debts or becomes insolvent (within the meaning of the Insolvency Act 1986) or makes or proposes to make any arrangement or composition with its creditors;

16.1.4 by either party with immediate effect from the date of service on the other of a written notice if the other party suffers any analogous event to those set out in Clauses 16.1.2 and 16.1.3 in any other jurisdiction;

16.1.5 by either party in the circumstances set out in Clause 17;

16.1.6 by English Heritage if the Authority is in breach of any of its obligations under this Agreement (whether or not such breach is material in nature) and fails to remedy the breach (if capable of remedy) within 14 days after written notice by English Heritage specifying the breach and requiring the same to be remedied; or

16.1.7 by English Heritage with immediate effect from the date of service on the Authority of written notice if the Authority is in repeated or persistent breach of any of its obligations under this Agreement (whether it is the same obligation or not and whether or not such breaches are material in nature or are remedied by the Authority).

16.2 The termination of this Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended

to come into force or continue in force on or after the termination. Without prejudice to the foregoing the following Clauses shall survive termination: Clauses 1, 7, 9, 10, 11, 13, 16.2, 16.3, 18, 20, 21, 22, 23, 25, 26, 27 and 28.

- 16.3 Any termination of this Agreement will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination.

17 Force majeure

- 17.1 If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event, then:

17.1.1 that party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;

17.1.2 as soon as possible after the start of the Force Majeure Event that party shall give notice to the other party of the nature of the Force Majeure Event, the date and time at which it started and the likely effects of the Force Majeure Event on its ability to perform its obligations;

17.1.3 that party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Agreement; and

17.1.4 as soon as practicable after the end of the Force Majeure Event that party shall notify the other party and resume performance of its obligations under this Agreement.

- 17.2 If a party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event for a continuous period in excess of 14 days the other party may terminate this Agreement immediately by notice in writing.

18 Notices

- 18.1 Any notice given under this Agreement shall be in writing and served by delivering it personally or sending it by pre-paid recorded delivery or registered post or fax to the address and for the attention of the relevant party set out in Clause 18.2 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:

18.1.1 if delivered personally, at the time of delivery;

18.1.2 in the case of pre-paid recorded delivery or registered post 48 hours from the date of posting; and

18.1.3 in the case of fax, at the time of transmission.

Provided that if deemed receipt occurs before 9am, on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

- 18.2 The addresses and fax numbers of the parties for the purposes of Clause 18.1 are:

For English Heritage:

Address: National Monuments Record, Kemble Drive, Swindon, SN2 2GZ

For the attention of: Catherine Cload, Heritage Gateway Project Manager

Fax number: 01793 414444

For the Authority:

Address: ●

For the attention of: ●

Fax number: ●

or such other address or facsimile number in the United Kingdom as may be notified in writing from time to time by the relevant party to the other party.

19 Assignment

The Authority will not be entitled to assign, transfer, sub-license or charge any or all of the Authority's rights or obligations under this Agreement without the prior written consent of English Heritage.

20 No partnership/agency

Nothing in this Agreement will make any party the agent or employee of the other nor will it create a partnership, joint venture or employment relationship between the parties.

21 Third party rights

A person who is not a party to this Agreement shall not have the right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

22 Dispute escalation

Without prejudice to either party's right to seek interim or interlocutory relief in the courts the parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Agreement (or its construction, validity or termination) (a **Dispute**). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the parties, either party may give to the other a notice in writing (a **Dispute Notice**). Within seven days of the Dispute Notice being given the parties shall each refer the Dispute to the senior representatives nominated by the chief executive officer (or equivalent) of each party who shall meet in order to attempt to resolve the dispute. If the Dispute is not settled by agreement in writing between the parties within 14 days of the Dispute Notice it shall be resolved in accordance with Clauses 23 and 28.

23 Mediation

23.1 Any Dispute may be referred to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.

23.2 The mediation shall be conducted in London in English. The mediation shall be conducted without prejudice to the rights of any of the parties in future proceedings.

24 Variation

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

25 Waiver and cumulative remedies

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or

remedies. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

26 Severability

- 26.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 26.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

27 Entire agreement

- 27.1 This Agreement sets out the entire agreement and understanding between the parties and supersedes any previous agreements between the parties relating to the subject matter of this Agreement.
- 27.2 The Authority acknowledges that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 27.3 Nothing in this Clause will operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

28 Governing law and jurisdiction

- 28.1 This Agreement is governed by, and will be construed in accordance with, English law.
- 28.2 The parties irrevocably submit to the exclusive jurisdiction of the English courts which will have jurisdiction to hear and decide any suit, action or proceedings and/or to settle any disputes which may arise out of or in connection with this Agreement.

This Agreement has been entered into on the date stated above.

SIGNED for and on behalf of
THE HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND

By:

Signature:

Title:

SIGNED for and on behalf of
[● INSERT LOCAL AUTHORITY NAME]

By:

Signature:

Title:

SCHEDULE 1

Data Format Standards

- 1 Data accessible through the Heritage Gateway should, to ensure consistency, compatibility and ease of retrieval, be compliant with the nationally recognised data standards MIDAS (and the forthcoming MIDAS Heritage), for content, and INSCRIPTION (a collection of 'wordlists' maintained or recommended by the Forum on Information Standards in Heritage (FISH)) for indexing terminology.

These standards can be consulted via the FISH website at: <http://www.fish-forum.info/>. For further information regarding compliance with these standards, the Authority is referred to the English Heritage Data Standards Unit at: DSU.info@english-heritage.org.uk.

- 2 Messages routed through the Interface must, to enable queries to be successfully passed between the Heritage Gateway user and the underlying dataset(s) being interrogated, be compliant with MIDAS XML schemas.

SCHEDULE 2

Resource Provider Toolkit

This document can be provided separately if required, ref: Resource Provider Toolkit v1.1