

APPENDIX 1 - MANAGED SERVICES FOR TEMPORARY AGENCY RESOURCES

CUSTOMER AGREEMENT

This Agreement together with relevant Order comprise the contractual provisions which apply to the Order that is entered into between the Customer and the Service Provider and which govern the provision of the Services to the Customer.

CONDITIONS OF CONTRACT

THIS AGREEMENT is made the _____ day of _____ 20____

BETWEEN:

(1) [] of [] (**the Customer**)

and

(2) [] whose registered office is at [] (**the Service Provider**)

WHEREAS:

- (A) ESPO selected framework providers, including the Service Provider, to provide Services.
- (B) The Service Provider undertook to provide the Services on the terms set out in a Framework Agreement number [] dated [] (the "Framework Agreement").
- (C) ESPO and the Service Provider have agreed that public sector bodies within the UK may enter into Customer Agreements under the Framework Agreement with the Service Provider for the Service Provider to supply Services.
- (D) The Customer enters into this Agreement on the terms hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 As used in this Agreement, the terms and expressions set out below shall have the meanings ascribed therein;

Agency(ies)	means the Service Provider and/or those agencies with whom the Service Provider will contract to supply Temporary Agency Workers to the Customer(s)
Agency Legislation	means Part 2 Chapter 7 Income Tax (Earnings and Pensions) Act 2003 sections 44-47 as amended and the Social Security (Categorisation of Earners) Regulations 1978 as amended by the Social Security (Categorisation of Earners) (Contributions) Amendment Regulations 2014, Regulations 1, 2(2) and 5, and Schedule 1, Part 1, paragraph 2 and Schedule 3, paragraphs 2 and 9
Agreement	means this agreement between the Customer and the Service Provider, comprised of the Conditions and the Schedules and Annexes hereto and any Order
Assignment	means the required duties and period of time where a Temporary Agency Worker is working within the Customer's organisation
Authorised Representative	means a representative of the Customer or the Service Provider as appropriate for the purposes of this Agreement
Authorised Users	means those employees, agents and independent contractors of

the Customer who are authorised by the Customer to use the Services and the Documentation

Charges	means the charges set out in the Pricing Schedule
Controller	shall take the meaning given in the GDPR
Commencement Date	means [date to be inserted]
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998
Contract Manager	means the nominated officer or employee of the Customer responsible for managing this Agreement for the provision of the Services
Cybersecurity Requirements	means all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Protection Legislation	means the GDPR, the LED and any national implementing Law, as amended or updated from time to time in the UK including the Data Protection Act 2018 and all applicable Law about the processing of personal data and privacy
Data Protection Impact Assessment	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
Data Protection Officer	shall take the same meaning given in the GDPR
Data Subject	shall take the meaning given in the GDPR
Data Subject Access Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
Documentation	means the document made available to the Customer by the Service Provider online via [INSERT WEB ADDRESS] or such other web address notified by the Service Provider to the Customer from time to time which sets out the user instructions

for the Services

Default	means any breach of the obligations of either Party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such Party is liable to the other
DPA 2018	means Data Protection Act 2018
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
Equality Legislation	means the Equality Act 2010, the Equality Act 2006, the Human Rights Act and such other Law to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; Equality Legislation shall help organisations and providers to meet their obligations under anti-discrimination Law
ESPO	means Leicestershire County Council, acting in its capacity as servicing authority to a joint committee known as ESPO, established under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000, whose place of business is at of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation
Framework Agreement	means the agreement between ESPO and the Service Provider under which this Agreement is entered into by the Customer and the Service Provider for the supply of the Services
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679);
Good Industry Practice	means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector
Hiring Manager	means an officer of the Customer with the responsibility for hiring Temporary Agency Workers and Workers
Implementation Plan	means the plan to be developed by the Customer and the Service Provider in accordance with Schedule 5 and which will contain a schedule of tasks to be done, the timescale for completion of those tasks, identifying the Party responsible for those tasks, together with the milestones to be achieved and against which payment will be made

Initial Term	the period commencing on the Commencement Date and ending on the [insert number] anniversary of the Commencement Date
Intellectual Property Rights or IPR	<p>means:</p> <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), know-how, trade secrets and, moral rights and other similar rights or obligations;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off</p>
Invitation to Tender	means the invitation to tender issued to the Service Provider in response to a request following the publication of the OJEU notice for the procurement of the Services
Joint Controllers	means an arrangement where two or more Controllers jointly determine the purposes and means of processing
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply
LED	means Law Enforcement Directive (Directive (EU) 2016/680)
Mirror Framework	means any framework agreement entered into by the Service Provider and a company owned by the member authorities of ESPO
Modular Build Services	means a choice of additional services offered in the Tender which can be added to the Specification should the Customer require
Normal Business Hours	means 8.00 am to 6.00 pm local UK time, each Working Day
Order	means an official order in such form as may be issued by the Customer to the Service Provider in respect of the Services
Personal Data	shall take the meaning given in the GDPR
Personal Data Breach	shall take the meaning given in the GDPR
Parent Company	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or

indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term Holding Company shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

Pricing Schedule	<p><i>For direct call offs use this definition</i> [means the Pricing Schedule attached to the Service Provider's Framework Agreement – attached hereto at Schedule 3]</p> <p><i>[OR:]</i></p> <p><i>For further competitions use this definition</i> [means the Pricing Schedule attached hereto at Schedule 3]</p>
Processor	shall take the meaning given in the GDPR
Processor Personnel	means all directors, officers, employees, agents, consultants, contractors, sub-processors and third party processors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement
Protective Measures	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Part B of Schedule 9 of this Agreement (Joint Controller Agreement)
Protocol	means the Customer Protocol describing the Customers obligations in relation to their local arrangements and contract management requirements and which is attached hereto as Schedule 1
Requests for Information	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR
Service Provider Personnel	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor of the Service Provider engaged in the performance of its obligations under this Agreement
Services	means the provision of the managed services for Temporary Agency Workers more particularly set out in the Specification attached as Schedule 2 hereto
Software	means the online software applications provided by the Service Provider as part of the Services
Specification	means the Specification for the Services which the Service Provider is authorised to provide under the Framework Agreement and which is more particularly set out in Schedule 2 hereto
Sub-processor	means any third party appointed to process Personal Data on behalf of the Processor related to this Agreement

Support Services Policy

means (1) the policy for providing support in relation to the Services as described in the Form of Contract, the Master Contract Schedule and the Contract Documents or (2), in the absence of such policy, the Service Provider's policy for providing support in relation to the Services as made available at [INSERT WEB ADDRESS] or such other website address as the Service Provider may notify to the Customer from time to time

System

means the Service Provider's technology system provided to the Customer by the Service Provider and through which the Customer may place Orders

Temporary Agency Worker

means a temporary (non-permanent) worker offered and provided on Assignment by an Agency to fulfil a specific role for a defined period of time in return for a fee. The Temporary Agency Worker is not an employee of the Customer and will not be treated as if he/she is. The Temporary Agency Worker will complete a timesheet, signed by the Hiring Manager, which will be processed by the Agency and passed to the Service Provider in order to invoice for the Agency fee

Tender

means the Service Provider's tender submitted in response to the Invitation to Tender and attached to the Framework Agreement as **Schedule 2**

Term

means the period of the Initial Term as may be varied by: a) any Extension Period; or b) the earlier termination of this Agreement in accordance with its terms. The Customer may extend this Agreement beyond the Initial Term by a further period or periods of up to [insert number of years] years in total (each such extension together with any other such extensions, being the "**Extension Period**"). If the Customer wishes to extend this Agreement, it shall give the Service Provider at least three (3) months' written notice of such intention before the expiry of the Initial Term or Extension Period. If the Customer gives such notice then the Term shall be extended by the period set out in the notice. If the Customer does not extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term.

Working Day

means Monday to Friday in any week but excluding any public or bank holidays

1.1.1 the masculine includes the feminine and the neuter; and

1.1.2 the singular includes the plural and vice versa.

1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.4 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Agreement.

1.5 In the event and to the extent only of any conflict between the Conditions and the Schedules or the Order, the Conditions shall prevail.

- 1.6 Terms or expressions contained in this Agreement which are capitalised but which do not have an interpretation in **Condition 1** shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.

2. SERVICE PROVIDER'S OBLIGATIONS

- 2.1 The Service Provider shall supply the Services in accordance in all respects with the terms of the Framework Agreement and the terms of this Agreement and the terms and conditions of the relevant Order and in accordance with any local arrangements agreed and set out in **Schedule 4**
- 2.2 For the avoidance of doubt the Customer shall not be responsible for any Services that are delivered by the Service Provider and are not the subject of a valid Order.
- 2.3 For the avoidance of doubt any terms that the Service Provider may seek to impose and which in any way vary or contradict the terms of this Agreement shall be excluded and not form part of the Order.
- 2.4 The Services to be supplied under the Order shall be provided in accordance with the terms of the Order. Where the Order identifies that provision will be in accordance with an Implementation Plan, the Implementation Plan will be agreed between the Customer and the Service Provider unless otherwise agreed in writing by the Customer. The Service Provider acknowledges the importance to the Customer of performing the Services by the required date, and shall take all reasonable steps to achieve provision by those dates in accordance with Good Industry Practice and the Service Level Agreement.
- 2.5 The Service Provider shall use all reasonable endeavours to ensure that the Services meet the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.
- 2.6 The Service Provider warrants to all its reasonable endeavours that the Services to be supplied under the Order shall comply in all respects with all relevant requirements of any Law which may be in force at the time when the Services are supplied.
- 2.7 The Service Provider shall be deemed to have satisfied itself as to the sufficiency and correctness of the Pricing Schedule. Unless otherwise expressly stated in the Order the Pricing Schedule shall cover all the Service Provider's obligations and everything necessary for the supply of the Services under the Order.
- 2.8 Unless otherwise expressly stated in the Framework Agreement or the Order no claim by the Service Provider will be allowed for any addition to the charges specified in the Pricing Schedule on the grounds of any matter relating to any document forming part of the Framework Agreement or the Order or any ambiguity or discrepancy therein on which an experienced Service Provider could have satisfied himself by reference to the Customer or any other appropriate means.
- 2.9 For the avoidance of doubt the Service Provider shall have no liability for the negligent acts or omissions or wilful misconduct of the Agency (including its employees and agents) or any Temporary Agency Worker, except to the extent that any loss or damage suffered by the Customer results (in whole or in part) from the acts or omissions of the Service Provider itself.
- 2.10 The Service Provider will ensure that the correct amount of tax and National Insurance contributions are paid and/or deducted in respect of Temporary Agency Workers engaged via this Agreement and will comply and procure compliance by each Agency with all applicable requirements relating to tax and National Insurance including without limitation those relating to intermediaries (including those known as "IR35"), the Agency Legislation and any other Law in force from time to time relating to any payments made to Temporary Agency Workers.

3. CUSTOMER'S OBLIGATIONS

- 3.1 The Customer shall have selected a Service Provider for Orders in accordance with the criteria outlined in the Framework Agreement.
- 3.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 3.3 The Customer shall respond to any reasonable request for information from the Service Provider.
- 3.4 The Customer will assign an Authorised Representative who will interface with the Service Provider's Contract Manager, to ensure both Parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 3.5 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).
- 3.6 The Customer hereby agrees to comply with the Protocol set out in **Schedule 1** hereto.
- 3.7 If a candidate is engaged, the Customer must ensure that such Temporary Agency Worker is entered into the System within 24 hours of engagement. Failure to do so may result in delays in payment to temporary agency workers and Service Providers.

4. PROVISION OF THE SERVICES

- 4.1 The Service Provider shall provide the Services identified in the Order in accordance with the **Services Description and Specification in Schedule 2 and the Service Level Agreement in Schedule 6**. The Charges in respect of such Services shall be as detailed in the **Pricing Schedule at Schedule 3**. And as may be supplemented by any **Local Arrangements** as set out in **Schedule 4**.
- 4.2 Without prejudice to any other remedies available, if the Service Provider fails to provide the Services in accordance with the Specification and the Service levels are not met then the Customer shall be entitled to Service Credits calculated in accordance with the Service Level Agreement in **Schedule 6**.
- 4.3 The Service Provider will be responsible for providing all Temporary Agency Workers (either himself or through Agencies) as ordered from time to time from the Service Provider by the Customer. This will include administrative and clerical, operational, social care, and professional including teaching and education ancillary staff and technical categories of Agency staff.

Only one of the **Condition 4.4** precedents shall be included, the irrelevant precedent **Conditions** shall be deleted as applicable

(Neutral Vendor 4.4)

- 4.4 The Service Provider shall in the provision of the Services ensure that where the Service Provider is acting solely as a Neutral Vendor it shall not supply Temporary Agency Workers from its own register of Workers. The Service Provider shall be permitted to utilise associated or subsidiary companies as a source of supply for the Services subject to the following additional conditions:
 - 4.4.1 in sending requests for Temporary Agency Workers associated or subsidiary companies do not receive more favourable treatment or terms than other agencies in the Service Provider's supply chain; and
 - 4.4.2 any quotations thus received by the Service Provider are treated equally and without any discrimination.

(Master Vendor 4.4)

4.4 The Service Provider shall in the provision of the Services ensure that where the Service Provider acts as a Master Vendor it shall do so subject to the following additional conditions:-

[to be deleted and/or amended as applicable]

Option 1 (Service Provider Category Lead), or

- 4.4.1 *The Service Provider shall provide the Services on the basis that it shall provide for all the Customer's requirements for Temporary Agency Workers in a [named category or categories] and no other(s).*
- 4.4.2 *With the exception of the Services provided for and described in the preceding condition hereof the Service Provider shall expose all Customer's requirements for the Services to the wider network of Agencies within its management and control.*
- 4.4.3 *For the avoidance of doubt any associate or subsidiary company of the Service Provider shall be subject to the same restriction as the Service Provider referred to in **Condition 4.4.1** and shall not therefore be permitted to provide the Services beyond the scope of the category or categories referred to therein.*
- 4.4.4 *All quotations requested from Agencies (save as may be provided for otherwise in this **Condition**) shall be treated equally and without discrimination by the Service Provider.*

Option 2 (Volume 'Cap'), or

- 4.4.1 *The Service Provider shall be required to ensure the provision of the Services via it's own register of Temporary Agency Workers but not exceeding [sixty per centum 60%]) (the Volume Cap) of the Temporary Agency Worker Assignments requested in any rolling four week period. This is to ensure that when averaged out at any point during the Term there is opportunity for other Agencies within the supply chain to provide the Services*
- 4.4.2 *The Service Provider shall therefore invite all contracted Agencies within its supply chain to provide quotations for all assignments in excess of the Volume Cap and to produce evidence thereof if reasonably requested by ESPO so to do.*
- 4.4.3 *The Volume Cap shall apply to the Service Provider's opportunity to provide the Services under this Agreement whether the Services are provided direct by the Service Provider or via an associate or subsidiary company.*
- 4.4.4 *All quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the Service Provider.*

Option 3 (Time Limited Supply Option), or

- 4.4.1 *The Service Provider shall be required to ensure the provision of the Services via its own register of Temporary Works in accordance with the requirements of the Service Level Agreement (attached hereto as Schedule 6 to the Customer Agreement).*
- 4.4.2 *The Service Provider shall only be permitted to provide the Services via its own register of Temporary Agency Workers where the requirements of the Customer can be confirmed in writing within [4 hours] of the Customer's request.*
- 4.4.3 *In all circumstances where the Service Provider cannot satisfy the [four] hour limit for use of its own register of Temporary Agency Workers then the Service Provider shall invite all contracted Agencies within it's supply chain to provide*

quotations for such Assignments, and to produce evidence thereof if reasonably requested by ESPO so to do.

4.4.4 The time limit shall apply to the Service Provider's opportunity to provide the Services under this Agreement whether the Services are provided direct by the Service Provider or via an associate or subsidiary company. For the avoidance of doubt an associate or subsidiary company shall be treated as part of the Service Provider's own register of Temporary Agency Workers for these purposes.

4.4.5 All quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the Service Provider.

Where the Customer is accessing the framework via the Lot 1 Managed Service Provision, and has defined an alternative delivery model the Service Provider shall do so in the following way:-

Supply Chain Optimisation,

4.4.1 The Service Provider shall provide the Services on the basis that it shall provide for all the Customer's requirements for Temporary Agency Workers except in a [named category or categories] where a specific strategy will be developed to deliver the customers requirements. This will be via [(Customers to complete as per the strategy decided upon) e.g. direct to the supply chain or specialist agency(s)] For all other categories the Service Provider shall provide services [(customer to choose strategies from other examples or define specific strategy)].

*For the avoidance of doubt any associate or subsidiary company of the Service Provider shall be subject to the same restriction as the Service Provider referred to in **Condition 4.4.1** and shall not therefore be permitted to provide the Services beyond the scope of the category or categories referred to therein.*

Where the Customer is accessing the framework via Lot 2 or Lot 3, the following terms shall apply to the delivery of that part of the Services that comprise software as a service:-

Software as a Service,

4.4.1 Licence

*4.4.1.1 Subject to the Customer paying the Charges in accordance with **Condition 5**, the restrictions set out in this **Condition 4.4.1**. and the other terms and conditions of this Agreement, the Service Provider hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub licences, to permit the Authorised Users to use the Services and the Documentation during the Term solely for the Customer's internal business operations.*

4.4.1.2 In relation to the Authorised Users, the Customer will use its reasonable commercial endeavours to ensure that:

4.4.1.2.1 only its Authorised Users have to access and use the Services and the Documentation;

4.4.1.2.2 any Authorised User shall not permit another person(s) to access his account unless it has been reassigned in its entirety to another individual Authorised User, in which case

the prior Authorised User shall no longer have any right to access or use the Services or Documentation; and

4.4.1.2.3 each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential.

4.4.1.3 The Customer shall use its reasonable commercial endeavours to not access, store, distribute or transmit any virus, or any material during the course of its use of the Services that:

4.4.1.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

4.4.1.3.2 facilitates illegal activity;

4.4.1.3.3 depicts sexually explicit images;

4.4.1.3.4 promotes unlawful violence;

4.4.1.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

4.4.1.3.6 is otherwise illegal or causes damage or injury to any person or property;

4.4.1.3.7 and the Service Provider reserves the right, without prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this [Condition](#).

4.4.1.4 The Customer shall not:

4.4.1.4.1 except as may be allowed by any applicable Law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Agreement

4.4.1.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means except to the extent expressly set out in this Agreement or as may be allowed by any applicable Law which is incapable of exclusion by agreement between the Parties; or

4.4.1.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable Law which is incapable of exclusion by agreement between the Parties; or

4.4.1.4.2 access all or any part of the Services or Documentation in order to build a product or service which competes with the Services or the Documentation; or

4.4.1.4.3 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Condition 4.1.1.

4.4.1.4.4 The Customer shall use reasonable commercial endeavours to prevent any unauthorised access to, or use of, the Services and the Documentation and, in the event of it becoming aware of any such unauthorised access or use, promptly notify the Service Provider.

4.4.2 Services

4.4.2.1 The Service Provider shall, during the Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.4.2.2 The Service Provider shall use all reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.4.2.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and

4.4.2.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Service Provider has used all reasonable endeavours to give the Customer at least ten Normal Business Hours' notice in advance.

4.4.2.3 The Service Provider will, as part of the Services and at no additional cost to the Customer, provide the Customer with support in relation to the Services during Normal Business Hours as described in the Support Services Policy in effect at the time that the Services are provided.

4.4.3 Service Provider's obligations

4.4.3.1 The Service Provider undertakes that it will perform all the Services in accordance with the Documentation and with all reasonable skill and care, in a timely and efficient manner, using appropriately qualified and experienced staff and in accordance with Good Industry Practice.

4.4.3.2 Without affecting its other obligations under this Agreement, the Service Provider shall comply with all applicable Law, including the Cybersecurity Requirements, with respect to its activities under this Agreement.

4.4.3.3 The undertaking at **Condition 4.4.3.1** shall not apply to the extent of any non-conformance which is caused by use of the Services by the Customer or its agents contrary to the Service Provider's reasonable instructions, or modification or alteration of the Services by the Customer or its agents. If the Services do not conform with the foregoing undertaking, the Service Provider will, at its expense, use its best endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Notwithstanding the foregoing, the Service Provider's responsibility for avoiding any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet shall be limited to the Service Provider using

its reasonable commercial endeavours to ensure the avoidance of such loss or damage, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

4.4.3.4 This Agreement shall not prevent the Service Provider from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

4.4.3.5 The Service Provider warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

4.4.4 Customer's obligations

4.4.4.1 Customer shall use its reasonable commercial endeavours to ensure that it shall:

4.4.4.1.1 provide the Service Provider with all necessary co-operation in relation to this Agreement in order to provide the Services;

4.4.4.1.2 without affecting its other obligations under this Agreement, comply with all applicable Laws and regulations with respect to its activities under this Agreement;

4.4.4.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;

4.4.4.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

4.4.4.1.5 ensure that its network and systems comply with the relevant specifications provided by the Service Provider from time to time; and

4.4.4.1.6 except as otherwise expressly provided in this Agreement, procure maintained and secure network connections and telecommunications links from its systems to the Service Provider's data centres.

4.5 In the event that an Agency has failed an audit, or is unable to meet requirements of this Agreement or, in the case of inherited suppliers, refuses to accept the terms and conditions of the Service Provider for appointing agencies, such Agency will be removed from the supply chain.

5. CHARGES

5.1 In consideration of the provision of the Services in accordance with the terms of the Framework Agreement and the Order, the Customer shall pay the Charges calculated in accordance with the **Pricing Schedule** *use if completing a direct call-off* – [of the Framework Agreement] and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in **Schedule 3**

- 5.2 Payment shall be made within fourteen (14) calendar days of receipt by the Customer (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of **Schedule 3**, from the Service Provider.
- 5.3 Where the Service Provider enters into a sub-contract with an Agency for the purposes of performing its obligations under this Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Service Provider to the Agency to be within five (5) Working Days after the Service Provider has been paid, and that in total, payment does not exceed twenty one (21) days from the issue of an undisputed invoice. The Service Provider shall provide the Customer with evidence that it is acting in compliance with this **Condition** as part of the Management Information that it is required to provide to the Customer in accordance with **Condition 8.1.2** of this Agreement. ESPO reserves the right to audit, carry out spot checks and take all other steps it considers necessary in respect of claims of late payment by the Service Provider.
- 5.4 The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by Law from time to time.
- 5.5 The Parties acknowledge that the Service Provider is required to pay to ESPO and, where relevant, the Trading Company a retrospective rebate based on the value of each customer agreement at a percentage agreed in the Framework Agreement.

6. RECOVERY OF SUMS DUE

- 6.1 If any undisputed sum of money shall be due from the Service Provider, the same may be deducted from any sum then due or which at any time thereafter may become due to the Service Provider under this Agreement or any other agreement with the Customer.

7. IMPLEMENTATION PLAN

- 7.1 The Service Provider shall provide the Services in accordance with any Implementation Plan as agreed with the Customer as attached hereto as **Schedule 5**.
- 7.2 The Service Provider shall deliver a draft Implementation Plan to the Customer on or before the commencement of the Services to the Customer. The draft Implementation Plan shall be sufficiently detailed as is necessary to manage the implementation of the Services effectively. Once agreed with the Customer (agreement not to be unreasonably delayed or withheld) the Service Provider shall monitor its performance jointly with the Customer against the Implementation Plan.

8. MONITORING AND REPORTING

- 8.1 The Service Provider shall:
- 8.1.1 appropriately manage the provisions of the Services that it provides under this Agreement;
 - 8.1.2 be required to provide to the Customer such management information as it reasonably requires including but not limited to the information identified in **Schedule 7** and the Framework Agreement;
 - 8.1.3 on reasonable notice grant to the Customer's external and internal auditors access to any relevant data or documentation relating to the Framework Agreement and Order and the supply of the Services for the purpose of carrying out an audit; and
 - 8.1.4 institute, keep and maintain proper and sufficient records in connection with business conducted under this Agreement and for the continuance of this Agreement and for a period of twelve (12) months thereafter allow any nominated representative of the Customer (including the Customer's Authorised Representative, the chief financial officer and the internal and external auditors

of the Customer) reasonable access and co-operation with regard to such records.

9. SERVICE LEVELS

- 9.1 The Service Provider shall provide the Services to meet or exceed the service levels contained in any Service Level Agreement forming part of this Customer Agreement as attached hereto as **Schedule 6**.

10. SERVICE PROVIDER'S PERSONNEL

- 10.1 The Service Provider shall select, employ, train, furnish and deploy in and about the performance of the Services only such persons as are of good character and who are appropriately skilled and experienced.
- 10.2 The Service Provider shall comply with any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Service Provider shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this Agreement who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall be appropriately checked by the Disclosure and Barring Service (DBS) and shall upon reasonable request produce evidence of such satisfactory disclosure.
- 10.3 The Service Provider and the Service Provider's sub-contractors, staff and agents shall comply with all reasonable requirements of the Customer whilst present at the Customer's premises.
- 10.4 The Service Provider shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of **Conditions 10.1, 10.2 and 10.3** above.
- 10.5 The Service Provider, its agents, sub-contractors and Service Providers shall employ sufficient staff to ensure that the Services are provided at all times in accordance with this Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Service Provider to ensure that a sufficient reserve of staff is available to provide the Services in accordance with this Agreement during staff holidays or absence through sickness or any other cause.
- 10.6 The Customer, acting reasonably, shall have the right to refuse access to its premises at any time to any employee of the Service Provider, its agents, sub-contractors or Service Providers. The exercise of this right shall not diminish the Service Provider's obligation of performance arising under this Agreement.
- 10.7 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any of its staff nor the Agencies nor the Agencies' staff are placed in a position where (in the reasonable opinion of the Customer) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or the Service Provider's staff and the duties owed to the Customer under the provisions of this Agreement.
- 10.8 The Service Provider shall promptly notify and provide full particulars to ESPO or the relevant Customer if such conflict referred to in **Condition 10.7** above arises or may have reasonably been foreseen as arising.
- 10.9 The Customer reserves the right to terminate this Agreement immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of this Agreement. The action of the Customer pursuant to this **Condition** shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

10.10 This **Condition 10** shall apply during the Term and until whichever is the later of the termination or expiry of this Agreement and the termination or expiry of the last Customer Agreement.

11. DEFAULT IN PERFORMANCE OF THE SERVICE

11.1 The Service Provider shall respond promptly to all complaints, oversights and omissions and shall immediately make good any default on its part at its own expense.

11.2 Where Services are required or ordered under this Agreement and the Service Provider fails to provide such Services or any element thereof in accordance with this Agreement, or in the event of breach or default by the Service Provider (which ESPO or the Customer has invited the Service Provider to remedy but which has not been remedied) ESPO or the Customer may take whatever action it reasonably considers necessary or appropriate to effect a suitable remedy which may include (but not be limited to) the customer (or ESPO on the customers behalf) terminating part or all of this Agreement or obtaining substituted provision of the Services to be supplied under this Agreement. This shall be without prejudice to any other remedy for breach of this Agreement and shall be in addition to and without prejudice to the provisions of **Condition 15** hereof.

11.3 In taking such above mentioned remedial actions ESPO and/ or the Customer shall be entitled to claim from the Service Provider any reasonable and demonstrable excess of costs so directly incurred by ESPO and/ or the Customer over the rates contained in the Pricing Schedule together with all associated costs, charges and expenses as direct losses (including professional fees and VAT). Such amount shall be due as a debt from the Service Provider to ESPO or the Customer and payable within 28 days of demand.

11.4 Any dispute as to the reasonableness of any debt owed to ESPO and/or the Customer under **Condition 11.3** may be referred for determination in accordance with **Condition 29**.

11.5 The rights of ESPO and/or the Customer under any of the **Conditions 11.1 to 11.4** shall be without prejudice to its rights under any other provision of this Agreement.

12. WARRANTIES AND REPRESENTATIONS

12.1 The Service Provider warrants and represents that:

12.1.1 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and

12.1.2 the Service Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this **Condition**) in accordance with its own established internal procedures.

13. INSURANCE AND INDEMNITY

13.1 The Service Provider shall indemnify and keep indemnified the Customer against all losses, damages, costs, charges and expenses at any time incurred or suffered by the Customer and arising directly from any breach by the Service Provider of this Agreement, or any of its obligations to the Customer, or from any negligence, negligent act, negligent omission, default, or breach of contract, on the part of the Service Provider or, its employees, and provided always that the Service Provider's liability to indemnify the Customer shall be reduced proportionately to the extent that an act or omission the Customer, its servants or officers may have contributed to the said death, loss, injury or damage. The Service Provider shall effect and maintain at all times during the continuance of this Agreement and for twelve months thereafter (or such longer period as, depending on the basis of claims covered by the insurance, will effect cover for the limitation period applicable to any relevant claim):

- 13.1.1 Public Liability insurance in the minimum sum of ten million pounds
- 13.1.2 Employers Liability insurance of not less than ten million pounds
- 13.1.3 Professional Indemnity insurance of not less than five million pounds

The levels of insurance cover stipulated for Public Liability and Employer's Liability shall be in respect of any one claim, and without limit, in respect of the number of claims made in any 12 month period of insurance, such insurance to be effected with a reputable insurance company and evidenced immediately upon any reasonable demand by the ESPO Contract Manager to do so.

- 13.2 Temporary Agency Workers engaged via this Agreement by the Service Provider will be insured under the Service Provider's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 13.3 Temporary Agency Workers engaged via this Agreement will be insured under the Customer's own Employer's Liability and Public Liability insurance policies whilst under its direction and control, except where the individual Temporary Agency Worker holds his or her own Public Liability insurance
- 13.4 Save to the extent that the cost, liability, expense or demand is caused by the Customer the Service Provider shall procure and produce upon demand an indemnity from each Agency whereby the Agency indemnifies the Customer against each and every cost, liability, expense or demand (including redundancy payments or protective awards) and any liability for wrongful dismissal or unfair dismissal or otherwise incurred by the Customer in connection with any temporary placement under the terms of this Agreement, including without limitation any such matter relating to:
 - 13.4.1 Any claim, cost or proceeding arising directly as a result of the Agency's failure to co-operate or provide information in relation to any Temporary Agency Worker;
 - 13.4.2 The Service Provider's failures to pay the Agency and/ or the Agencies failure to pay any Temporary Agency Worker any sums properly due;
 - 13.4.3 Any claim by a trade union, staff association or staff body in respect of any or all of the Temporary Agency Workers arising out of the Agency's failure to comply with its legal obligations;
 - 13.4.4 Any circumstance where the Customer is deemed to be the employer of any Temporary Agency Worker engaged by the Customer under this Agreement. The Service Provider will use all reasonable endeavours to alert the Customer to any circumstances where a Temporary Agency Worker might be deemed to have become an employee of the Customer.
- 13.5 Save to the extent that the claim, cost or proceeding is caused by the Customer, the Service Provider shall indemnify the Customer against any claim, cost or proceeding arising directly as a result of:
 - 13.5.1 the Service Provider's failure to pay the Agency;
 - 13.5.2 any claim by a trade union, staff association or staff body in respect of any or all of the Temporary Agency Workers arising out of the Service Provider's failure to comply with its legal obligations; or
 - 13.5.3 any circumstance where the Customer is deemed to be the employer of any Temporary Agency Worker engaged by the Customer under this Agreement; orProvided that if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (in this **Condition** referred to as "the Claim"), the Customer shall:
 - 13.5.4 as soon as reasonably practicable, give written notice of the Claim to the Service Provider, specifying the nature of the Claim in reasonable detail;

- 13.5.5 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Service Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Customer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Service Provider, but without obtaining the Service Provider's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - 13.5.6 give the Service Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, directors, employees, agents, representatives or advisers, and to any relevant accounts, documents and records within the power or control of the Customer, so as to enable the Service Provider and its professional advisers to examine them and to take copies (at the Service Provider's expense) for the purpose of assessing the Claim; and
 - 13.5.7 subject to the Service Provider providing security to the reasonable satisfaction of the Customer to the Customer against any claim, liability, costs, expenses, damages or losses which may be incurred, permit the Service Provider to take over the handling of the Claim and if the Service Provider considers it appropriate to compromise or settle the Claim.
- 13.6 Neither Party shall do anything or refrain from doing or omit doing anything, which might render any of the foregoing insurance policies void or voidable.
 - 13.7 The Service Provider shall ensure that Agencies are bound by the requirements of this **Condition 13**. In instances where the Customer agrees variations in the levels of insurances held by Agencies this will be recorded in the Customer Agreement.
 - 13.8 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall exclude, restrict or limit either Party's liability for death or personal injury resulting from its negligence.
 - 13.9 Notwithstanding **Condition 13.2** above, the Parties' liability to each other under or in connection with this Agreement and the Services or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall be the levels of cover specified in **Condition 13.1** where a claim falls within the Service Providers' insurance policy, or where a claim is not required to be covered by an insurance policy, [£1 million (one million pounds)].
 - 13.10 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by Law.
 - 13.11 Neither Party shall other than as a consequence of fraud or wilful default by that Party, be liable for any claim by the other Party for loss of profit or revenue, consequential, economic, special or indirect loss.
 - 13.12 For the avoidance of doubt the Service Provider will not be responsible for the acts and omissions of Temporary Agency Workers under the direction, supervision and control of ESPO or the Customer.

14. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Service Provider shall fully indemnify and hold the Customer harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of confidential information by the use or possession of the Services or any part thereof provided by the Service Provider or licensed by the Service Provider to the Customer under this Agreement subject to:

- 14.1.1 the Customer promptly notifying the Service Provider of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the Service Provider at their own expense to conduct all negotiations for settlement or litigation;
 - 14.1.2 the Customer making no admission without the Service Provider's written consent unless and until the Service Provider shall have failed to take over the conduct of the negotiations or litigation;
 - 14.1.3 the conduct by the Service Provider of such negotiations or litigation shall be conditional upon the Service Provider having given the Customer such reasonable security as the Customer may require for the compensation, damages, costs and expenses for which the Customer may become liable. The Customer at the Service Provider's expense shall give the Service Provider all available assistance.
- 14.2 If the Services or any part thereof becomes, or in the Service Provider's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **Condition 14.1** above, the Service Provider shall at its own expense negotiate to obtain the right for the Customer to continue to use the infringing items, if necessary by replacing, remove or modifying them, but without reducing their quality or ability to meet the Customer's requirements as specified by this Agreement.
- 14.3 The Service Provider shall indemnify the Customer against all losses, costs, damages and expenses whatsoever during the period that the Customer is deprived of the use of the Services by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by agreement between the Parties which shall not entitle the Service Provider to any addition to the Charges or any extension of the Order lead time.
- 14.4 The Service Provider shall not be liable under **Condition 14.1** or **14.2** above for any such infringement or alleged infringement which arises as a result of the inclusion in the Services of any element supplied by the Customer or any use of the Services for a purpose or in a manner different from that specified in, or reasonably to be inferred from, this Agreement.

15. TERMINATION

- 15.1 Either Party may at any time by notice in writing terminate this Agreement as from the date of service of such notice:-
- 15.1.1 if there is a change of control, as defined by Section 1124 of the Corporation Tax Act 2010, in the other Party or its Parent Company; or
 - 15.1.2 the other Party being an individual, or where the other Party is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 1124 of the Corporation Tax Act 2010, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or
 - 15.1.3 the other Party, being a company, passes a resolution, or the Court makes an order that the other Party or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the

business or any part thereof of the other Party or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the other Party or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

- 15.1.4 the Customer may at any time by notice in writing terminate this Agreement forthwith, if the Service Provider is in Default of any material or fundamental breach of any obligation under this Agreement.
- 15.2 Throughout the Term the Customer shall monitor the Service Provider's financial standing against the Service Provider's financial position taken on the Commencement Date. In the event that the Service Provider's financial position falls below the position recorded on the Commencement Date the Customer shall discuss the Service Provider's circumstances with the Service Provider. The Customer reserves the right to terminate this Agreement by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer) there is a material detrimental change in the financial standing of the Service Provider which:
 - 15.2.1 adversely impacts on the Service Provider's ability to provide the Services under this Agreement; or
 - 15.2.2 could reasonably be expected to have an adverse impact on the Service Provider's ability to provide the Services under this Agreement.
- 15.3 Either Party may at any time by notice in writing terminate this Agreement forthwith, if the other Party is in Default of any obligation under this Agreement and:
 - 15.3.1 the Default is capable of remedy and the other Party shall have failed to remedy the Default within thirty (30) days of written notice to the that Party specifying the Default and requiring its remedy; or
 - 15.3.2 the Default is not capable of remedy.
- 15.4 Termination in accordance with this **Condition 15** shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any Party.
- 15.5 In the event of any termination of this Agreement whether under this **Condition 15** or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Customer under this Agreement or otherwise, the Customer shall be entitled to obtain a refund of any Charges paid by the Customer in respect of any Services which have not been performed by the Service Provider in accordance with the terms of this Agreement.
- 15.6 In the event that any Mirror Framework is terminated or otherwise expires, the Customer may elect to terminate this Agreement by serving notice in writing with effect from the date specified in such notice.

16. CONFIDENTIALITY

- 16.1 Each Party:
 - 16.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 16.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

- 16.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with this Agreement:
- 16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with this Agreement and only to the extent necessary for the performance of this Agreement;
- 16.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of this Agreement.
- 16.3 Where it is considered necessary in the opinion of the Customer, the Service Provider shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Service Provider shall ensure that its staff, sub-contractors and agents are aware of the Service Provider's confidentiality obligations under this Agreement.
- 16.4 The Service Provider shall not use any Confidential Information it receives from the Customer otherwise than for the purposes of this Agreement.
- 16.5 The provisions of **Conditions 16.1 to 16.4** shall not apply to any Confidential Information received by one Party from the other:-
- 16.5.1 which is or becomes public knowledge (otherwise than by breach of this **Condition**);
- 16.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 16.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 16.5.4 is independently developed without access to the Confidential Information; or
- 16.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR pursuant to **Condition 18**.
- 16.6 Nothing in this **Condition** shall prevent the Customer from:
- 16.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Customer's accounts
- 16.6.2 disclosing any Confidential Information obtained from the Service Provider to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to this Agreement;
- 16.6.3 provided that in disclosing information under **Condition 16.6.2** the Customer discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.
- 16.7 The Service Provider shall not without the prior written consent of the Customer divulge the existence of this Agreement or any Order or disclose any information relating to or contained in this Agreement to any person who is not engaged in the performance of this Agreement.
- 16.8 In the event that the Service Provider fails to comply with this **Condition 16** the Customer reserves the right to terminate this Agreement by notice in writing with immediate effect.
- The provisions of this **Condition 16** shall apply notwithstanding termination of this Agreement.

17 PROTECTION OF PERSONAL DATA

- 17.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, where the Customer has completed the second column of the table in Schedule 9 to specify the processing of Personal Data it requires the Service Provider to perform, the Customer is

the Controller and the Service Provider is the Processor unless otherwise specified in Part B of Schedule 9. The only processing that the Processor is authorised to do is listed in Schedule 9 by the Controller and may not be determined by the Processor.

- 17.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 17.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - 17.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 17.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 17.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 17.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 17.4.1 process that Personal Data only in accordance with Schedule 9, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 17.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - 17.4.2.1 nature of the data to be protected;
 - 17.4.2.2 harm that might result from a Data Loss Event;
 - 17.4.2.3 state of technological development; and
 - 17.4.2.4 cost of implementing any measures;
 - 17.4.3 ensure that:
 - 17.4.3.1 the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 9);
 - 17.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - 17.4.3.2.1 are aware of and comply with the Processor's duties under this **Condition**;
 - 17.4.3.2.2 are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - 17.4.3.2.3 are informed of the confidential nature 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 Controller or as otherwise permitted by this Agreement; and
 - 17.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 17.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- 17.4.4.1.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - 17.4.4.1.2 the Data Subject has enforceable rights and effective legal remedies;
 - 17.4.4.1.3 the Processor 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 Controller in meeting its obligations); and
 - 17.4.4.1.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 17.4.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Agreement unless the Processor is required by Law to retain the Personal Data.
- 17.5 Subject to **Condition 17.6**, the Processor shall notify the Controller immediately if it:
 - 17.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 17.5.2 receives a request to rectify, block or erase any Personal Data;
 - 17.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 17.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 17.5.5 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
 - 17.5.6 becomes aware of a Data Loss Event.
- 17.6 The Processor's obligation to notify under **Condition 17.5** shall include the provision of further information to the Controller in phases, as details become available.
- 17.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under **Condition 17.5** (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 17.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 17.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 17.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 17.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 17.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 17.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this **Condition**. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- 17.8.1 the Controller determines that the processing is not occasional;
 - 17.8.2 the Controller 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; or
 - 17.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 17.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 17.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 17.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 17.11.2 obtain the written consent of the Controller;
 - 17.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this **Condition 17** such that they apply to the Sub-processor; and
 - 17.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 17.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 17.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this **Condition** by replacing it with any applicable controller to processor standard **Conditions** or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 17.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

[IF SOME OF THE PESONAL DATA IS TO BE UNDER THE JOINT CONTROL OF THE CUSTOMER AND THE SERVICE PROVIDER (I.E. THE PROCESSOR IS ALSO A CONTROLLER OF SOME OF THE PERSONAL DATA) THE CUSTOMER SHOULD COMPLETE THE DETAILS OF THAT PROCESSING IN **CONDITION 17.15 AND STATE WHICH PARTY IS RESPONSIBLE FOR EACH OBLIGATION LISTED IN PART B OF SCHEDULE 9 TO ASSURE ITSELF OF COMPLIANCE WITH DATA PROTECTION LEGISLATION. IF NOT, THEN **CONDITION 17.15** AND PART B OF SCHEDULE 9 SHOULD BE DELETED.]**

- 17.15 Notwithstanding **Condition 17.1** the Parties acknowledge that they are also Joint Controllers for the purpose of the Data Protection Legislation in respect of: [Insert the scope of Personal Data where the purposes and means of the processing is determined by both Parties]. In respect of the Personal Data under Joint Control and identified herein, **Condition 17.1 – 17.14** will not apply and the Parties agree to comply with the requirements as detailed in Part B of Schedule 9.]

18 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

- 18.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Service Provider's expense) to enable the Customer to comply with these information disclosure requirements.
- 18.2 The Service Provider shall and shall procure that its sub-contractors shall;

- 18.2.1 transfer any request for information to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information (or such other period as stipulated by the Customer requesting the information); and
 - 18.2.2 provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven (7) Working Days (or such other period as the Customer requesting the information); and
 - 18.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 18.3 The Customer shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;
- 18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
 - 18.3.2 is to be disclosed in response to a request for information and in no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Customer.
- 18.4 The Service Provider acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;
- 18.4.1 without consulting the Service Provider; or
 - 18.4.2 following consultation with the Service Provider and having taken its views into account.
- 18.5 The Service Provider shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.6 The Service Provider acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with **Condition 18.4**.

19 SOCIAL RESPONSIBILITY & HEALTH AND SAFETY

- 19.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other Law relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 19.2 The Service Provider shall take all reasonable steps to secure the observance of **Condition 19.1** by all Staff employed in performance of this Agreement.
- 19.3 The Service Provider shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other Law.
- 19.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of this Agreement being in contravention of Equality Legislation or any other Law relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Service Provider's staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider's staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

- 19.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or any other Law relating to discrimination which arise directly or indirectly out of any act or omission of the Service Provider, its agents or Sub-Contractors, or the Service Provider's staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment ESPO may have been ordered or required to pay to a third party.
- 19.6 The Service Provider must ensure that all written information produced or used in connection with this Agreement is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 19.7 The Service Provider acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Good and/or Services and the Service Provider shall provide all necessary assistance and information to ESPO as may be required in relation to the performance of an impact analysis by ESPO. The Service Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by ESPO.
- 19.8 The Service Provider shall ensure that all employees of the Service Provider are eligible to work in the United Kingdom.
- 19.9 The Parties shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of this Agreement and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.
- 19.10 The Customer shall be entitled at the Customer's expense to inspect such books, accounts and records belonging to the Service Provider as are necessary to demonstrate compliance with **Conditions 19.1 to 19.9** above.
- 19.11 The cost to the Service Provider of complying with this **Condition 19** shall be included in the Charges.

20 CORRUPT GIFTS AND PAYMENTS

- 20.1 The Customer shall be entitled to cancel and terminate this Agreement and to recover from the Service Provider the amount of any loss resulting from such cancellation or termination if the Service Provider or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of this Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the Service Provider or acting on its behalf (whether with or without the knowledge of the Service Provider) or if in relation to any contract with the Customer the Service Provider or any person employed by the Service Provider or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- 20.2 The decision of the Customer shall be final and conclusive in any dispute, difference or question arising in respect of:
- 20.2.1 the interpretation of this **Condition 20**; or
- 20.2.2 the right of the Customer under this **Condition 20** to terminate this Agreement

21 FORCE MAJEURE

- 21.1 For the purposes of this Agreement the expression Force Majeure shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected Party, its agents or employees.
- 21.2 Neither Party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 21.3 If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 21.4 It is expressly agreed that any failure by the Service Provider to perform or any delay by the Service Provider in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Service Provider shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 21.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

22 HEALTH AND SAFETY

- 22.1 Both Parties shall comply with the provisions of the Health & Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and the Provision and Use of Work Equipment Regulations 1998. All other health and safety assessments required by specific regulation and codes of practice relating to the Service Provider's business must also be strictly applied. The Service Provider is to have monitoring, inspection, review and, where appropriate, health surveillance arrangements in place to meet its responsibilities and may be required to produce documentation to prove that procedures have been carried out in accordance with the regulations upon reasonable request. All Temporary Agency Workers must be aware of and abide by Health & Safety standards and be aware of their duty of care to other employees and members of the public. Temporary Agency Workers shall adhere to a Customer's health and safety requirements at all times and work within the Customer's culture and values.
- 22.2 Both Parties shall in performing their obligations under this Agreement adopt safe methods of work in order to protect the health and safety of its own employees and to the extent applicable the employees of the Customer and all other persons, including members of the public provided that the Customer shall be responsible for the Health and Safety of the Temporary Agency Workers whilst they are under the Customer's control and shall supply the Service Provider with any pertinent Health and Safety information relating to any Services. Save to the extent that the losses, costs, or damages are caused or contributed to by ESPO or the Customer, the Service Provider shall indemnify ESPO and the Customer for any direct losses, costs, or damages, caused

to ESPO and/ or the Customer for any breaches of health and safety Laws, policies, or codes of practice, by the Service Provider.

- 22.3 The Service Provider shall request that any Agencies used are bound by the requirements of this **Condition 22**.
- 22.4 In respect of each Assignment, the Customer shall provide the Service Provider full details of:
- 22.4.1 the intended duties of the Temporary Agency Worker;
 - 22.4.2 any special skills which it requires the Temporary Agency Worker to have including any experience, training, qualifications or authorisations including those required by a professional body or by Law;
 - 22.4.3 any risks to health and safety known to the Customer and any steps that may have been taken to prevent or control such risks;
 - 22.4.4 any specific health and safety information which the Customer wishes to be passed on to the Temporary Agency Worker.
- 22.5 The Customer acknowledges that neither the Service Provider nor any Agency has the obligation (or the opportunity) to supervise, direct or control the manner, time or place of any Temporary Agency Worker's work. The Customer shall provide sufficient supervision, direction and control over the Temporary Agency Worker throughout the Assignment.

23 TUPE

- 23.1 The Customer warrants that it has to the best of its ability prior this agreement given to the Service Provider sufficient and accurate information regarding each and every Relevant Employee as is necessary to enable the Service Provider to assess fully the impact of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) and the consequences for the Service Provider
- 23.2 In the event that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or as may be amended) apply upon expiry or termination of this Agreement or any of the contracts of employment of any person employed or engaged by the Service Provider shall be transferred from the Service Provider to any third party (Replacement Service Provider) engaged by Customer to perform any of the Services or any service equivalent or similar to any of the Services the Service Provider shall indemnify and keep indemnified Customers and the Replacement Service Provider(s) from and against all employment liabilities arising directly as a result of the acts or omissions of the Service Provider and which relate to claims brought by any of the employees or by a Trade Union or other employee representative against Customers or any Replacement Service Provider(s) in respect of or in any way relating to any period on or prior to the date of the employee transfer envisaged by this **Condition 23.2**. For the avoidance of doubt, this includes, but is not limited to, any claim for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise, whether brought in an Employment Tribunal or Civil Court, and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer or any Replacement Service Provider
- 23.3 For the purposes of this **Condition** "Relevant Employee" means person employed or engaged by the Customer or by any third party engaged by Customer to perform any of the Services or any service equivalent or similar to any of the Services prior to the commencement of this Agreement.

24 TRANSFER AND SUB-CONTRACTING

- 24.1 This Agreement is personal to the Service Provider. The Service Provider shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the prior consent in writing of the Customer.

24.2 Notwithstanding any sub-contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

25 AMENDMENTS TO THIS AGREEMENT

25.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the respective Authorised Representative of the Customer and by a duly Authorised Representative of the Service Provider. No variation of this Agreement shall limit or remove the Service Provider's obligations under the Framework Agreement.

26 COMMUNICATIONS

26.1 Any notice which either Party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other Party at its address specified in the Order form either by (a) hand, (b) first class post or recorded delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

26.2 Either Party may change its address for service by notice as provided in **Condition 26.1**.

27 SEVERABILITY

27.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Customer and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

28 WAIVER

28.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

28.2 A waiver of any Default shall not constitute a waiver of any subsequent Default whether of the same or a different nature.

28.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Condition 26**.

29 DISPUTE RESOLUTION

29.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of the Authorised Representatives of each Party.

29.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

29.3 The obligations of the Parties under this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation pursuant to this **Condition 29** and the Supplier shall and procure that its employees and other agents shall comply fully with the requirements of this Agreement at all times.

29.4 If the dispute cannot be resolved by the Parties pursuant to **Condition 29.1**, the Parties shall refer it to mediation pursuant to the procedure set out in **Condition 29.5** unless either Party considers that the dispute is not suitable for resolution by mediation.

29.5 If a dispute is referred to mediation the Parties shall comply with the following provisions:

- 29.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;
- 29.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider appointed by CEDR to provide guidance on a suitable procedure;
- 29.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 29.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties with effect from its signature by their duly Authorised Representatives;
- 29.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties; and
- 29.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

30 ACTION UPON EXPIRY OR TERMINATION

- 30.1 On expiry or termination of this Agreement the Parties will comply with the provisions of **Schedule 8** in order to maintain an orderly continuation of the Services.

31 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 31.1 With the exception of ESPO and the Trading Company which shall each have the right to enforce the provisions set out in the Framework Agreement in relation to the payment of retrospective rebate neither Party intends to confer any other right or benefit upon a third party and for the avoidance of doubt save as excepted herein the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

32 LAW AND JURISDICTION

- 32.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both Parties hereby submit.
- 32.2 This Agreement is binding on the Customer and its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

33 ENTIRE AGREEMENT

- 33.1 This Agreement together with the Framework Agreement and the Order constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day first above written

SIGNED for and on behalf of

[] the Customer

By:

Name:

Title:

Date:

SIGNED for and on behalf of

[] the Service Provider

By:

Name:

Title:

Date:

SCHEDULE 1 to the CUSTOMER AGREEMENT PROTOCOL

ESPO will maintain overall responsibility for the performance management, review and renewal of the Framework Agreement.

Customers will be responsible for managing their own local arrangements including contract reviews for their own service delivery needs.

As such Customers will be required to:

- a) Agree the local implementation of the provision of the Services and integration of electronic systems between their own organisation and the Service Provider.
- b) Identify a named officer (Contract Manager) who shall be a single point of contact for the Service Provider and ESPO.
- c) Agree their own (tiered) Agency lists for Temporary Staffing requirements (where applicable) and any variations to the performance management tool used to monitor and manage Agencies.
- d) Specify their own Job Descriptions and Person Specifications for Temporary Agency Workers.
- e) Communicate to the Service Provider any organisational policies or procedures that the Service Provider, Agencies or Temporary Agency Workers will be required to observe in the delivery of the Services including any requirements for the clearance checking of Temporary Agency Workers including DBS requirements.
- f) Communicate any requirements for the use, care, protection and handling of Personal Data in compliance with the Data Protection Legislation
- g) Confirm the suitability of the Key Performance Indicators detailed in the Service Level Agreement forming part of the Customer Agreement.
- h) Specify individual requirements for the provision of Management Information reporting.
- i) Specify individual requirements for data release to law enforcement agencies.
- j) Be responsible for the payment of invoices issued by the Service Provider in respect of the Services delivered to them and to specify any local variations to invoicing requirements.
- k) Agree details of their own baseline against which savings will be calculated.
- l) Attend overarching contract review meetings as organised by ESPO from time to time.
- m) Manage locally any performance issues or continuous improvement actions.
- n) Note that ESPO shall need to access all management information for the purpose of managing this Agreement.

If the Services include Modular Build Services within the meaning set out in the Framework Agreement then, in addition to the obligations listed above, the Customer will be required to advise on the use of Job Centre Plus or any other local procurement initiatives relating to the selection of Agencies, together with any requirements for local work with other Customers on pay rates to Temporary Agency Workers.

Any service delivery requirements that are locally agreed relating to the above points and any other variations to the Customer Agreement including Contract Standards and the Service Level Agreement should be recorded in **Schedule 4 (Local Arrangements)** to this Customer Agreement

SCHEDULE 2 to the CUSTOMER AGREEMENT

**SERVICES DESCRIPTION (Service Delivery proposal offered by the Tenderer)
and**

SPECIFICATION (Specification provided in the Invitation to Tender)

[to be inserted]

SCHEDULE 3 to the CUSTOMER AGREEMENT
PRICING SCHEDULE
(including Invoicing Procedures)

[to be inserted]

SCHEDULE 4 to the CUSTOMER AGREEMENT
LOCAL ARRANGEMENTS

[to be inserted]

i.e.: Working hours
Shift patterns
Types of staff required
Locations of customer establishments]

SCHEDULE 5 to the CUSTOMER AGREEMENT

EXAMPLE IMPLEMENTATION PLAN

1. An Implementation Plan will be required where identified in the order.
2. An Implementation Plan will be requested from the Service Provider by the Customer in one of two ways:
 - a. Where customers are calling off from the Framework, an Implementation Plan will be requested by the Customer.
 - b. Where customers are re-opening competition underneath the Framework and invite tenders as part of a further competition process, an Implementation Plan will be requested as part of the tender submission.
3. The Implementation Plan will vary in degrees of complexity and timescales depending on the Customer's specific requirements and the Customer's current position.
4. The Implementation Plan will include a schedule of tasks to be undertaken, against a set timescale and will identify the responsibilities of the Service Provider and Customer in implementing this Agreement. Such tasks may include but not be limited to, provision of details of all Hiring Managers, job descriptions and person specifications for the roles, drafting and preparation of guidance documents for Hiring Managers and appropriate training for key users. The Service Provider will (with full agreement with the Customer) create the Implementation Plan with milestone dates for achieving delivery and commencement of the Services.

SCHEDULE 6 to the CUSTOMER AGREEMENT

EXAMPLE SERVICE LEVEL AGREEMENT

Between

[name of Customer] (the Customer)

and

[name of Service Provider] (the Service Provider)

This Service Level Agreement (SLA) is intended to provide a framework for the way in which the Customer and the Service Provider will work together to maximise the benefits of using the Service Provider's services for their temporary agency resources.

Both Parties agree to deliver the services in accordance with the contents of this agreement.

1. Services covered

- 1.1. This Service Level Agreement sets out the agreed Service Levels to be provided by the Service Provider to the Customer under the Agreement entered into between the Customer and the Service Provider under ESPO Framework **reference number 653F/19**.
- 1.2. The managed service for temporary agency resources includes but is not limited to provision of suitably experienced and qualified Temporary Agency Workers in a timely manner to fulfil Assignments as required by the Customer, provision of all supporting management information as well as all related services, including but not limited to implementation and training.
- 1.3. This Service Level Agreement (SLA) covers the core level of service applicable to all Services provided as defined in the Specification (see **Section 2** of the Invitation to Tender document)

2. Duration

- 2.1. This Service Level Agreement (SLA) will be valid for as long as there are Services still in use by the Customer which have been supplied in accordance with this Agreement let under the ESPO Framework reference 653F/19

3. Services required

- 3.1. The Services shall be delivered in accordance with the Service Provider's Tender submitted and accepted [*by ESPO (in the event that the Customer calls-off from the Framework)*] [*by the Customer (in the event that the Customer re-opens competition underneath the Framework and invites tenders as part of a further competition exercise)*] *delete as applicable*

4. Ordering of Temporary Agency Workers

- 4.1. The Customer shall ensure that requests for Temporary Agency Workers are made in accordance with the Framework Agreement and that;
 - 4.1.1. Hiring Managers provide the Service Provider with sufficient detail to enable the Service Provider to fill the Assignment with a suitably qualified and experienced Temporary Agency Worker, supplying or referring to a relevant job description and/or person specification when placing the order
 - 4.1.2. requests for Temporary Agency Workers are authorised promptly
- 4.2. The Service Provider shall ensure that;

- 4.2.1. the Hiring Manager can request an Temporary Agency Worker via a variety of channels
- 4.2.2. all Assignments are filled quickly with a suitably qualified and experienced Temporary Agency Worker within the following set timeframes

below table included as an example

Urgency of Assignment request	Timescale
Temporary Agency Worker required to commence an Assignment	Assignment Fulfilment Timescales from the Service Provider required
within 4 hours	within 30 minutes
within 24 hours	within 1 hour
within 2-3 days	within 4 hours
within 4-7 days	within 48 hours

- 4.2.3. If the Hiring Manager wants to see CVs and conduct interviews, the Hiring Manager shall stipulate this in requesting the Temporary Agency Worker and shall indicate the timescale within which the Service Provider shall supply CVs. Any specific format or technique required for any such interview will be confirmed to the Service Provider by the Customer.
- 4.2.4. [*if the Assignment is being filled by an Agency which is not the Service Provider*] all detail regarding the Assignment is shared with all tiered Agencies to enable the Agencies to promptly respond to the Assignment request.

5. Provision of Temporary Agency Workers

- 5.1. Fulfilment of a request shall be defined as the supply of a suitable Temporary Agency Worker, accepted by the Hiring Manager within the timeframe as set out in at **4.2.2** above.
- 5.2. The Service Provider shall meet the following service levels

Type of assignment	Fulfilment rate
standard assignments	Minimum of 98%
'hard to fill' assignments (<i>to be defined and agreed between the Customer and the Service Provider</i>)	Minimum of XX%

- 5.3. The Customer shall require an exception report detailing the action being taken by the Service Provider to remedy the situation and the associated timescale for the remedy, in the event that;
- 5.3.1. the Service Provider falls below the above stated levels for more than two consecutive months,
- 5.3.2. the Service Provider falls below 90% for standard assignments in any one month
- 5.3.3. the Service Provider falls below XX% for hard to fill assignments in any one month

6. Rejection of Temporary Agency Workers and cancellation of Assignments

- 6.1. the Service Provider shall ensure that appropriately qualified and experienced Temporary Agency Workers are supplied that are appropriate for the Assignment concerned
- 6.2. in the event that a Temporary Agency Worker shall not arrive on time to commence an Assignment the Service Provider shall ensure that the Hiring Manager is notified **without delay**.
- 6.3. in accordance with the specification the Service Provider shall make no charge to the Customer in the event that;
 - 6.3.1. the Temporary Agency Worker fails to attend at the Assignment at the reporting time
 - 6.3.2. the Temporary Agency Worker fails to attend or rejects the Assignment
 - 6.3.3. the Temporary Agency Worker is rejected within the trial period (where such a trial period is agreed)
 - 6.3.4. the Temporary Agency Worker is rejected within the first three hours
 - 6.3.5. the Temporary Agency Worker is found not to have the defined requirements for the role
 - 6.3.6. the Temporary Agency Worker is found not to have the correct and valid credentials to allow them to legally work in the UK
 - 6.3.7. the Temporary Agency Worker is defined as being unfit for work or not being capable of carrying out the majority, or most of the specified tasks required safely and to the necessary standard.
- 6.4. The Customer shall notify the Service Provider of the requirement for any change or cancellation of the assignment **at least 90 minutes** prior to the agreed Assignment start time.
- 6.5. If the Customer fails to comply with the requirement of 6.4 above they shall pay 25% of the cost of the first day or where the Assignment is less than one day, 25% of the Assignment charges, unless the Temporary Agency Worker can be placed elsewhere.

7. Communications and Account Management

7.1. Account Management

- 7.1.1. The Customer's Contract Manager is [*state name and job title*] who can be contacted for further information or any issues or to give feedback on [*insert contact details*]
- 7.1.2. The Contract Manager shall be available for queries during Normal Working Hours [*07:30 to 17:30*]
- 7.1.3. The Service Provider has nominated an Account Manager for the Customer. Any contact the Customer makes with the Service Provider, should, in the first instance be made through [*state name and job title*] by contacting [*insert contact details*]
- 7.1.4. the Account Manager shall be available for queries during Normal Working Hours [*07:30 to 17:30*]

7.2. Service Helpdesk [*if applicable*]

7.2.1. Role

- 7.2.1.1. the Service Provider shall provide a Service Helpdesk which will be the first point of contact for all Customer enquiries and service delivery related issues. The Service Helpdesk shall be manned by suitably experienced individuals who are familiar with this Customer Agreement (and should not simply be an answering service).

7.2.2. Hours of cover

7.2.2.1. the period for which the helpdesk service is available is between the hours of [07:30 and 17:30 Monday to Friday], excluding all United Kingdom Public Holidays.

7.2.2.2. the working hours, upon which response and resolution times are calculated will be [07:30 and 17:30 Monday to Friday], excluding all United Kingdom Public Holidays.

7.2.3. Contacting the service helpdesk and call logging

7.2.3.1. enquiry/enquiries may be placed by email or telephone. In either case the processing of the call will only take place between the hours of [07:30 and 17:30 Monday to Friday], excluding all United Kingdom public holidays.

7.2.3.2. calls to the helpdesk shall be charged at local rate or lower. No charges at premium rate shall be made.

7.2.3.3. the Customer call logging procedure shall achieve the following functions

- provide a standard call logging procedure for the services provided
- minimises the risk of calls being unanswered or missed
- achieve customer satisfaction

7.2.3.4. the service desk can be contacted

- by telephone [*telephone number to be inserted*]
- by e-mail [*email address to be inserted*]

7.3. Out of Hours Service [*if applicable*]

7.3.1. Role

7.3.1.1. the Service Provider shall provide an Out of Hours Service which will be the first point of contact for all Customer enquiries and service delivery related issues outside of the Normal Working Hours detailed above

7.3.2. Hours of cover

7.3.2.1. the period for which the helpdesk service is available is between the hours of [17:30 and 07:30 Monday to Sunday], including all United Kingdom Public Holidays.

7.3.2.2. the working hours, upon which response and resolution times are calculated will be [17:30 and 07:30 Monday to Sunday], including all United Kingdom Public Holidays.

7.3.3. Contacting the service helpdesk and call logging

7.3.3.1. calls may be placed by email or telephone. In either case the processing of the call will only take place between the hours of [17:30 and 07:30 Monday to Sunday], excluding all United Kingdom public holidays.

7.3.3.2. the Customer call logging procedure shall achieve the following functions

- provide a standard call logging procedure for the services provided
- minimises the risk of calls being unanswered or missed
- achieve customer satisfaction

7.3.3.3. the service desk can be contacted

- by telephone [*telephone number to be inserted*]
- by e-mail [*email address to be inserted*]

Contact	Response Times	Resolution Times
Customer enquiries by telephone	90% of calls answered within 4 seconds 95% of calls answered within 7 seconds 100% of calls answered within 10 seconds	90% of enquiries answered within 24 hours 95% of enquiries answered within 48 hours 100% of enquiries answered within 5 days
Customer enquiries by email	90% of emails answered within 30 minutes 95% of emails answered within 1 hour 99% of emails answered within 2 hours	90% of enquiries answered within 24 hours 95% of enquiries answered within 48 hours 100% of enquiries answered within 5 days

8. Web Services

- 8.1. High up-time of web service are critical to all Customers, and represent the amount of time the Service is available

Uptime	Level
Average level	98%
Minimum level	96%

9. Monitoring and Review

- 9.1. The Customer requires regular contact from their Account Manager with additional attendance by the Account Manager at ad-hoc internal review meetings. Initially for the first six months, monthly meetings should be diarised, with quarterly meetings thereafter. The Customer and the Service Provider may agree to move this to less frequently, if this proves appropriate for the circumstances.
- 9.2. ESPO established the framework on behalf of the Customer, and as and when it considers necessary ESPO will also conduct review meetings with the Service Provider addressing any strategic issues arising across all Customers. If the Customer need to raise any issues with ESPO, please advise the Customer's Contract manager who will make contact with ESPO accordingly ([see 7.1.1](#))
- 9.3. Management Information
- 9.3.1. The Service Provider shall provide to the Customer on a quarterly basis management information which should provide the detail as included in [Schedule 7 of the Customer Agreement](#) at no cost to the Customer
- 9.3.2. notwithstanding 9.3.1 above the Customer shall be able to run Management Information reports themselves from the system on an 'as-required' basis

10. Complaints and Resolution

- 10.1. In the event of any issues arising under this Service Level Agreement, the Customer's Contract Manager shall in the first instance contact the Service Provider's Account Manager for resolution.
- 10.2. Any complaints raised under this Service Level Agreement will be managed in the first instance in accordance with the Service Provider's complaints procedure. This

process ensures that all complaints are dealt with in a professional manner, and to the satisfaction of the Customer.

- 10.3. If the issue is not resolved satisfactorily or escalation is needed, the Customer's Contract Manager shall escalate the issue to ESPO, for discussion with the Service Provider's [*Business Development Director*] and, if the issue is not resolved, the Customer and the Service Provider shall follow the procedure set out in **Condition 29** of this Agreement (Dispute Resolution).

SCHEDULE 7 to the CUSTOMER AGREEMENT

MONITORING AND MANAGEMENT INFORMATION

The following data is required for performance management purposes. This summary data must be submitted to the Customer on a quarterly basis (every three months from the commencement of the customer contract) or as otherwise agreed with the Customer. Provision of such data shall not prevent the Customer requesting additional reports when required, or running their own reports from the system.

Data should be from the period in question unless stated otherwise.

This list is not exhaustive, and may change over the life of this Agreement.

Data required by Customers	
Measure	Additional summary data to be provided (beyond that listed in the Data Definition)
1 Financial	
1.1 Spend via contract by customer	Total spend in Quarter
1.2 Spend via by directorate and service	Total spend per directorate and service
1.3 Savings to date	Summary of savings during quarter per customer – to ensure no additional inaccurate savings are being accrued, savings are in addition to the spend figure
1.4 MSP fee	Total MSP fee charged per client in Quarter (excluding any Gainshare elements)
1.5 ESPO fee	Total ESPO fee accumulated in Quarter
1.6 Agency fees	Maximum hourly charge to all clients at the current point in time per specialism (overall, not per client)
1.7 Average savings expressed in both pence and percentage	Average savings during quarter in £ and % per specialism for each client
2 Process / Operations	
2.1 Total hours billed	Summary of hours billed, per specialism
2.2 Total no. assignments filled	Summary of number of assignments filled in given period, per specialism (figures may be less than 2.3)
2.3 Fill rates	% of requested assignments which have been filled in given period, per specialism
2.4 Time to fill	Average length of time in days taken to fill an assignment, overall and per specialism
2.5 System issues raised	System issues which are resolved within Service Level Agreements Service Provider responses, within Service Level Agreements, regarding considerations of future system developments

2.6 Time to resolve system issues	Average length of time taken, in days, to resolve systems issues in given period
2.7 Timesheets on time	% of timesheets which are authorised on time, broken down by business area
3 Customer and Quality (* denotes measures which will be assessed using feedback from customer satisfaction survey, see below example)	
3.1 Complaints made	Summary and/or number of complaints received from customers
3.2 Complaints resolved, and time taken to resolve.	Summary and/or number of complaints from customers resolved in accordance with the agreed complaints procedure
3.3 % interviewed for role	% of CVs which are put forward and are interviewed
3.4 % offered after interview	% of assignments offered after interview
3.5 Assignment extensions	Number of assignments extensions
3.6 Assignment cancellations	Number of assignments which are withdrawn / cancelled prior to the start
4 Contract & Supply Chain Management	
4.1 % SMEs in supply chain	% of spend that is going through SMEs % of tiered Agencies which are SMEs
4.2 Maximum overall time took to pay supply chain in quarter	Maximum number of days taken to pay the supply chain, following the issue of an undisputed invoice to the customer. Please note Condition 5.3 of this Customer Agreement.
4.2.1 I hereby agree and have complied with Condition 5.3 within this Agreement.	Yes / No Signed
4.3 Agencies passing audit	% agencies which have passed an audit
4.4 Service Provider complaints	Summary and/or number of complaints received from supply chain
4.5 Assignments > 13 weeks	Summary of number of assignments which are longer than 13 weeks

Example of Customer Satisfaction Survey

Sample customer satisfaction survey to be used to support data provision

To be completed by recruiting/ hiring managers for each assignment

To what extent did you:

receive submitted CVs to your specified timescale?	<input type="checkbox"/>	Better than expected	<input type="checkbox"/>	As expected	<input type="checkbox"/>	Worse than expected
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receive as many CVs as requested/ expected?	<input type="checkbox"/>	Better than expected	<input type="checkbox"/>	As expected	<input type="checkbox"/>	Worse than expected
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find the CVs matched your specified requirements?	<input type="checkbox"/>	Better than expected	<input type="checkbox"/>	As expected	<input type="checkbox"/>	Worse than expected
---	--------------------------	----------------------	--------------------------	-------------	--------------------------	---------------------

Did all candidates offered an interview turn up?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
--	--------------------------	-----	--------------------------	----

If not – were you notified ahead of time?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
---	--------------------------	-----	--------------------------	----

Did you appoint?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
------------------	--------------------------	-----	--------------------------	----

Did the candidate:

arrive on time?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
-----------------	--------------------------	-----	--------------------------	----

If not – were you notified ahead of time?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
---	--------------------------	-----	--------------------------	----

dress appropriately?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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Perform the required tasks to the required standard?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
--	--------------------------	-----	--------------------------	----

Promptly submit accurate timesheets?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
--------------------------------------	--------------------------	-----	--------------------------	----

Behave appropriately?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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Comments:

NB – This specific format is not mandatory but MSPs will need to collect data in order to provide statistic

SCHEDULE 8 to the CUSTOMER AGREEMENT

ACTION ON EXPIRY OR TERMINATION

1. TRANSFER OF RESPONSIBILITY

- 1.1 The Service Provider acknowledges that on termination or expiry of this Agreement for any reason, the continuity of the Service is of paramount importance. The Service Provider shall minimise disruption caused and assist the implementation of any contingency plan proposed by the Customer to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 1.2 The Service Provider shall promptly provide such assistance and comply with such timetable as the Customer may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent) in the period immediately before the expiry or other termination of this Agreement. The Service Provider shall ensure that its sub-contractors are under a similar obligation. The Customer shall be entitled to require the provision of such assistance both prior to and up to twelve (12) months after the expiry or other termination of this Agreement. If the Customer requires such assistance after the expiry or other termination of this Agreement and within twelve (12) months of the expiry or other termination of this Agreement, the Customer shall reimburse any reasonable costs incurred by the Service Provider in the course of providing such assistance.
- 1.3 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Service Provider or its subcontractors which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, and which the Service Provider may otherwise be obliged to disclose under this Agreement or otherwise beneficial to orderly transfer.
- 1.4 The Service Provider shall not knowingly or purposely obstruct the ability of the Customer to ensure an orderly transfer of responsibility for service provision.
- 1.5 Within 21 days of being so requested by the Authorised Representative, the Service Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Customer to issue tender documents for the future provision of temporary agency worker services.
- 1.6 The Customer shall take all necessary precautions to ensure that the information referred to in paragraph 1.5 above is given only to Service Providers who have qualified to tender or/have been successful in being selected as the Service Provider following a tender exercise for the future provision of temporary agency worker services. The Customer shall require that such Service Providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose.
- 1.7 The Service Provider shall indemnify the Customer against any claim made against the Customer at any time by any person in respect of any liability incurred by the Customer arising from any deficiency or inaccuracy in information which the Service Provider is required to provide under paragraph 1.5 above.

2. TRANSFER OF UNDERTAKINGS

- 2.1 Where, in the opinion of the Service Provider and/or the Customer's Authorised Representative, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are likely to apply on the termination or expiration of this Agreement, the information to be provided by the Service Provider under paragraph 1.5 shall include, as applicable, accurate information relating to the Staff or Agency Workers who would be transferred under the same terms of employment under those Regulations, including in particular:-

- 2.2 the number of Staff or Agency Workers who would be transferred, but with no obligation on the Service Provider to specify their names;
- 2.3 in respect of each of those members of Staff or Agency Workers their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- 2.4 the general terms and conditions applicable to those members of Staff or Agency Workers, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 2.5 The Service Provider agrees that if upon termination of this Framework Agreement, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are applicable, the Service Provider shall in good faith co-operate with the Customer in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties
- 2.6 The Service Provider shall comply with the requirements of those Regulations in respect any personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Service Provider.
- 2.7 The Service Provider shall indemnify the Customer in full and upon demand against any claim made against the Customer at any time by any person currently or previously employed by the Customer or by the Service Provider for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer) resulting from any act or omission of the Service Provider on or after the date of this Agreement, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Customer.
- 2.8 Where it is considered, in the opinion of the Service Provider and the Customer's Authorised Representative, that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended) shall apply on the expiry or termination of this agreement and shall operate so as to transfer the contracts of employment of any employees engaged in the provision of the Services to the Customer, the Customer shall indemnify, and keep indemnified, the Service Provider from and against all employment liabilities arising directly as a result of the acts or omissions of the Customer on or after the date of the employee transfer envisaged by this paragraph and which relate to claims brought by any of the employees or by a Trade Union or other employee representative against the Service Provider in respect of or in any way relating to any period on or after the date of the employee transfer.

SCHEDULE 9 to the CUSTOMER AGREEMENT

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Part A shall be completed by the Controller, who may take account of the view of the Processor; however, the final decision as to the content of this Part A shall be with the Controller at its absolute discretion.

1. INTRODUCTION

- 1.1 The contact details of the Controller's Data Protection Officer are: [Insert Contact details].
- 1.2 The contact details of the Processor's Data Protection Officer are: [Insert Contact details].
- 1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Schedule 9.

[IF THE CUSTOMER WISHES THE SERVICE PROVIDER TO PERFORM ANY PROCESSING OF PERSONAL DATA ON THE CUSTOMER'S BEHALF THE CUSTOMER SHOULD COMPLETE THE DETAILS OF THAT PROCESSING IN THE SECOND COLUMN OF THIS TABLE TO ASSURE ITSELF OF COMPLIANCE WITH DATA PROTECTION LEGISLATION]

Description	Details
Identity of the Controller and Processor	<p style="color: red;">The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor in accordance with Condition 17.1.</p> <p style="color: red;">[Guidance: You may need to vary this section where (in the rare case) the Customer and Service Provider have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p style="color: red;">“Notwithstanding Condition 17.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p>

	<p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p> <p>In respect of Personal Data under Joint Control, Condition 17.1-17.14 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Part B of Schedule 9 instead.”</p>	
Subject matter of the processing	<p>This should be a high level, short description of what the processing is about i.e. its subject matter of this Agreement.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver this Agreement to provide a service to members of the public.]</p>	
Duration of the processing	<p>Clearly set out the duration of the processing, including dates.</p>	
Nature and purposes of the processing	<p>Be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include; employment processing, statutory obligation, recruitment assessment etc.</p>	
Type of Personal Data being processed	<p>Examples here include; name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.</p>	

Categories of Data Subject	Examples here include; Staff (including volunteers, agents and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc.
Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data.	Describe how long the data will be retained for, how it will be returned or destroyed.

[PART B – JOINT CONTROLLER AGREEMENT

[Guidance: insert only where Joint Controller applies in Part A]

In this Part B the Parties must outline each Party's responsibilities for:

- providing information to data subjects under Article 13 and 14 of the GDPR;
- responding to data subject requests under Articles 15-22 of the GDPR;
- notifying the Information Commissioner (and data subjects) where necessary about data breaches;
- maintaining records of processing under Article 30 of the GDPR;
- carrying out any required Data Protection Impact Assessment; and

this Agreement must include a statement as to who is the point of contact for data subjects.

IF SOME OF THE PERSONAL DATA IS TO BE UNDER THE JOINT CONTROL OF THE CUSTOMER AND THE SERVICE PROVIDER (I.E. THE PROCESSOR IS ALSO A CONTROLLER OF SOME OF THE PERSONAL DATA) THE CUSTOMER SHOULD COMPLETE THE DETAILS OF THAT PROCESSING IN **CONDITION [[17].15]** AND STATE WHICH PARTY IS RESPONSIBLE FOR EACH OBLIGATION LISTED IN THIS PART B TO ASSURE ITSELF OF COMPLIANCE WITH DATA PROTECTION LEGISLATION. IF NOT, THEN **CONDITION [[17.15]** AND THIS PART B SHOULD BE DELETED. PARAGRAPH 13 OF THIS PART B IS ONLY APPLICABLE WHERE THE PROCESSING IS LIKELY TO RESULT IN HIGH RISK OF THE RIGHTS AND FREEDOMS OF NATURAL PERSONS. IF THIS IS NOT THE CASE IT CAN BE DELETED.]

The essence of this relationship shall be published.

The Parties may wish to incorporate some conditions equivalent to those specified in **Condition 17.2-17.14**.

The Parties may also wish to include an additional condition apportioning liability between the Parties arising out of data protection of data that is jointly controlled.

Where there is a Joint Control relationship, but no controller to processor relationship under this Agreement, this completed Part B should be used instead of [Condition 17.1-17.14](#).

The following Part B applies to Personal Data under the Joint Control of the Parties as described in [Condition \[17.15\]](#) of this Agreement.

1. The [Parties] [Customer] [Service Provider] shall be responsible for the provision of information to Data Subjects as detailed in GDPR Article 13 (Information to be provided where personal data are collected from the data subject).
2. The [Parties] [Customer] [Service Provider] shall be responsible for the provision of information to Data Subjects as detailed in GDPR Article 14 (Information to be provided where personal data have not been obtained from the data subject).
3. The [Parties] [Customer] [Service Provider] shall be responsible for responding to any request for information from a Data Subject under GDPR Article 15 (Right of access by the data subject).
4. The [Parties] [Customer] [Service Provider] shall be responsible for responding to and rectifying any request for rectification from a Data Subject under GDPR Article 16 (Right to rectification).
5. The [Parties] [Customer] [Service Provider] shall be responsible for responding to and erasing any request for the right to erasure from a Data Subject under GDPR Article 17 (Right to erasure (right to be forgotten)).
6. The [Parties] [Customer] [Service Provider] shall be responsible for responding to and restricting any request for restriction of processing from a Data Subject under GDPR Article 18 (Right to restriction of processing).
7. The [Parties] [Customer] [Service Provider] shall be responsible for notifying any rectification or erasure of personal data or restriction of processing carried out in accordance with GDPR Articles 16, 17 and 18 to each recipient to whom the personal data have been disclosed in accordance with GPR Article 19 (Notification obligation regarding rectification or erasure of personal data or restriction of processing).
8. The [Parties] [Customer] [Service Provider] shall be responsible for responding to and porting any request for data portability from a Data Subject under GDPR Article 20 (Right to data portability).
9. The [Parties] [Customer] [Service Provider] shall be responsible for responding to and complying with any objection from a Data Subject under GDPR Article 21 (Right to object).
10. The [Parties] [Customer] [Service Provider] shall be responsible for ensuring a Data Subject is not

subject to a decision based solely on automated processing, including profiling which causes legal effects or significant effects on the Data Subject and shall comply with GDPR Article 22 (Automated individual decision-making, including profiling).

11. The [Parties] [Customer] [Service Provider] shall be responsible for notifying the supervisory authority (Information Commissioners Office) and the Data Subject of any Personal Data Breach in accordance with GDPR Article 33 (Notification of a personal data breach to the supervisory authority) and Article 34 (Communication of a personal data breach to the data subject).

12. Each Party shall maintain a record of its processing activities under its responsibility in accordance with GDPR Article 30 (Records of processing activities).

[**Condition 13** is only applicable where the processing is likely to result in a high risk to the rights and freedoms of natural persons. If this is not the case it can be deleted.]

13.[The [Parties] [Customer] [Service Provider] shall be responsible for carrying out a data protection impact assessment in accordance with GDPR Article 35 (Data protection impact assessment) and Article 36 (Prior consultation).

14.] The Parties agree that the [Customer] [Service Provider] shall be the point of contact for Data Subjects.]