

**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 05-10-2025 day of 20

BETWEEN:

(1) The Police and Crime Commissioner of Leicestershire of St Johns, Leicester LE19 2BX **(the Customer)**

and

(2) Matrix SCM Group Ltd whose registered office is at 2nd Floor Partis House, Knowlhill, Milton Keynes, United Kingdom, MK5 8HJ **(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 653F_23 dated 11/04/2023 (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 01/10/2025
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 all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority which are applicable to a Party
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 set out under the Data Protection Legislation
Data Subject	shall take the meaning set out under the Data Protection Legislation
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
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, and such other acts, and legislation and Law and other Law relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment and 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 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018;
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 6 month anniversary of the Commencement Date
Intellectual Property Rights or IPR	means: 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; 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 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

Invitation to Tender	means the invitation to tender issued to the Service Provider in response to a request following the publication of the 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
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	means the Pricing Schedule attached to the Service Provider's Framework Agreement – attached hereto at Schedule 3
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 excluding for the avoidance of doubt any Temporary Agency Workers.
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 https://teammatrix.com 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/Contractor	means a temporary (non-permanent) worker/contractor 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
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 of up to 6 months 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 Subject to Schedule 11 which shall prevail over the Conditions, 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 use all its reasonable endeavours to ensure 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.
- 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.

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:-

Where the Customer is accessing the framework via Lot 4, the provisions set out in Schedule 11 shall apply

- 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** 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 The prices and costs detailed in the Pricing Schedule shall be capped for the first year of this Agreement.
- 5.3 For the avoidance of doubt any reduction in the prices and costs shall be passed through to the Customer at the earliest practicable opportunity consistent with the Service Providers Obligations under **Paragraph 2.8.2** of the Specification (**Section 2**)
- 5.4 The Service Provider may only apply to increase the prices charged under this Agreement in exceptional circumstances. With the exception of changes to statutory contributions, which shall be handled in accordance with **Condition 20.4** of the Framework Agreement, any request by the Service Provider to review prices shall be submitted in writing to the Customer at least sixty (60) days in advance of the requested effective date. Such a request shall include:
 - 5.4.1 evidence that the Service Provider has minimised any increase in costs including in respect of the costs of the Agency(ies);
 - 5.4.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
 - 5.4.2.1 a breakdown of the profit and cost components that comprise the relevant Charge;
 - 5.4.2.2 details of the movement in the different identified cost components of the relevant Charge;
 - 5.4.2.3 reasons for the movement in the different identified cost components of the relevant Charge; and
 - 5.4.2.4 evidence that the Service Provider has attempted to mitigate against the increase in the relevant cost components.

- 5.5 The Customer shall consider an application made in accordance with **Condition 5.3** and revert to the Service Provider within thirty (30) days of receiving it. If the Customer agrees the price increase, it shall take effect from a date to be agreed between the Parties. If the Customer does not agree the price increase (increases as a result of statutory or legislative change excluded) or the Parties cannot agree a date for the price increase to take effect and further negotiation between the Parties fails, then the matter shall be referred for determination in accordance with **Condition 29**.
- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 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 rate 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 poundsThe 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 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
- 13.3 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:

- 13.3.1 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;
 - 13.3.2 The Service Provider's failures to pay the Agency and/ or the Agencies failure to pay any Temporary Agency Worker any sums properly due;
 - 13.3.3 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;
 - 13.3.4 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.
- 13.4 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:
- 13.4.1 the Service Provider's failure to pay the Agency;
 - 13.4.2 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
 - 13.4.3 any circumstance where the Customer is deemed to be the employer of any Temporary Agency Worker engaged by the Customer under this Agreement ;
- provided 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:
- 13.4.4 as soon as reasonably practicable, give written notice of the Claim to the Service Provider, specifying the nature of the Claim in reasonable detail;
 - 13.4.5 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;
 - 13.4.6 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
 - 13.4.7 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.

- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 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).
- 13.9 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.
- 13.10 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.
- 13.11 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.

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

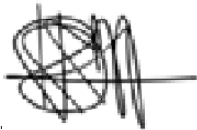
- 33.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 33.2 Each of the Parties acknowledges and agrees that, in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
- 33.3 The Service Provider acknowledges that it has:
- 33.3.1 entered into the Contract in reliance on its own due diligence alone; and
- 33.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.
- 33.4 Nothing in this clause 33 shall operate to exclude Fraud or fraudulent misrepresentation."

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

Signed by.....^{Signed by:}
Andries Van Staden.....for and on behalf of the **Service Provider**
_{B587D9BF254B446...}

Andries Van Staden
.....

Director

Signed by..... for and on behalf of the **Customer**

.....Kira Knott

Authorised Signatory

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)

See separate document labelled:

"Schedule 2 - MSTAR4 – Framework Specification.pdf"

Lot 4 SOW Project Delivery specification applies.

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

As per attached "MSTAR4 Schedule 3 – Pricing - LOT 4 SOW – Project Delivery"

SCHEDULE 4 to the CUSTOMER AGREEMENT
LOCAL ARRANGEMENTS

Not Applicable

SCHEDULE 5 to the CUSTOMER AGREEMENT

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

SERVICE LEVEL AGREEMENT

Where the provider fails to source a suitable member of agency staff within 4 weeks of instruction, the Authority reserve the right to source the candidate via their own means.

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 feedback)	
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

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

1. INTRODUCTION

- 1.1 The contact details of the Controller's Data Protection Officer are: Steven Morris – Steven.Morris@leics.police.uk.
- 1.2 The contact details of the Processor's Data Protection Officer are: Lauren Edwards, laurenmarie.edwards@teammatrix.com.
- 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.

Description	Details
Identity of the Controller and Processor	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 .
Subject matter of the processing	The processing is needed in order to ensure that the Processor can effectively deliver this Agreement to provide a policing service to members of the public.
Duration of the processing	Duration of contract
Nature and purposes of the processing	The processing of personal data between the Controller and the Processor will be limited to the necessary and proportionate information required to onboard identified individuals in line with established Human Resource requirements. The processing of specific policing information will be covered by a separate agreement between the identified individuals and the Controller.

	For the purposes of this contract personal data will be processed for the purposes of: • Employment processing • HR Processes • Recruitment assessment • Vetting Processes And other purposes commensurate with the onboarding of agency staff as required by the Controller.	
Type of Personal Data being processed	This will include but not limited to: • Name • Date of birth • Address • National Insurance Information • Contact information • Biometric Data (if required) • Vetting Information • Finance Information (as required)	
Categories of Data Subject	Agency Staff members	
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.	12 Months upon conclusion of the contract with the processor.	

SCHEDULE 10 to the CUSTOMER AGREEMENT

AGREED OUTCOMES FORM

CUSTOMER AGREED OUTCOME FORM FOR PROJECT REFERENCE: CONT0483

Pursuant to Framework Agreement (Ref 653f_23 MSTAR4)

Customer	
Address	
Contact Details	
Service Provider	
Address	
Contact Details	
Area of Professional Delivery	
Anticipated Start Date	
Anticipated End Date	
Budget	
Description of the Services Required	
Additional Security and Vetting Requirement	
Insurance Levels	
Professional Indemnity	£ 5,000,000.00
Public Liability	£ 5,000,000.00
Employers Liability	£ 5,000,000.00
Milestones	
	£
Reporting Requirements	
Special Conditions	

SIGNED for and on behalf of

By:

Title:

Date:

[] the Service Provider

By:

Name:

Title:

Date:

SCHEDULE 11 to the CUSTOMER AGREEMENT

SCHEDULE 11 Lot 4 Statement of Work specific provisions

As used in this Schedule, the terms and expressions set out below shall have the meanings ascribed below:

Agreed Outcomes	means the intended result(s) and other requirements, as detailed within the Agreed Outcome Form for any given Project, subject to any Agreed Outcome Change Form.
Agreed Outcomes Form	means a form setting out the Agreed Outcomes to be in a form as set out in Schedule 10 of the Agreement
Agreed Outcome Change Form	means the form for the process set out in the Specification whereby the Service Provider or Customer can request a change to the Agreed Outcomes Form to be approved in writing
Application Approval	means the Customer approving the Milestone Application submitted by the Specialist Resource that shall be done within 5 Working Days of the Milestone Application
Approved / Approval	means the written consent of the Customer not to be unreasonably withheld or delayed
Bid Process	means the process undertaken by the Service Provider and/or Customer to invite Specialist Resources to provide a bid and to then evaluate those bids and award the successful Specialist Resource.
Contract Year	means each consecutive twelve (12) Month period during the Term commencing on the Commencement Date;
Milestone	means the stages or events required in the achievement of the Agreed Outcomes .
Milestone Application	means the application to verify that the Milestone has been completed as set out in the Agreed Outcomes Form subject to any Agreed Outcome Change Form and presented to the Customer by the Specialist Resource for Application Approval via the System.
Pre-Existing IPR	means any Intellectual Property Rights vested in or licensed to the Customer or the Service Provider prior to or independent of the performance by the Customer or the Service Provider of its obligations under the Agreement and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
Project/Statement of Works	means the deliverables and outcomes based piece of work as set out in the Agreed Outcomes Form undertaken by the Specialist Resource
Project Delivery	means the period when the Project is being delivered
Project Specific IPRs	means: - (a) IPRs in Services and/or deliverables provided by the Service Provider, (or by a third party on behalf of the Service Provider) specifically for the purposes of the Agreement including, any deliverables, and all updates and amendments of these items; and/or (b) IPRs arising as a result of the provision of the Services

and/or deliverables by the Service Provider under the Contract; and/or

(c) ; IPRs arising as a result of the Project/Statement of Work delivered by the Specialist Resource

Proposal	means the information submitted by the Specialist Resource Organisation to the Service Provider for consideration by the Service Provider and the Customer as a result of the Bid Process. This information must include details regarding their area of expertise, previous relevant project history as well as any information relating to the completion of the Project/Statement of Work
Self-Bill Approval	means the Specialist Resource accepting the Self-Bill Invoice issued by the Service Provider.
Self-Bill Invoice	Means documentation summary of Milestone Applications issued by the Service Provider to the Specialist Resource for Self-Bill Approval once an Application Approval has been completed by the Customer.
Specialist Resource/ Specialist Resource Organisation	means the entity appointed/to be appointed by the Service Provider to carry out any of the tasks within the Services which has been onboarded by the Service Provider to its Supply Chain in accordance with the Specification;
Supply Chain	means the Service Provider's network of onboarded Specialist Resources in accordance with the Specification;

1. CUSTOMER OBLIGATIONS

- 1.1 Customer shall use its reasonable commercial endeavours to ensure that it shall:
 - 1.1.1. provide the Service Provider with all necessary co-operation in relation to this Agreement in order to provide the Services;
 - 1.1.2. ensure that it provides a reasonable level of detail to the Service Provider at all times in order for the Service Provider to provide the Services and to pass onto the Specialist Resource Organisation in order for it to put together a Proposal.
 - 1.1.3. shall ensure that it provides to the Specialist Resource Organisation all relevant documents, information and items to the Specialist Resource Organisation in order for them to fully complete the Project/Statement of Work.

2. SUPPLY OF THE SERVICES

- 2.1.1. The Service Provider shall
 - 2.1.1.1. understand the meaning of and the importance of the Project, Milestones and how these must be monitored against;
 - 2.1.1.2. have and develop a well-established Specialist Resource market to be able to achieve the deliverables of a public sector organisation.

3. THE SERVICES

3.1.General

- 3.1.1. The Service Provider shall provide the Services to the Customer in accordance with:
 - 3.1.1.1. the provisions of the Framework Agreement and each call-off contract and the Specification;
 - 3.1.1.2. the Agreed Outcomes and the Customer's reasonable requests from time to time.
- 3.1.2. The Service Provider shall perform the Services by the dates agreed in writing or

if no date is agreed, in a timely manner to meet the reasonable requirements of the Customer and understands that a degree of flexibility may be requested by the Customer in relation to way the Services are provided to each Customer.

3.2.Specialist Resource

- 3.2.1. The Service Provider must be able to evidence its process of issuing requests for submissions and receiving submissions back from Specialist Resources and how these are reviewed if requested. These processes must be in line with the specification received from the Customer.
- 3.2.2. The Service Provider agrees to co-operate with a Customer regarding the transfer of information in respect of each Project/Statement of Work requirement, in order to ensure that the Specialist Resource is suitable for such Project/Statement of Work and to comply with its obligations under the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 3.2.3. The Service Provider shall always endeavour to ensure the suitability of a Specialist Resource (including, without limitation, that each Specialist Resource is skilled and competent with the appropriate qualifications, specialist knowledge and expertise for those tasks that they will be required to perform) and to maintain a high standard of service and integrity.
- 3.2.4. The Service Provider must ensure that the potential Specialist Resources are aware that at no time is there any guarantee of a Project/Statement of Work. The Service Provider will select which Specialist Resources it believes is suitable for the Project/Statement of Work. Those Specialist Resources will then put together a Proposal which will be checked by the Service Provider and the best Proposals put forward to the Customer. The Customer will then decide which Specialist Resource Organisation will deliver the Project/Statement of Work.
- 3.2.5. The Service Provider shall not submit any Specialist Resource details to a Customer on a speculative basis, unless previously agreed with the Customer.
- 3.2.6. During the Term of the Agreement the Service Provider shall be obliged:
 - 3.2.6.1. to perform the checks to establish and confirm that each Specialist Resource and each of the Service Provider's Staff is entitled to live and work in the UK. Should any Specialist Resource and / or Service Provider's Staff cease to be entitled to live and work in the UK at any time during the term of a Project/Statement of Work to a Customer, the Service Provider shall immediately notify the Customer of this fact and the Customer will be entitled to immediately terminate any relevant agreement in respect of that Specialist Resource and / or the Service Provider's Staff. For the avoidance of doubt it is assumed that a Specialist Resource Organisation has carried out employability checks in the normal course of its employment on each individual supporting in the completion of the Project/Statement of Work; and
 - 3.2.6.2. to provide proof of a Specialist Resource's qualifications, training and experience requested by the Customer or required by law or any professional body for the performance of the Project/Statement of Work. For the avoidance of doubt a Specialist Resource Organisation is responsible for providing qualified and experienced individuals to support in the completion of the Project/Statement of Work but do not have to provide evidence of an individual's qualifications, training and experience.
- 3.2.7. The Service Provider shall procure that all employees, Specialist Resource individuals and organisations and the Service Provider's Staff shall:
 - 3.2.7.1. attend such location as may be reasonably required for the proper provision of the Services;
 - 3.2.7.2. observe the Customer's general rules and procedures with regard to the Project/Statement of Work including without limitation the Customer's policies in respect of: IT. health and safety at work, security, smoking, dress

code, attendance and Code of Conduct. employees, consultants of the Specialist Resource and the Service Provider's Staff (as appropriate) will, on commencement of the Project/Statement of Work, be given access to all of a Customer's relevant policies and guidelines so that they know the rules and procedures, which need to be followed;

- 3.2.7.3. notify the Customer so far as possible in advance of any periods over which they will be unable to carry out the Project/Statement of Work or provide the Services (as appropriate) due to the holiday, sickness, maternity leave, shared parental leave, paternity leave or other reason which may impact on delivery of a Milestone;
- 3.2.7.4. act in a civil, co-operative and non-discriminatory fashion towards a Customer's employees, clients and other business contacts; and
- 3.2.7.5. acknowledge and agree that a Customer shall at all times have the right without thereby being in breach of this Agreement, to require the Service Provider to remove immediately from a Customer's site any employees, consultants of the Specialist Resource or any of the Service Provider's Staff who are providing Services.
- 3.2.8. The Service Provider shall ensure that in putting forward a Specialist Resources Proposal in response to a brief by a Customer, it adheres to the following:
 - 3.2.8.1. The Service Provider must have a Supply Chain management process in place and must be able to evidence this to the Customer upon request.
 - 3.2.8.2. The Service Provider must have a full and in-depth conversation and/or meeting with the Specialist Resource prior to them being put forward to the Customer.
 - 3.2.8.3. The Specialist Resource should be fully briefed and provide written consent to the Service Provider to send its Proposal for the specific brief referencing the Project/Statement of Work reference number.
 - 3.2.8.4. The Specialist Resource Proposal must be emailed to the relevant contact at the Customer. The email shall be in the following format:
 - 3.2.8.4.1. full Specialist Resource name and the Project/Statement of Work applied for;
 - 3.2.8.4.2. the reasons why the Specialist Resource is suitable for this specific Project/Statement of Work in the text of the email; and
 - 3.2.8.4.3. the written consent from the Specialist Resource to be put forward for the relevant Project/Statement of Work and the Proposal attached or appended either as an email or a scanned PDF document and accurately dated.

3.3. Specialist Resource– Specific Terms Pre-Engagement

- 3.3.1. The Service Provider must be able to offer to the Customer the option of having access to Specialist Resource and will recommend the most suitable route to the Customer.
- 3.3.2. The Service Provider must work with the Customer to understand its requirements fully. This includes providing information, advice and guidance to the Customer regarding its requirements and assisting the Customer to develop its requirements and ensure that they are suitable. This also includes assessing if the Project/Statement of Work is needed.
- 3.3.3. If the Customer already knows the Specialist Resource it wishes to work with, then the Service Provider must onboard that Specialist Resource onto its Supply Chain.
- 3.3.4. If the Customer knows the service it will require, then the Service Provider must support the Customer in finding a solution or suitable Specialist Resource Organisation to deliver this.

- 3.3.5. If the Customer knows the outcome of the Project/Statement of Work but requires the Service Provider to support or create the specification, then the Service Provider must work with the Customer to prepare any business cases or put together a document detailing its requirements including a specification.

3.4.Vetting

- 3.4.1. The Service Provider shall ensure that the Specialist Resource is fully vetted, audited and ready to deliver the requirements relevant to its Specialist Resource area. This vetting process will be in line with the Service Provider's own vetting and approval process. This should include but is not limited to checking all skills, qualifications and experience necessary for completion of the Project/Statement of Work as well as any additional requirements the Customer has, for example if DBS checks are in place.
- 3.4.2. The Service Provider shall ensure that a Specialist Resource Organisation will provide individuals who have been correctly vetted for the relevant Project/Statement of Work.
- 3.4.3. The Service Provider will have and maintain an electronic management information system which will contain up to date information on all Specialist Resources.

3.5.Proposal Submissions

- 3.5.1. Once the Service Provider understands the requirements of the Customer it will make contact with all relevant and qualified Specialist Resources who could fulfil the Customer's requirements fully and request it shall send its Proposals to the Service Provider for consideration.
- 3.5.2. The Service Provider must review all Proposals received from the Specialist Resources in relation to the Customers requirements, taking into account the best quality service and the most competitive rates. The Service Provider must ensure transparency and consistency at all times.
- 3.5.3. The Service Provider must put forward to the Customer the Proposals of the Specialist Resource Organisations they believe will be suitable following review of each of the Proposals but will remain impartial and unbiased at all times other than providing its expert knowledge. The Service Provider must not put itself into a position where its interests' conflict with ESPO's or any Customer.
- 3.5.4. The Service Provider will not submit a Specialist Resource Proposal to a Customer for consideration in response to a specific Project/Statement of Work unless the Service Provider has previously reviewed the Specialist Resource Proposal. The Service Provider must also have screened the Specialist Resource to ensure that they will fit with both the Customer's culture and the requirements of the Customer. The Specialist Resource must express its permission for its details to be submitted to the Customer.
- 3.5.5. The Service Provider shall fully brief all Specialist Resource Organisations prior to the submission of its Proposal to a Customer.
- 3.5.6. The Service Provider must facilitate any clarifications the Customer has by passing on any clarifications onto the potential Specialist Resource Organisation and then passing any responses back to the Customer.
- 3.5.7. The Service Provider will arrange any communication with the Specialist Resource and/or that the Customer requests.
- 3.5.8. The Customer will decide which Specialist Resource submission to accept using a fair and transparent process and will inform the Service Provider of its decision. The Service Provider will inform the Specialist Resource Organisations of the outcome and subject to the successful Specialist Resource Organisation accepting the offer, arrange the commencement of the Project/Statement of Work.
- 3.5.9. The Service Provider will enter into a contract with the successful Specialist Resource Organisation prior to the Project/Statement of Work commencement. A

separate contract must be in place for each Project/Statement of Work. Copies of this contract must be provided to the Customer upon request.

- 3.5.10. The Service Provider must agree Milestones with the Customer and track the Project/Statement of Work against these Milestones. It is the responsibility of the Service Provider to ensure that the Specialist Resource achieves the outcomes required by the Customer.

3.6.Payment

- 3.6.1. The Specialist Resource, on completion of an agreed Milestone, will submit a Milestone Application to the Customer who will review the work completed. The Customer should review the Milestone Application within period stated in the Specification and either authorise for payment (Application Approval) or reject the application to the Specialist Resource detailing what work remains to be completed.
- 3.6.2. Once the Milestone Application has been authorised by the Customer (Application Approval) the Service Provider will raise a Self-Bill Invoice to the Specialist Resource who will be notified that this is ready for approval. Once the Specialist Resource has approved (Self-Bill Approval) the Self-Bill Invoice, the Customer shall pay the Service Provider within 14 days and the Specialist Resource shall be paid by the Service Provider within 30 days of the Self-Bill Approval.
- 3.6.3. Where the Customer disputes a Milestone Application the Service Provider will work with the Specialist Resource to resolve the issue within 10 Working Days of the dispute. The Agreed Outcomes Form will be key to resolving any disputes and the Specialist Resource must evidence, where asked, that all items have been delivered for the Milestone disputed. Where this is evidenced, the Customer must authorise the Milestone Application.

3.7.During the Project/Statement of Work

- 3.7.1. The Service Provider must carry out reporting, Milestone reviews and Management Information tracking as per this Agreement, the Order Form, specification and Invitation to Tender. The Customer may request access to the Service Provider's system or records to monitor the status of a Project/Statement of Work at no additional cost to the Customer.
- 3.7.2. In the event that a Specialist Resource proves to be unsatisfactory, and the Customer notifies the Service Provider within the first day of the commencement of the Project/Statement of Work that this is the case, no charge will be made provided that the Specialist Resource Organisation completes no more than 1 day of work. At the Customer's request, the Service Provider will take immediate steps to source a replacement.
- 3.7.3. In the event that a Project/Statement of Work terminates within the term of the Project/Statement of Work (whether by expiry of notice or otherwise), without the prior written agreement of the Customer, and provided:
 - 3.7.3.1. The Customer notifies the Service Provider in writing of the termination of the Project/Statement of Work within 14 days of such termination; and
 - 3.7.3.2. the termination is not due to the Specialist Resources ill health; and
 - 3.7.3.3. nothing has materially changed with regards to the Project/Statement of Work or the Services which would precipitate the Specialist Resource to not complete the Project/Statement of Work
 - 3.7.3.3.1. then the Service Provider shall use its best endeavours to find a replacement at no extra cost to the Customer for the balance of the originally anticipated Term and if a replacement cannot be found within a reasonable period of time as judged solely by the Customer, and communicated to the Service Provider with reasonable notice, the Service Provider shall promptly refund any Charges paid by the Customer on a fair and reasonable basis relating to the work remaining for the Milestone.

3.7.4. The Service Provider and the Customer shall ensure that all Specialist Resource Organisations provided to a Customer remain at all times the contractors of the Service Provider and do not become employees of the Customer.

3.7.5. For the avoidance of doubt, all Project/Statement of Work deliverables and outcomes will be set by the Customer and agreed with the Service Provider and Specialist Resource. The Customer will report to the Service Provider if any outcomes or Milestones are not being met. The Service Provider will remain at all times responsible for the overall delivery of the Service.

4. PAYMENT AND PROJECT/STATEMENT OF WORK PRICE

4.1.PROJECT/STATEMENT OF WORK PRICE

4.1.1. In consideration of the Service Provider's performance of its obligations under the Agreement, the Customer shall pay Charges in accordance with the Agreed Outcomes Form subject to any Agreed Outcome Change Form the Project/Statement of Work Price in accordance with this clause and, subject to it, clause 5 of the Agreement (Charges).

4.1.2. Each individual payment which makes up the Project/Statement of Work Price will become due once each corresponding Milestone has been met. All Milestones will be agreed between the Customer and the Service Provider prior to the commencement of a Project/Statement of Work.

4.1.3. The Customer shall, in addition to the Charges and following evidence of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. Save as granted elsewhere under the Agreement, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.

5.2. The Service Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Agreement) without prior Approval, use or disclose any Customer Pre- Existing IPR or the Project Specific IPRs to any third party.

5.3. All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Service Provider hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.

5.4. The assignment under Clause 5.3 shall either take effect on the date of the Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

5.5. The Service Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Agreement.

5.6. If requested to do so by the Customer, the Service Provider shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 5.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

5.7. The Customer hereby grants to the Service Provider a non-exclusive, revocable, non-assignable licence to use the Customer Pre-Existing IPR and the Project Specific IPRs during the Term for the sole purpose of enabling the Service Provider to supply the Services and/or supply the deliverables.

5.8. Where the Service Provider is granted Approval by the Customer to use the third-party rights, the Service Provider shall procure that the owner of third-party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.

5.9. The Service Provider shall, during and after the Term indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Service Provider of the Services

and/or supply of the deliverables and/or the possession or use by the Customer of the deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:

- 5.9.1. items or materials based upon designs supplied by the Customer; or
- 5.9.2. the use of data supplied by the Customer which is not required to be verified by the Service Provider under any provision of the Contract.
- 5.10. The Customer shall notify the Service Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Service Provider:
 - 5.10.1. shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 5.10.2. shall take due and proper account of the interests of the Customer; and
 - 5.10.3. shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
- 5.11. If a Claim is made in connection with the Contract or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to: -
 - 5.11.1. modify the relevant part of the Services or the deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
 - 5.11.2. procure a licence to use and supply the Services or the deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- 5.12. In the event that the Service Provider is unable to comply with Clauses 5.11.1 or 5.11.2 within twenty (20) Working Days of receipt of the Service Provider's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Service Provider shall, upon demand, refund the Customer with all monies paid in respect of the Services or deliverable that is subject to the Claim.
- 5.13. In the event that a modification or substitution in accordance with Clause 5.11.1 is not possible so as to avoid the infringement, or the Service Provider has been unable to procure a licence in accordance with Clause 5.11.2 the Customer shall be entitled to delete the relevant Service from the Agreement and/or terminate the Agreement with immediate effect.

6. LIABILITIES

6.1.LIABILITY, INDEMNITY AND INSURANCE

- 6.1.1. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
 - 6.1.1.1. death or personal injury caused by its negligence or its Staff;
 - 6.1.1.2. fraud or fraudulent misrepresentation by it or its Staff;
 - 6.1.1.3. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979; or
 - 6.1.1.4. any other matter which, by Law, may not be excluded or limited.
- 6.1.2. Subject always to Clause 6.1.1 and Clause 6.1.3, the liability of either Party for Defaults , whether in contract, tort including negligence, breach of statutory duty or

however arising shall be subject to the following financial limits:

- 6.1.2.1. the liability of either Party for Defaults resulting in each event of direct loss of or damage to the tangible property of the other under or in connection with the Agreement shall in no event exceed ten million pounds or a lower value to be determined by the Parties; and
- 6.1.2.2. the aggregate liability under the Agreement of either Party for all other Defaults shall in no event exceed 100 per cent of the Charges paid and payable by the Customer to the Service Provider in the Contract Year in which the Default(s) arises].
- 6.1.3. Subject to Clause 6.1.1.1 and 6.1.4, in no event whether in contract, tort including negligence, breach of statutory duty or however arising shall either Party be liable to the other for any:
 - 6.1.3.1. loss of profits;
 - 6.1.3.2. loss of business;
 - 6.1.3.3. loss of revenue;
 - 6.1.3.4. loss of or damage to goodwill;
 - 6.1.3.5. loss of savings (whether anticipated or otherwise); and/or
 - 6.1.3.6. any indirect or consequential loss or damage
- 6.1.4. The Customer may, amongst other things, recover as a direct loss:
 - 6.1.4.1. any additional operational and/or administrative expenses arising from the Service Provider's Default;
 - 6.1.4.2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default; and
 - 6.1.4.3. the additional cost of procuring replacement Services for the remainder of the Term following termination of the Agreement as a result of a Default by the Service Provider.
- 6.1.5. Nothing in the Agreement shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 6.1.6. The Service Provider shall give the Customer, on request, copies of all insurance policies referred to in this Agreement or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 6.1.7. If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Agreement the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 6.1.8. The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Agreement. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability.
- 6.1.9. Excluding where the Customer directly causes the below cost, liability, demand or expense, the Service Provider shall indemnify the Customer, and shall be able to produce evidence of the same indemnity from the Specialist Resource on request, against each and every cost, liability, demand or expense (including for the avoidance of doubt redundancy payments) or any liability for unfair or wrongful dismissal incurred by the Customer in connection with any Project/Statement of Work under this Agreement arising from:

- 6.1.9.1. the Service Provider failing to pay any Specialist Resource in connection with providing Services under this Agreement.
- 6.1.9.2. any claim arising out of the Service Provider or its Specialist Resource failing to comply with its obligations both under this Agreement and its legal obligations.
- 6.1.9.3. any claim arising directly due to the Service Provider or its Specialist Resource failing to disclose information reasonably requested by the Customer in relation to any Specialist Resource in connection with providing Services under this Agreement.
- 6.1.10. The Service Provider shall be responsible for the acts and omissions of its Specialist Resource Organisation as though they are the actions and or omissions of its own Staff.

7. PROFESSIONAL INDEMNITY

- 7.1. The Service Provider shall affect and maintain a professional indemnity insurance policy during the Term and shall ensure that all Specialist Resources involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Term. To comply with its obligations under this Clause and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider and by any Specialist Resource involved in the supply of the Services has a limit of indemnity of not less than the sum set out in the Invitation to Tender for the Framework Agreement and for each individual claim or such higher limit as may be specified in the Agreed Outcomes Form or as required by Law from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

8. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

- 8.1. The Parties acknowledge and agree that the Agreement constitutes a contract for the provision of Services and not a contract of employment. Subject to Clause 6.1.2 the Service Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility and to HM Revenue or Customs as an employer of the Staff whether during the Term or arising from termination or expiry of the Agreement. This indemnity shall not apply where any Staff become employees of the Customer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).