

## 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 Supplier and which govern the provision of the Services to the Customer.

#### CONDITIONS OF CONTRACT

**THIS AGREEMENT** is made the 23<sup>rd</sup> day of June 2018.

#### **BETWEEN:**

- (1) Transport for London of 55 Broadway, London, SW1H 0BD (the Customer)  
and
- (2) Hays Specialist Recruitment Limited whose registered office is at 250 Euston Road. London. NW1 2AF (the Supplier)

#### **WHEREAS:**

- A. The Customer wishes to purchase the Services.
- B. The Supplier having been awarded Supplier status under a Framework Agreement with the Eastern Shires Purchasing Organisation the 'Framework Agreement' (a copy of which is available upon request will supply the Services in accordance with his obligations to the Customer.

**NOW IT IS HEREBY AGREED** as follows:

#### **1. INTERPRETATION**

1.1 As used in this Agreement:

- 1.1.1 the terms and expressions set out below shall have the meanings ascribed therein;

<b>Agency(ies)</b>	means the Supplier and/or those agencies with whom the Supplier will contract to supply Temporary Agency Workers to the Customer(s)
<b>Agency Legislation</b>	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
<b>Agreement</b>	means this agreement between the Customer and the Supplier, comprised of the Conditions and the Schedules and Annexes thereto and any Order
<b>Assignment</b>	means the required duties and period of time where a Temporary Agency Worker is working within the Customer's organisation
<b>Authorised Representative</b>	means a representative of the Customer or the Supplier as appropriate for the purposes of this Agreement
<b>Basic</b>	means in respect of any Permanent Worker or

<b>Remuneration</b>	Temporary Agency Worker, the basic annual salary following their Engagement or where there is no salary the basic rate of pay multiplied by the basic number of hours over a 12 month period, but in either case excluding all benefits in kind, bonuses, commissions or form of variable remuneration
<b>Charges</b>	means the charges set out in the Pricing Schedule
<b>Commencement Date</b>	means 23 <sup>rd</sup> June 2018
<b>Confidential Information</b>	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
<b>Contract Manager</b>	means the nominated officer or employee of the Customer responsible for managing this Agreement for the provision of the Services
<b>Default</b>	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
<b>EIRs</b>	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
<b>Engagement</b>	means the employment of a Permanent Worker by a member of the TfL Group, and 'Engage' and 'Engaged' shall be construed accordingly
<b>Equality Legislation</b>	means the Equality Act 2010, the Equality Act 2006, the Human Rights Act and such other acts and legislation 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 laws
<b>ESPO</b>	means the Eastern Shires Purchasing Organisation being the central purchasing body responsible for

creating the Framework Agreement

<b>FOIA</b>	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
<b>Framework Agreement</b>	means the Agreement between ESPO and the Supplier under which this Agreement is entered into by the Customer and the Supplier for the supply of the Services
<b>Functional Body</b>	means each of the functional bodies of the Greater London Authority as are defined by and may be created from time to time pursuant to the Greater London Authority Act 1999 which include (at the date of this Contract) Transport for London, the Mayor's Office for Policing and Crime, the London Fire and Emergency Planning Authority and the London Legacy Development Corporation;
<b>Gifted</b>	means a Temporary Agency Worker who has been identified and sourced directly by the Customer but is payrolled by the Supplier
<b>Implementation Plan</b>	means the plan to be developed by the Customer and the Supplier in accordance with <b>Schedule 5</b> 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
<b>Intellectual Property Rights" or "IPR"</b>	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;
<b>Invitation to</b>	means the invitation to tender issued to the Supplier

<b>Tender</b>	in response to a request following the publication of the OJEU notice for the procurement of the Services
<b>Order</b>	means an official order in such form as may be issued by the Customer to the Supplier in respect of the Services
<b>Parent Company</b>	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. The term Holding Company shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
<b>Permanent Workers</b>	means an individual who is Introduced by the Supplier to the Customer for the purpose of employment by the Customer
<b>Pricing Schedule</b>	means the Pricing Schedule attached to the Supplier's Framework Agreement – attached hereto at <a href="#">Schedule 3</a>
<b>Protocol</b>	means the Customer Protocol describing the Customers obligations in relation to their local arrangements and contract management requirements and which is attached hereto as <a href="#">Schedule 1</a>
<b>Requests for Information</b>	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR
<b>Restricted Period</b>	means at any time during the period of 14 weeks from commencement of an Assignment
<b>Services</b>	means the provision of the managed services for Temporary Agency Workers and Permanent Workers more particularly set out in the Specification attached as <a href="#">Schedule 2</a> hereto
<b>Specification</b>	means the Specification for the Services which the Supplier is authorised to provide under the Framework Agreement and which is more particularly set out in <a href="#">Schedule 2</a> hereto
<b>Temporary Agency Worker</b>	means a temporary (non-permanent) worker offered and provided on Assignment by an Agency to fulfil a specific role for a defined period of time in return for a fee. The Temporary Agency Worker is not an employee of the Customer and will not be treated as if he/she is. The Temporary Agency Worker will complete a timesheet, signed by the Hiring Manager, which will be processed by the Agency and passed to the Supplier in order to invoice for the Agency fee

<b>System</b>	means the Suppliers system that enables requesting, accepting and hiring of candidates offered by the Agency
<b>Tender</b>	means the Supplier's tender submitted in response to the Invitation to Tender and attached to the Framework Agreement as <b>Schedule 2</b>
<b>Term</b>	means the period of 1 year from the Commencement Date. With the agreement of both parties the Term may be extended by a period or periods of time, up to a maximum of an additional 12 months.
<b>TfL</b>	means Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
<b>TfL Group</b>	means TfL and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any " <b>member of the TfL Group</b> " shall refer to TfL or any such subsidiary;
<b>Working Day</b>	means Monday to Friday in any week but excluding any public or bank holidays

1.1.2 the masculine includes the feminine and the neuter; and

1.1.3 the singular includes the plural and vice versa.

- 1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.4 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Agreement.
- 1.5 In the event and to the extent only of any conflict between the Conditions and the Schedules or the Order, the Conditions shall prevail.

## **2. SUPPLIER'S OBLIGATIONS**

- 2.1 The Supplier 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 Supplier and are not the subject of a valid Order.
- 2.3 For the avoidance of doubt any terms that the Supplier 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 Supplier unless otherwise agreed in writing by the Customer. The Supplier

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 best industry practice and the Service Level Agreement.

- 2.5 The Supplier 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 Supplier warrants to all its reasonable endeavours that the Services to be supplied under the Order shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.
- 2.7 The Supplier 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 Supplier'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 Supplier 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 supplier could have satisfied himself by reference to the Customer or any other appropriate means.
- 2.9 For the avoidance of doubt the Supplier 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 provided by the Agency, 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 Supplier itself.
- 2.10 The Supplier 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 legislation 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 Supplier 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 Supplier.
- 3.4 The Customer will assign an Authorised Representative who will interface with the Supplier'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 2006 (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, 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 suppliers.

#### **4. PROVISION OF THE SERVICES**

- 4.1 The Supplier 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 Supplier 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 Supplier will be responsible for providing all Temporary Agency Workers (either himself or through Agencies) as ordered from time to time from the Supplier by the Customer. This will include administrative and clerical, operational, and professional and technical categories of Agency staff.
- 4.4
- 4.5 The Supplier shall in the provision of the Services ensure that where the Supplier acts as a Master Supply Chain Manager it shall do so subject to the following additional conditions:-
- 4.4.1 The Supplier shall be required to ensure the provision of the Services via its own register of Temporary Works in accordance with the requirements of the Service Level Agreement (attached hereto as Schedule 6 to the Customer Agreement).
- 4.4.2 The Supplier shall only be permitted to provide the Services via its own register of Temporary Agency Workers where the requirements of the Customer can be confirmed in writing within the timescales detailed in the Service Level Agreement.
- 4.4.3 In all circumstances where the Supplier cannot satisfy the Service Level Agreement for use of its own register of Temporary Agency Workers then the Supplier shall invite all contracted Agencies within its supply chain to provide quotations for such Assignments, and to produce evidence thereof if reasonably requested by ESPO so to do.
- 4.4.4 The time limit shall apply to the Supplier's opportunity to provide the Services under this Agreement whether the Services are provided direct by the Supplier or via an associate or subsidiary company. For the avoidance of doubt an associate or subsidiary company shall be treated as part of the Supplier's own register of Temporary Agency Workers for these purposes.
- 4.4.5 All quotations requested from Agencies (save as may be provided for otherwise in this Condition) shall be treated equally and without discrimination by the Supplier.
- 4.5 In the event that an Agency has failed an audit, or is unable to meet requirements of the Contract or, in the case of inherited suppliers, refuses to accept the terms and conditions of the Supplier 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 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 Supplier.
- 5.3 Where the Supplier 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 Supplier to the Agency to be within five (5) Working Days after the Supplier has been paid, and that in total, payment does not exceed twenty one (21) days from the issue of an undisputed invoice. The Supplier shall provide the Customer with evidence that it is acting in compliance with this clause as part of the Management Information that it is required to provide to the Customer in accordance with clause 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 Supplier.
- 5.4 The Charges are exclusive of Value Added Tax. The Customer shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.

## **6. RECOVERY OF SUMS DUE**

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

## **7. IMPLEMENTATION PLAN**

- 7.1 The Supplier shall provide the Services in accordance with any Implementation Plan as agreed with the Customer as attached hereto as **Schedule 5**.
- 7.2 The Supplier 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 Supplier shall monitor its performance jointly with the Customer against the Implementation Plan.

## **8. MONITORING AND REPORTING**

- 8.1 The Supplier 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.
  - 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 Supplier 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. SUPPLIER'S PERSONNEL**

- 10.1 The Supplier 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 Supplier shall comply with any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Supplier 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 Supplier and the Supplier'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 Supplier 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 Supplier, its agents, sub-contractors and suppliers 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 Supplier 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 Supplier, its agents, sub-contractors or suppliers. The exercise of this right shall not diminish the Supplier's obligation of performance arising under this Agreement.
- 10.7 The Supplier shall take appropriate steps to ensure that neither the Supplier 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 Supplier or the Supplier's staff and the duties owed to the Customer under the provisions of this Agreement.
- 10.8 The Supplier 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 Supplier 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 Supplier and the duties owed to the Customer under the provisions of this Agreement. The action of the Customer pursuant to this clause 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 clause 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 Supplier 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 the Agreement and the Supplier fails to provide such Services or any element thereof in accordance with the Agreement, or in the event of breach or default by the Supplier (which ESPO or the Customer has invited the Supplier 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 the 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 Supplier 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 Supplier 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 Supplier 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;

12.1.2 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the 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 Supplier 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 Supplier 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 Supplier or, its employees, and provided always that the Supplier'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 Supplier 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 [REDACTED]
- 13.1.2 Employers Liability insurance of not less than [REDACTED]
- 13.1.3 Professional Indemnity insurance of not less than [REDACTED]

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

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

- (ii) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (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 Supplier, but without obtaining the Supplier's consent) if the Customer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
- (iii) give the Supplier 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 Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (iv) subject to the Supplier 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 Supplier to take over the handling of the Claim and if the Supplier considers it appropriate to compromise or settle the Claim.

13.6 Neither party shall do anything or refrain from doing or omit doing anything, which might render any of the foregoing insurance policies void or voidable.

13.7 The Supplier shall ensure that Agencies are bound by the requirements of this Condition 13. In instances where the Customer agrees variations in the levels of insurances held by Agencies this will be recorded in the Customer Agreement.

13.8 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence.

13.9 Notwithstanding **Condition 13.2** above, the parties liability to each other under or in connection with this Agreement and the Services or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall be the levels of cover specified in **Condition 13.1** where a claim falls within the Suppliers' insurance policy, or where a claim is not required to be covered by an insurance policy, [REDACTED].

13.10 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.

13.11 Neither party shall other than as a consequence of fraud or wilful default by that party, be liable for any claim by the other party for loss of profit or revenue, consequential, economic, special or indirect loss.

13.12 For the avoidance of doubt the Supplier 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 Supplier 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 Supplier or licensed by the Supplier to the Customer under the Agreement subject to:

- 14.1.1 the Customer promptly notifying the Supplier of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the Supplier at their own expense to conduct all negotiations for settlement or litigation;
  - 14.1.2 the Customer making no admission without the Supplier's written consent unless and until the Supplier shall have failed to take over the conduct of the negotiations or litigation;
  - 14.1.3 the conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier 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 Supplier's expense shall give the Supplier all available assistance.
- 14.2 If the Services or any part thereof becomes, or in the Supplier's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **sub-condition 14.1** above, the Supplier 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 the Agreement.
- 14.3 The Supplier 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 in accordance with clause 25.1 and shall not entitle the Supplier to any addition to the Charges or any extension of the Order lead time.
- 14.4 The Supplier shall not be liable under **sub-condition 14.1 and 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, the 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 416 of the Income and Corporation Taxes Act 1988, 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 416 of the Income and Corporation Taxes Act 1988, 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 Supplier 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 Supplier's financial standing against the Supplier's financial position taken on the Commencement Date. In the event that the Supplier's financial position falls below the position recorded on the Commencement Date the Customer shall discuss the Supplier's circumstances with the Supplier. The Customer reserves the right to terminate this Agreement by serving notice on the Supplier 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 Supplier which:
  - 15.2.1 adversely impacts on the Supplier's ability to provide the Services under this Agreement; or
  - 15.2.2 could reasonably be expected to have an adverse impact on the Supplier'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 Supplier in accordance with the terms of this Agreement.

## **16. CONFIDENTIALITY**

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 Supplier shall take all necessary precautions to ensure that all Confidential Information obtained from the Customer under or in connection with the Agreement:
    - 16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with the 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 Supplier shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Supplier shall ensure that its staff, sub-contractors and agents are aware of the Supplier's confidentiality obligations under this Agreement.
- 16.4 The Supplier 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 Supplier to any person engaged in providing any services to the Customer for any purpose relating to or ancillary to the 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 Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement or any Order or disclose any information relating to or contained in the Agreement to any person who is not engaged in the performance of the Agreement.
- 16.8 In the event that the Supplier fails to comply with this **Condition 16** the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 16.9 The provisions of this **Condition 16** shall apply notwithstanding termination of the Agreement.

## **17. DATA PROTECTION ACT 1998**

- 17.1 The Parties shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.
- 17.2 The Parties shall not disclose Personal Data to any third parties other than:
- 17.2.1 to staff, sub-contractors and agents to whom such disclosure is reasonably necessary in order to perform the Agreement; or
- 17.2.2 to the extent required under a court order

provided that disclosure under **Condition 17.2.1** is made with the approval of the other Party and subject to written terms no less stringent than the terms contained in this Condition and that the Party shall give notice in writing to the other Party of any disclosure under **Condition 17.2.2** immediately it is aware of such a requirement.

- 17.3 The Parties shall indemnify and keep indemnified each other against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this condition by the Parties and/or any act or omission of any staff, sub-contractor or agent.
- 17.4 The Parties are required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998.
- 17.5 In this condition Personal Data means personal data as defined in the Data Protection Act 1998 which is supplied by one Party to the other therein or obtained in the course of performing the Agreement.

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

- 18.1 The Supplier 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 Supplier's expense) to enable the Customer to comply with these information disclosure requirements.
- 18.2 The Supplier 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 Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 18.4 The Supplier acknowledges that the Customer may be obliged under the FOIA or the EIR to disclose information;
  - 18.4.1 without consulting the Supplier; or
  - 18.4.2 following consultation with the Supplier and having taken its views into account.
- 18.5 The Supplier shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 18.6 The Supplier 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 Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 19.2 The Supplier shall take all reasonable steps to secure the observance of clause 19.1 by all Staff employed in performance of this Agreement.
- 19.3 The Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or any other law, enactment, order or regulation.
- 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 Supplier's performance of this Agreement being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Supplier's staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Supplier and any of the Supplier'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 other any law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or the Supplier's staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier shall ensure that all employees of the Supplier 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 Supplier as are necessary to demonstrate compliance with **Conditions 19.1 to 19.9** above.

19.11 The cost to the Supplier 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 the Agreement and to recover from the Supplier the amount of any loss resulting from such cancellation or termination if the Supplier 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 the Agreement or any other contract with the Customer or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Customer or if like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if in relation to any contract with the Customer the Supplier or any person employed by the Supplier 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 the Agreement

## **21. FORCE MAJEURE**

21.1 For the purposes of the 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 Supplier to perform or any delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier 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 Suppliers business must also be strictly applied. The Supplier 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 Supplier 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 Supplier 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 Supplier.

22.3 The Supplier 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 Supplier 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 Supplier 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 Supplier sufficient and accurate information regarding each and every Relevant Employee as is necessary to enable the Supplier 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 Supplier

- 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 Supplier shall be transferred from the Supplier to any third party (Replacement Supplier) engaged by Customer to perform any of the Services or any service equivalent or similar to any of the Services the Supplier shall indemnify and keep indemnified Customers and the Replacement Supplier(s) from and against all employment liabilities arising directly as a result of the acts or omissions of the Supplier 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 Supplier(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 Supplier
- 23.3 For the purposes of this clause "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 The Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Customer.
- 24.2 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

## **25. AMENDMENTS TO THE 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 Supplier. No variation of this Agreement shall limit or remove the Supplier'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 this **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 Supplier 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 If any dispute or difference of any kind whatsoever shall arise between the Customer and the Supplier in connection with or arising out of this Agreement or the carrying out of the Services, including any disputes as to any decision, opinion, instruction, direction, certificate or valuation given by any officer of the Customer (whether during the progress of this Agreement or after its completion and whether before or after the termination, abandonment or breach of this Agreement, the Parties shall attempt in good faith to negotiate a settlement and to this end the respective Authorised Representative of the Customer and the Supplier shall meet to endeavour to resolve the conflict.
- 29.2 If the respective Authorised Representatives of the Customer and the Supplier fail to reach agreement within fifteen (15) Working Days of either Party notifying the other of the dispute the dispute shall be escalated to a discussion between the relevant Service Director of the Customer and the Managing Director (or equivalent) of the Supplier for resolution.
- 29.3 If the Parties fail to reach agreement within twenty (20) Working Days of reference to the Service Director and the Managing Director (or equivalent) the dispute shall be referred to the ESPO Contract Manager for mediation.
- 29.4 If the Parties remain unable to resolve the dispute within thirty (30) Working Days of the Mediator being appointed, or such longer period as may be agreed, then either Party may seek redress via 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 which shall 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 Supplier and the Supplier's successors and permitted assignees.

**33. ENTIRE AGREEMENT**

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

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

SIGNED for and on behalf of

[ ] the Customer

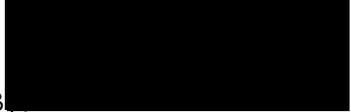
By: 

Name: MIKE BROWN

Title: COMMISSIONER

Date: 04-07-18

SIGNED for and on behalf of

[  ] the Supplier

By: 

Name: MATTHEW Dickason

Title: Managing Director

Date: 22/06/2018

## **SCHEDULE 1 to the CUSTOMER AGREEMENT**

### **PART 1 KEY CONTRACT INFORMATION**

1. **Contract Reference Number: TfL 93944**
2. **Name of Service Provider:** Hays Specialist Recruitment Ltd
3. **Commencement:**
  - (a) **Contract Commencement Date:** 23<sup>rd</sup> June 2018
  - (b) **Services Commencement Date:** 22<sup>nd</sup> June 2019
4. **Term:** A period of One (1) year from the Contract Commencement Date. With the agreement of both parties the Term may be extended, by a period or periods of time, up to a maximum of an additional twelve (12) months.
5. **Invoicing Procedure and Frequency:** Weekly.
6. **Method of Payment:** BACS.
7. **Payment Period:** fourteen (14) calendar days of receipt by the Customer of a valid invoice, in accordance with the provisions of Schedule 3
8. **Address where invoices shall be sent:**

#### For TfL and GLA

Name: Accounts Payable  
Address: 1st Floor  
PO Box 45276  
14 Pier Walk  
London  
SE10 1AJ

#### For British Transport Police

Name: Accounts Payable  
Address: 25 Camden Road  
London  
NW1 9LN

#### For London Fire Brigade

Name: London Fire Brigade -LFEP  
Address: Property Services – 3rd Floor  
169 Union Street  
London  
SE1 0LL

#### For LDC

Name: London Legacy Development Corporation  
Address: Level 10  
1 Stratford Place

Montfichet Road  
London  
NW1 9LN

9. **Interest Rate:** [REDACTED] per annum above the base rate as set by the Bank of England as may be amended from time to time.

10. **Details of the Authority's Contract Manager**

**Name:** Sharon Kelly  
**Address:** Transport for London  
55 Broadway

[REDACTED]

**Tel:** [REDACTED]  
**Fax:** [REDACTED]  
**Email:** [REDACTED]

11. **Details of the Service Provider's Services Manager**

**Name:** Sam Mannings  
**Address:** [REDACTED]  
[REDACTED]  
[REDACTED]

**Tel:**  
**Fax:**  
**Email:**

12. **Insurance Cover:** The minimum insurance cover that the Service Provider shall maintain on a per incident basis shall be:

- (a) Public Liability Cover: [REDACTED]
- (b) Professional Indemnity Cover: [REDACTED]
- (c) Employers Liability Cover: [REDACTED]

13. **Address for service of notices and other documents:**

**For the Authority:** Transport for London  
55 Broadway  
London  
SW1H 0BD

Facsimile number:

For the attention of: Sharon Kelly

**For the Service Provider:**

Hays Specialist Recruitment Ltd  
250 Euston Road  
London  
NW1 2AF

Facsimile number: [REDACTED]

For the attention of: the company secretary

## **PART 2 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 Supplier.
- b) Identify a named officer (Contract Manager) who shall be a single point of contact for the Supplier 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 Supplier any organisational policies or procedures that the Supplier, 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 access to data relating to Temporary Agency Workers.
- 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 Supplier 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 and to escalate to ESPO only those matters that frustrate the local arrangements.
- n) Note that ESPO shall need to access all management information for the purpose of managing the Agreement.

If the Services include strategic 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)**

#### **1. General**

- 1.1 The Supplier will be required to source Temporary Agency Worker and Permanent Worker roles in Professional & Administrative services ("Lot 1") and Temporary Agency Worker and Permanent Worker roles in IT and Technology services ("Lot 2"). Professional & Administrative services roles are roles that may require qualifications and/or experience including, but not limited to, Finance, Health, Safety & Environmental, Human Resources, Legal, Marketing & Communications, Medical and Risk professions as well as general administrative roles ("**Professional & Administrative Services**"). IT and Technology services roles are roles that may require qualifications and/or experience including, but not limited to, Engagement & Governance, Infrastructure, Project Delivery & Integration and Service Management ("**IT and Technology Services**").
- 1.2 The Supplier will be required to understand the requirements of the business through proactive engagement with key business stakeholders which will include meeting up with key stakeholders to discuss the recruitment challenges such as hard to fill roles.
- 1.3 The Supplier will be required to have a dedicated Services Manager and sufficient onsite presence in the form of Recruitment Consultant(s) to deliver the service required.
- 1.4 The Supplier will be required to ensure that all Temporary Agency Workers including those obtained through Second Tier suppliers, are paid correctly within three (3) Business Days of receiving payment from the Customer.
- 1.5 The Supplier shall be measured and must be capable of measurement through the Service Level Agreement (SLA) provisions at Schedule [5] of the Contract and in Appendices 1 & 2 of this document.
- 1.6 The Customer's requirements may vary and nothing in the Contract shall require the Customer to order or commit to ordering any particular volume or type of Temporary Agency Workers or Permanent Workers or to use any particular Temporary Agency Worker or Permanent Worker Introduced to the Customer.

#### **2. Managing Agencies**

- 2.1 The Supplier will be the sole point of contact between the TfL Recruitment Teams which sit within the HR Services function within the HR Directorate and the Agencies.
- 2.2 The Supplier will ensure that Agencies undertake payrolling and people management activity including managing performance, conduct, grievances and, disciplinary issues.

- 2.3 The Supplier will work with the Customer to establish a process for recording, auditing and rewarding Agency performance (“Agency Performance Process”).
- 2.4 Agencies on the list approved by TfL may fulfil Roles (“Approved Agencies List”). At its absolute discretion, and acting reasonably, TfL may require the Supplier to remove an Agency from the Approved Agency List at any point during the term of the Contract.
- 2.5 The Supplier shall have an open book policy for pay and charge rates including Agency agreements.

### **3. The Recruitment Process – General**

- 3.1 The Supplier shall provide sufficient implanted resource to work alongside TfL’s Recruitment Teams on site. This will be in the form of Recruitment Consultant(s) who will source candidates and liaise with Hiring Managers during the shortlisting, interview and offer stage. Initial campaign planning discussions and onboarding of successful candidates will be undertaken by the Customer’s Recruitment team.
- 3.2 The Supplier shall provide off site resource to manage and process all timesheeting and payroll issues and queries of Temporary Agency Workers. This includes checking of timesheets and resolving anomalies; ensuring the pay and agency charge rates are updated to meet legislative requirements and business requests.
- 3.3 The Supplier shall be available to the Customer’s Recruitment Teams between 08:30 and 17:30 hours Monday to Friday for the purposes of consultation and advice relating to the service provided and the Workers supplied.
- 3.4 The Supplier is required to respond to enquiries from the Customer’s Recruitment Team within 3 Business Hours of the enquiry being made.
- 3.5 The Supplier will use the Customer’s Applicant Tracking System (“ATS”), currently Oracle Taleo, to manage campaigns for Temporary Agency Workers and Permanent Workers for the Customer and Tubelines Limited<sup>1</sup>. The Customer is scheduled to upgrade to version 13B by April 2014.
- 3.6 The Supplier will utilise in accordance with the Customer’s requirements the following systems. The Customer uses SAP for Temporary Agency Worker onboarding, timesheeting, invoicing and provision of some management information. Tubelines Limited use an Oracle system managing payment to suppliers via BACS. It also handles timesheet generation for Temporary Agency Workers and some management reporting. The Supplier is required to adhere to data protection principles as detailed in the Contract.
- 3.7 The Customer’s Recruitment Teams will release Roles to the Supplier via ATS with details of the Role, including requirements for key skills, knowledge and experience and any qualifications (including safety) (“Required Capabilities”). The Supplier must ensure that any candidates put forward match the requirements.

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<sup>1</sup> Note, Tubelines Limited currently uses an MS Excel spreadsheet-based recruitment system for applicant tracking with a manual vacancy approval process and a project has commenced for migration to Oracle Taleo which is expected to be in place in time for this contract

- 3.8 The charge rates for a Temporary Agency Worker Role will be supplied to the Supplier via ATS.
- 3.9 The anticipated salary range for a Permanent Worker Role will be supplied to the Supplier via ATS.
- 3.10 The Supplier will filter curricula vitae ("CVs") to ensure that they match the Customer's form and content requirements. Unless otherwise specified by the Customer, the Supplier must not provide more than six (6) CVs per vacancy. Unless otherwise instructed by the Customer, CVs must be uploaded directly to ATS within three (3) Working Days for Temporary Agency Worker Roles and within ten (10) Working Days for Permanent Worker Roles. The relevant skills, knowledge, experience and qualifications (including safety) must be highlighted for ease of reference for the Assignment Manager.
- 3.11 The Supplier shall provide the Customer with all information it has been provided in respect of the proposed Temporary Agency Worker or Permanent Worker and specify in the case of a Temporary Agency Worker whether the Temporary Agency Worker is employed by it or any sub-contractor before any Introduction.
- 3.12 The Supplier shall notify the Customer immediately if it believes that a Permanent Worker or a Temporary Agency Worker is unsuitable for an Assignment or Engagement or becomes aware of any matter that indicates they may be unsuitable or is inconsistent with any information previously provided including, for the avoidance of doubt, where a Permanent Worker or Temporary Agency Worker ceases to have the appropriate skills, approvals or a right to work in the United Kingdom.
- 3.13 If requested the Supplier will ensure that a candidate attends a testing session, arranged and paid for by the Customer, to ensure that required capabilities are met prior to being assigned to the Customer and the test and results will be made available to the Customer on request.
- 3.14 The Supplier will provide the Customer with a list of available tests to assess whether the Candidate has the Required Capabilities. The Customer will advise the Supplier of the tests which it approves for use with Candidates ("Approved Tests"). For psychometric tests, the Supplier shall use tests that are from suppliers that are on TfL's psychometric test supplier framework except by written consent of the Customer.
- 3.15 All tests must be conducted in accordance with industry standards and best practice. This includes that psychometric tests shall be conducted in accordance with the British Psychological Society Psychological Testing Centre (PTC) guidelines.
- 3.16 The Supplier shall provide scoring and information in a form requested by the Customer. Where the Customer requires, the Supplier shall provide feedback to candidates.
- 3.17 For all Candidates selected for interview, the Supplier will ensure that they are suitably prepared.

## **4. The Recruitment process for the Permanent Worker**

### **4.1 Requirements**

- 4.1.1 The Hiring Manager will interview candidates to assess their suitability for the role prior to engagement. The Supplier will notify those candidates who were not shortlisted for interview.
- 4.1.2 The qualifications, memberships and experience required will be detailed by the Assignment Manager and communicated to the Supplier. The Supplier must ensure that any Candidates put forward match the requests.
- 4.1.3 Candidates submitted for interview must have the legal right to work in the United Kingdom and where necessary, hold a visa. On no account must candidates be sent for interview if they do not meet this requirement.
- 4.1.4 The Supplier will provide the following documents to the Customer upon offer of employment and before the start date of employment, countersigned by a member of the Supplier's team with the words 'I confirm this is a true copy of the original seen by me today' together with a printed name, signature and date:
- Proof of identity and right to work in the United Kingdom as defined by the Home Office (authorised document that form a defence from List 1 and List 2)
  - Proof of address from one of the following documents that must be less than 3 months old: utility bill, a letter from any government department or organisation, bank or building society statement or credit card statement. A mobile phone bill is not acceptable.
  - Visa (if required).

## **5 The Recruitment process for the Temporary Agency Worker**

### **5.1 Requirements**

- 5.1.1 In all circumstances, the Customer will have no direct employment relationship with any Temporary Agency Worker engaged. No Temporary Agency Worker engaged by The Customer will be deemed the Customer's employee and the Customer will not be deemed the employer of any Temporary Agency Worker supplied by the Supplier.
- 5.1.2 No Temporary Agency Worker supplied to the Customer by the Supplier or its Agencies, should be through offshore based umbrella companies or any other type of offshore employment intermediaries.
- 5.1.3 The Hiring Manager will, in most cases, wish to interview Candidates prior to engagement. Once a suitable Candidate has been selected by the Customer, the Hiring Manager will update the ATS Candidate status and notify the Supplier via their implanted Recruitment Consultant of the Customer's decision. The

Supplier will then notify the Shortlisted Candidates and the unsuccessful Candidates. The Supplier will brief Candidates regarding the interview format.

5.1.4 Records of shortlisted CVs must be retained in ATS for equality and audit purposes. CVs should not normally be sent by e-mail.

5.1.5 The Supplier will provide the Temporary Agency Worker with the following information before they begin the engagement which will be detailed on Temporary Agency Worker Assignment Checklist:

- Location of place of assignment
- Organisation/Department
- Who to report to
- When to report
- Duties
- Expected length of assignment
- Pay rates
- Hours to be worked
- The Customer will not pay travel expenses to and from their place of work and encourages walking, cycling and the use of public transport
- Procedures and policies which they must adhere to, particularly on Drugs and Alcohol, Conflict of Interest declarations, Anti-Fraud & Corruption and Whistle-blowing and Equality & Inclusion
- TfL Behaviours
- Details of appropriate health and safety risk assessments
- Any required safety equipment to undertake the role

5.1.6 The Supplier will set up, manage and maintain all payroll activity on the SAP/Oracle system and undertake people management activities, for all the Temporary Agency Workers that the Supplier source as well as those Gifted to the Supplier by the Customer.

## **5.2 Conditions, pay rates and expenses**

5.2.1 Unless specified, the Temporary Agency Worker will normally be expected to work 35 hours per week for Lot 1 and 40 hours per week for Lot 2 and will also be expected to take a one hour lunch break. The above hours may be changed from time to time at the sole discretion of The Customer.

5.2.2 The Customer shall be entitled, for whatever reason, to terminate an Assignment by giving to the Supplier written notice which will be 24 hours' notice of termination during the first 30 days of the Assignment and, thereafter, one (1) week's notice. The Customer requires the Supplier to ensure that the Temporary Agency Worker gives not less than one (1) week's notice should the Temporary Agency Worker wish to terminate their Assignment. The Customer reserves the right to change these notice periods having given due notice of the change to the Supplier.

5.2.3 If a Temporary Agency Worker is deemed by the Customer, at its sole discretion, to be unsuitable for the placement within the first 5 days of the commencement of engagement then the Supplier shall terminate the Assignment and cancel any charges for that engagement.

- 5.2.4 The Supplier will ensure that no Temporary Agency Worker will be allowed to work flexibly/flexi-time or take time off in lieu. The Customer will not be due to make any payment to the Supplier if it is discovered that the Customer has been invoiced for such working practices.
- 5.2.5 Pay ranges (minimum and maximum) are determined at the outset of the vacancy arising (on the Vacancy Request eForm) and will come from the NPL Rate Card owned by the Customer's NPL Recruitment Team. These pay ranges are determined through a benchmarking exercise that will take place twice a year. The Supplier will work with the Customer's NPL Recruitment Team to review the Rate Card ensuring that the Customer's rates are both competitive and affordable.
- 5.2.6 New Roles arising (that do not currently appear on the Rate Card) will have a benchmarked pay range agreed by the Customer's NPL Recruitment Team with input from the Supplier.
- 5.2.7 The actual pay rate for each successful candidate will be discussed and agreed between the Hiring Manager and the Customer's NPL Recruitment Team who will then confirm the rate to the Supplier. No pay rates will be agreed between the Hiring Manager and the Supplier.
- 5.2.8 Unsocial hours allowance (for working outside of agreed times) and overtime (for working in excess of agreed contractual hours) is payable at the discretion of the Hiring Manager and will not be paid unless prior approval to any changes to pay rates has been given by the Customer's NPL Recruitment Team with local Director Level sign-off.
- 5.2.9 The Supplier is expected to meet its own administrative/processing costs for all matters covered by legislation currently in force and for any future administrative/processing costs, should there be any further changes in law during the currency of the Contract.
- 5.2.10 The Supplier shall not benefit financially from pay rate increases as a result of legislative changes.
- 5.2.11 The Supplier shall not be entitled to reimbursement for expenses (including any expenses of the Temporary Agency Workers) unless authorised in advance in writing by the Customer's NPL Recruitment Team. This authorisation will only be given in exceptional circumstances such as out of London and overseas travel and will also require local director level sign off.
- 5.2.12 Temporary Agency Workers should only be trained within the Customer in specific courses/subjects which they would not be able to obtain elsewhere, e.g. use of our SAP system. Induction and basic safety training will be provided where necessary. There may be, on occasions the need to train Temporary Agency Workers to ensure the delivery of critical projects at the Customer.

## 5.3 Referencing

5.3.1 The Supplier must ensure that all Temporary Agency Workers are fully cleared to work for the Customer and the Supplier will undertake all necessary checks at no cost to the Customer. Mandatory requirements for all Temporary Agency Worker Roles include:

- Identity checks & right to work in the UK
- Proof of address
- Employment history – two recent (one within last 3 months minimum) written work related references which have been confirmed and cleared and date back to 2 years maximum. For certain roles, The Customer reserves the right to request the Temporary Agency Worker be referenced for 5 years
- Basic Disclosure Scotland checks
- Reasonable adjustments and Health & Safety assessment.

5.3.2 Candidates submitted for interview must have the legal right to work in the United Kingdom and, where necessary, hold a valid visa. On no account must candidates be sent for interview if they do not meet this requirement.

5.3.3 For selected Temporary Agency Worker Roles there may be additional requirements including some or all of the following:

- Occupational Health questionnaire
- Occupational Health medical
- Enhanced disclosure
- Qualifications and / or professional membership
- Drivers Licence
- Financial Probity
- Government Security

5.3.4 The Supplier will provide the following scanned documents to the Customer upon offer of Assignment and before the start date, countersigned by a member of the Supplier's team with the words 'I confirm this is a true copy of the original seen by me today' together with a printed name, signature and date:

- Proof of identity and right to work in the United Kingdom as defined by the Home Office (authorised document that form a defence from List 1 and List 2)
- Proof of address from one of the following documents that must be less than 3 months old: utility bill, a letter from any government department or organisation, bank or building society statement or credit card statement. A mobile phone bill is not acceptable
- Visa (if required).

5.3.5 The Customer reserves the right to amend the requirements for references and clearances in line with any introduction of new Government legislation or TfL policy at no extra cost.

- 5.3.6 As part of the supplier performance monitoring, the Customer will arrange and undertake and the Supplier will permit compliance audits to be undertaken by a third party to ensure that all pre-employment screening is undertaken as agreed.
- 5.3.7 The Supplier may be required to ensure that it does not provide Temporary Agency Workers in certain circumstances such as:
- where the Temporary Agency Worker has previously been an employee of the Customer and has left within the last 2 years on grounds of early retirement and/or redundancy; or
  - an ex-employee of the Customer who has been fairly dismissed under the Customer's disciplinary or probationary procedures.
- 5.3.8 See Pre-Employment Screening matrix for more detail on referencing requirements (Appendix 3). The Supplier is required to adhere to data protection principles in accordance with the terms of the Contract.
- 5.3.9 Where a Basic Disclosure Scotland check is requested but not received prior to the Assignment start date, the Temporary Agency Worker may commence the Assignment, providing the Supplier has made the application number available to the Customer. If a satisfactory Basic Disclosure Scotland check is not received within 4 weeks of the Temporary Agency Worker's start date, the Assignment will be terminated with immediate effect.
- 5.3.10 Where a satisfactory Basic Disclosure Scotland check is returned within 4 weeks of the Temporary Agency Worker start date, both parties agree that the requirement for two years of references set out in clause 5.3.1 of this Schedule shall be waived.

### **5.3A. Criminal Record Declarations**

5.3A.1 In this section 5.3A:

- "Relevant Conviction" means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.
- "Relevant Individual" means any Temporary Agency Worker, servant, employee, officer, consultant or agent of the Supplier or any Agency carrying out, or intended to carry out, any aspects of the Services or any Assignment.

5.3A.2 The Supplier shall procure from each Relevant Individual a declaration that it has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions committed. A Declaration shall be procured prior to a Relevant Individual carrying out any Services or Assignment. The Supplier shall confirm to the Customer in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Supplier shall procure that a Relevant Individual notifies the Supplier immediately if that Relevant Individual commits a Relevant Conviction throughout the Term and the Supplier shall notify the Customer in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.

- 5.3A.3 The Supplier shall not engage or allow any Relevant Individual that has disclosed a Relevant Conviction to provide Services or act on any Assignment.
- 5.3A.4 The Customer may, in accordance with the audit rights set out in Clause 23 of the Contract, audit and check any and all such records as are necessary in order to monitor compliance with this section 5.3A.
- 5.3A.5 If the Supplier fails to comply with the requirements under Paragraphs 5.3A.2 and/or 5.3A.3, the Customer may, without prejudice to any of its other rights powers or remedies, serve notice on the Supplier requiring it to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration with immediate effect and take such steps as are necessary to ensure that the Relevant Individual has no further involvement with carrying out any Services or Assignment unless (in the case of non-compliance with Paragraph 5.3A.2) within 7 days of receipt of the notice the Supplier confirms to the Customer it has procured all of the Declarations required under Clause 5.3A.2.
- 5.3A.6 Any breach of Paragraphs 5.3A.2 and/or 5.3A.3 by the Supplier shall constitute a material breach of this Contract and entitles the Customer to terminate the Contract in accordance with Clause 34.2 of the Contract.
- 5.3A.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Supplier shall remove or procure the removal (as the case may be) of the Relevant Individual with immediate effect and take such steps as are necessary to ensure that the Relevant Individual has no further involvement in carrying out any Services or Assignment.
- 5.3A.8 Nothing in this section 5.3A in any way waives, limits or amends any obligation of the Supplier to the Customer arising under this Contract and the Supplier may not claim any extra costs or time as a result of any actions under this section 5.3A.

#### **5.4 Response Times**

- 5.4.1 The Supplier is expected to respond to enquiries from the Customer's NPL Recruitment Team within 3 Business Hours of the enquiry being made.
- 5.4.2 Once a Temporary Agency Worker has commenced their Assignment the Supplier must have a process in place to ensure the Temporary Agency Worker's next of kin can be reached 24 hours a day in case of emergency.

#### **5.5 Assignment Manager/Temporary Agency Worker Check**

The Supplier's implanted Recruitment Consultant(s) shall contact the Assignment Manager on the first day of the Assignment of a new Temporary Agency Worker and at the end of the first week to ensure everything is satisfactory. Likewise the Temporary Agency Worker, to ensure that the Role is as briefed and that the Temporary Agency Worker has everything they need. The Supplier shall confirm to the Customer's NPL Recruitment Team that contact has been made and provide details of any issues raised with remedial action taken.

#### **5.6 Timesheets and Invoices**

- 5.6.1 As part of the onboarding process the Temporary Agency Worker will be set up on the Customer's SAP or Oracle system by the Customer's NPL Recruitment Team and a purchase order is then generated.
- 5.6.2 Once the Temporary Agency Worker has commenced their Assignment they will be required to complete their timesheets electronically using the Customer's SAP or Oracle Timesheeting system. This includes Temporary Agency Workers sourced through Agencies. It is the responsibility of the Supplier to ensure that their Temporary Agency Workers are aware of this and they are given adequate guidance and complete the timesheets on time on a weekly basis.
- 5.6.3 Hiring Managers will be required to approve the timesheet on a weekly basis. It is the responsibility of the Supplier to ensure that Hiring Managers are aware of this and they are given adequate guidance to approve these on time.
- 5.6.4 All timesheeting/invoicing back office activity will be managed off site by the Supplier who will deal with all timesheeting/invoicing enquiries liaising with the Temporary Agency Workers, the Customer's Hiring Managers, Finance/Accounts Payable Teams and Agencies.

## **5.7 Contract Variations**

### **5.7.1 Working Time Directive**

The Supplier is required to make changes to the pay/charge rates for those Temporary Agency Workers eligible under the Working Time Directive and to advise the Customer's NPL Recruitment Team two (2) weeks in advance of this taking effect.

### **5.7.2 Agency Workers Regulations**

The Supplier is required to make changes to the pay/charge rates for those Temporary Agency Workers eligible under the Agency Workers Regulations and to advise the Customer's NPL Recruitment Team two (2) weeks in advance of this taking effect.

### **5.7.3 Pensions auto enrolment**

The Supplier is required to make changes to the pay/charge rates for those Temporary Agency Workers affected by the Pensions Auto Enrolment legislation.

### **5.7.4 Pay rate increases/reductions**

The Supplier is required to make the necessary increase/decrease to the pay/charge rates of Temporary Agency Workers, having received authorisation from the Customer's NPL Recruitment Team and or eForm authorisation, and to advise the Customer's NPL Recruitment Team once the change has been implemented.

### **5.7.5 Cost centre/position number/project (timesheet) codes**

The Supplier is required to make the necessary changes to their records in relation to cost centre, position number, project codes, having received authorisation from the Customer's NPL Recruitment Team and/or eForm authorisation, and to advise the Customer's NPL Recruitment Team once the change has been implemented.

#### 5.7.6 **Assignment expiry/terminations & NPL Leaver Forms**

The Supplier is required to advise the Customer's NPL Recruitment Team of Assignment expiry or Assignment termination by their Temporary Agency Workers and ensure that the Assignment Manager completes an NPL Leaver Form within one (1) week after Assignment expiry/termination. The Supplier will be required to contact the Hiring Manager four (4) weeks prior to Assignment end date to remind them of this requirement.

### **6. Performance & Quality of Service**

6.1. The Customer will monitor and review the performance of the Supplier on an operational basis (periodically) and a strategic basis (quarterly) against the following areas:

#### **Temporary Agency Workers:**

- Briefing of candidates
- Diversity Data Integrity
- CV supply timescale
- CV format
- Quality of CVs
- Interviews arranged timescale
- Quality of candidates (Interview to offer)
- Fulfilment
- Engaging Temporary Agency Workers at mid point of rate card range
- Candidate offer timescale
- Taleo and New Starter form accuracy
- Payrolling
- Invoicing
- Level of attendance / time keeping
- Competence
- Enquiry Response
- Standard reporting
- Diversity Data Reporting
- Exceptional reporting

#### **Permanent Workers:**

- Briefing of candidates
- Diversity Data Integrity
- CV supply timescale
- CV format
- Quality of CVs
- Interviews arranged timescale
- Quality of candidates (interview to offer)
- Fulfilment
- Standard reporting
- Diversity Data Reporting
- Exceptional reporting

6.2. The Supplier will be required to supply an SLA performance scorecard covering all the specific KPI's related to the areas above and detailed in Appendix 1 for Temporary Agency Worker recruitment and Appendix 2 for Permanent Worker recruitment.

- 6.3. The Supplier shall provide the Services in accordance with the Service Levels and shall ensure that it maintains the requisite technical, operational and specialist abilities and capacity to provide the services in accordance with the Contract and the Customer requests for Temporary Agency Workers and Permanent Workers.
- 6.4. If at any time any of the Service Levels are at a red warning level, then without prejudice to the Customer's other rights and remedies under the Contract or otherwise, the provisions of Clause 12.2 of the Contract will apply<sup>2</sup>

## **TFL SCHEDULE 2 - SPECIAL CONDITIONS OF CONTRACT**

7. The following additional clauses will apply to the Contract as if expressly set out in the main body of the Contract:

### **7.1 Conflict of Interest**

- 7.1.1 The Supplier warrants that it does not and will not have at the Contract Commencement Date or Services Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the TfL Group, save to the extent fully disclosed to and approved by the Customer.
- 7.1.2 The Supplier shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify the Customer in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the TfL Group and shall work with the Customer to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the Customer's satisfaction, provided that, where the Customer is not so satisfied, it may terminate the Contract by notice in writing to the Supplier.

### **7.2 Quality and Best Value**

- 7.2.1 The Supplier acknowledges that Customer is a best value Customer for the purposes of the Local Government Act 1999 and as such Customer is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness, as such, the Supplier shall, where reasonably requested by the Customer, participate in any relevant best value review.

### **7.3 IT Systems**

- 7.3.1 The Supplier will provide the Customer with all assistance and co-operation required by the Customer in relation to any information technology system (including an integrated e-ordering and/or e-

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<sup>2</sup> The consequences of failure to meet Service Levels requires further thought. The provisions of clause 12.2 of the Contract provide for remedy of any service level default. TfL needs to agree when service level default can lead to termination of an Assignment or the entire Contract – see note re termination clause 32 of the Contract.

invoicing solution) required to be implemented by the Customer during the Term (including during the Mobilisation Period).

7.3.2 Without limiting any other terms or conditions of the Contract, the Supplier shall not (and shall ensure that the Agencies (and other authorised subcontractors) and any Temporary Agency Worker shall not) do anything which constitutes an offence under the Computer Misuse Act 1990.

#### 7.4 **London Living Wage**

7.4.1 In this clause 7, the following expressions shall have the following meanings:

<b>“London Wage”</b>	<b>Living</b>	the basic hourly wage as detailed on <a href="http://www.livingwage.org.uk">www.livingwage.org.uk</a> (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Supplier
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7.4.2 Without prejudice to any other provision of this Contract, the Supplier shall:

- 7.4.2.1 ensure that none of its employees engaged in the provision of the Services is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
- 7.4.2.2 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;
- 7.4.2.3 provide the Customer with such information concerning the London Living Wage and as the Customer or its nominees may reasonably require from time to time;
- 7.4.2.4 disseminate on behalf of the Customer to its employees engaged in the provision of the Services such perception questionnaires as the Customer may reasonably require from time to time and promptly collate and return to the Customer responses to such questionnaires; and
- 7.4.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- 7.4.2.6 Any breach by the Supplier of the provisions of this clause 7.4 shall be treated as a material breach capable of remedy in accordance with **Clause 34.2.1**.

#### 7.5 **Assistance to the Customer**

7.5.1 Without limiting the provisions of the Specification or any other terms and conditions of the Contract, the Supplier shall (and shall ensure that the Agency (or other authorised subcontractor) and the Temporary Agency Workers [and the potential Permanent Workers prior to Engagement] shall) provide to the Customer such information,

assistance, access, attendance of personnel and co-operation as the Customer may reasonably require from time to time:

- 7.5.1.1 to enable the Customer to meet its obligations to provide audited accounts, reports and returns pursuant to regulations, directions or guidance applicable to the Customer or as required by external agencies;
- 7.5.1.2 to answer enquiries (including from government bodies, the general public, members or officials of the Customer, Parliament and Members of Parliament, and third parties entitled to request or receive information from the Customer); and
- 7.5.1.3 for any investigation by a relevant agency, body or ombudsman (and without limiting any other of the Customer's rights or remedies, the Customer shall be entitled to recover from the Supplier any payment ordered or required to be paid by the Customer under such investigation which arises because of a direct or indirect breach of the Contract or a negligent act or omission of the Supplier, a Agency (or other authorised subcontractor) or a Temporary Agency Worker [or potential Permanent Worker prior to Engagement ]).

7.5.2 The above information, assistance, access, attendance of personnel and co-operation shall be provided at no additional charge to the Customer.

## **7.6 Customer's Operations and Reputation**

7.6.1 The Supplier shall (and shall ensure that the Agency (or other authorised subcontractor) and the Temporary Agency Workers [and the potential Permanent Workers prior to Engagement] shall):

- 7.6.1.1 take all reasonable care to ensure that the provision of the Services does not interfere with the operations of the Customer; and
- 7.6.1.2 not take any action which might or shall:
  - 7.6.1.2.1 harm or be prejudicial to the public confidence in the Customer or to its public image; or
  - 7.6.1.2.2 bring the Customer into disrepute.

7.6.2 Without limiting paragraph 9.1 above, the parties shall work together to endeavour to maintain the public image of the Customer, where the provision, delivery or receipt of the Services may be part of (or may otherwise affect) that public image.

## **7.7 Security**

7.7.1 The Supplier shall not (and shall ensure that the Agencies (and any other authorised subcontractors) and Temporary Agency Workers [and the potential Permanent Workers prior to Engagement] shall not) do any act or make any omission, which has or could reasonably be expected to have an adverse impact upon the security of the business and operations of the Customer.

7.7.2 Without limiting paragraph 7.7.2, the Supplier shall comply (and shall ensure that the Agencies (and any other authorised subcontractors) and

Temporary Agency Workers [and the potential Permanent Workers prior to Engagement] shall comply) with the provisions of the Specification and the Customer's standards, policies, procedures and regulations, regarding security including those differing standards and requirements that are applicable at each Premises.

7.7.3 Without prejudice to paragraph 7.7.2, when requested by the Customer the Supplier shall procure that all Temporary Agency Workers and potential Permanent Workers have been security cleared by the Customer to a security level of Counter Terrorist Check or higher before they commence work in relation to the Services and thereafter, the Supplier shall procure that such security clearances are applied for upon their expiry. If the Customer gives consent to Temporary Agency Workers working on the Services with a security clearance lower than Counter Terrorist Check, the Customer may require as a condition of such consent, that:

7.7.3.1 the Supplier procure that such Temporary Agency Workers sign a confidentiality undertaking in the form specified by the Customer; and

7.7.3.2 the Supplier shall notify the Customer in writing in advance if the Supplier wishes to make any significant future change to the role of such Temporary Agency Workers and within a reasonable period of receipt of such notice the Customer shall notify the Supplier if it requires that such Temporary Agency Workers be security cleared by the Customer to a security level of Counter Terrorist Check, before the change in their role can be implemented. If the Customer does, at its absolute discretion, require that such Temporary Agency Workers be so cleared, the Supplier shall not change their role until they have been cleared by the Customer to a security level of Counter Terrorist Check.

7.7.4 If upon expiry of any security clearances the Customer refuses to renew the security clearance, the Parties shall discuss in good faith to reach agreement as to how to mitigate any impact on the provision of the Services arising from such non-renewal of security clearance, but without prejudice to paragraph 10.6.

7.7.5 The Supplier shall, and shall procure that the Agencies (and any other authorised subcontractors) shall, seek security clearance from the Customer for:

7.7.5.1 Temporary Agency Workers who are both proposed to be assigned or engaged in the delivery of the Services; and

7.7.5.2 a reasonable number of additional staff who would be available for call out at short notice to enable the day to day operation of the Services.

7.7.6 The Customer shall be entitled at any time for security reasons to require the Supplier by notice in writing not to appoint or to remove from the provision of the Services any Temporary Agency Worker.

## 7.8 Premises

7.8.1 If the Supplier is permitted to use any Premises which are owned by the Customer or any member of the TfL Group in connection with the provision of the Services, the Supplier shall, if required by the Customer to do so, enter into on or prior to the Contract Commencement Date at the Customer's election either:

7.8.1.1 a licence to occupy on terms to be agreed by the Customer and the Supplier each acting reasonably; or

7.8.1.2 a lease which is validly excluded from the provisions of sections 25-28 of the Landlord and Tenant Act 1954 on terms to be agreed by the Customer and the Supplier each acting reasonably.

7.8.2 The Supplier acknowledges and agrees that if it is required to enter into a lease pursuant to paragraph 7.8.1.2 it shall also enter such documents as are required by the Customer to ensure that the lease is excluded from the provisions of the Landlord and Tenant Act 1954.

## 7.9 **Crime and Disorder Act 1998**

7.9.1 The Supplier acknowledges that the Customer is under a duty in accordance with Section 17 of the Crime and Disorder Act 1998:

7.9.1.1 to have due regard to the impact of crime, disorder and community safety in the exercise of the Customer's duties;

7.9.1.2 where appropriate, to identify actions to reduce levels of crime and disorder; and

7.9.1.3 without prejudice to any other obligation imposed the Customer, to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area,

and in the performance of the Contract, the Operator will assist and co-operate with the Customer, and will use reasonable endeavours to procure that its sub-contractors observe these duties and assists and co-operates with the Customer where possible to enable the Customer to satisfy its duty.

## 7.10 **IT Systems**

7.10.1 For the purposes of this Clause 7.10, unless the context indicates otherwise, the following expressions shall have the following meanings:

**"e-GIF"**

the UK Government's "e-government interoperability framework" standard, as may be updated from time to time, details of which are available on the Cabinet Office website, [www.govtalk.gov.uk](http://www.govtalk.gov.uk);

**"Euro Compliant"**

that the software, electronic or magnetic media, hardware or computer system (whichever is applicable) is capable of, and will not require any replacement or changes in order to be capable of, supporting the

introduction of, changeover to and operation of the Euro as a currency and in dual currency (Sterling and Euro) and will not manifest any material error nor suffer a diminution in performance or loss of functionality as a result of such introduction, changeover or operation and it shall (if applicable) be capable of processing transactions calculated in Euros separately from or in conjunction with other currencies and is capable of complying with any legislative changes relating to the Euro;

7.10.2 The Supplier shall ensure that:

7.10.2.1 any software, electronic or magnetic media, hardware or computer system used or supplied by the Supplier in connection with the Contract shall:

7.10.2.2 not have its functionality or performance affected, or be made inoperable or be more difficult to use by reason of any date related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system;

7.10.2.3 not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the Customer and/or where TfL is the Customer any other member of the TfL Group, on which it is used or with which it interfaces or comes into contact;

7.10.2.4 be compliant with e-GIF;

7.10.2.5 be Euro Compliant; and

any variations, enhancements or actions undertaken by the Supplier in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Supplier's compliance with this Clause 13.

8. Where reasonably requested to do so by another Functional Body or any London Borough or any member of the TfL Group, the Supplier shall contract with such other Functional Body or London Borough or member of the TfL Group on the terms and conditions of the Agreement mutatis mutandis, save that the Special Conditions applicable to the relevant Functional Body or London Borough or member of the TfL Group shall apply. For the avoidance of doubt, the Customer shall not have any liability to the Supplier in respect of any contract entered into by the Supplier and another Functional Body or London Borough or member of the TfL Group pursuant to this Clause.

**SCHEDULE 3 to the CUSTOMER AGREEMENT**

**PRICING SCHEDULE**

**(including Invoicing Procedures)**

**Part 1: Temporary Agency Workers**

**1. Charges**

The Charges for Temporary Agency Workers shall be based upon a mark-up on a Temporary Agency Worker’s pay rates (i.e. rates paid by the Agent to the Temporary Agency Worker excluding all holiday pay and benefits in kind, bonuses, commissions, taxes or national insurance contributions, and any form of variable remuneration). The Charges for Temporary Agency Worker placements shall not exceed the maximum mark-ups on Temporary Agency Worker pay rates (i.e. rates paid by the Agent to the Temporary Agency Worker excluding all benefits in kind, bonuses, commissions, taxes or national insurance contributions, and any form of variable remuneration) set out below in Tables 1 and 2. These maximum mark-ups will remain firm and fixed throughout the course of the Contract unless amended by a variation.

**Table 1**

Fees for Lot 1	
Agency mark up to 6 months of engagement (%)	██████
Agency mark up 6 months and above of engagement (%)	██████
Gifted Resource mark-up (%)	██████
2nd tier mark-up (the rate bid for a Non-Permanent worker sourced by the Master Vendor from their supply chain).	██████
a) Tier 3 mark up (the rate for creative supply chain: Graphic Specialists (including but not limited to: Graphic Designer, Artworker, Illustrator and Photoshop Specialists).  b) Design Studio - Job Trafficking Specialists  c) Print Specialists (including but not limited to print	To be agreed by both parties, post contract award.

<p>specifiers, production co-ordinators, print managers, distribution co-ordinators and distribution managers)</p> <p>d) Film, Animation and Photo Specialists (including but not limited to film producers, camera operators, photographers, animators (2D and 3D), voiceover artists, illustrators, technical and production and post-production managers)</p>	
<p>Note: Where a Temporary Agency Worker has been engaged in the Customer for 12 months, the above Gifted Resource mark-up will apply for the remainder of the engagement.</p> <p>Where a Temporary Agency Worker sourced by a 2nd tier supplier has been engaged in the Customer for 12 months, a mark-up of [REDACTED] will apply for the remainder of the engagement.</p>	

**Table 2**

Fees for Lot 2	
Agency mark up to 6 months of engagement (%)	[REDACTED]
Agency mark up 6 months and above of engagement (%)	[REDACTED]
Gifted Resource mark-up (%)	[REDACTED]
2nd tier mark-up (the rate bid for a Non-Permanent worker sourced by the Master Vendor from their supply chain).	[REDACTED]
<p>Note: Where a Temporary Agency Worker has been engaged in the Customer for 12 months, the above Gifted Resource mark-up will apply for the remainder of the engagement.</p> <p>Where a Temporary Agency Worker sourced by a 2nd tier supplier has been engaged in the Customer for 12 months, a mark-up of [REDACTED] will apply for the remainder of the engagement.</p>	

- 1.1 No remuneration shall be payable by the Customer to the Supplier during any period when the Temporary Agency Worker has taken time off in lieu or is either absent, by reason of sickness, holiday or special absence or unable to perform his/her duties to the satisfaction of the Customer.
- 1.2 The Charges may not be changed without the prior written consent of the Customer.
- 1.3 The Customer shall not be liable to pay the Supplier any Charges in relation to overtime, unless the Hiring Manager has given prior written approval for such overtime and has agreed the applicable rate with the Services Manager.
- 1.4 The National Insurance (NI) percentage charged to the Customer for all Temporary Agency Workers will be calculated as an estimated actual figure based on actual freepay and NI percentage as per current legislation and a standard working week of 35 hours for Lot 1 and 40 hours for Lot 2, except for Temporary Agency Workers in the GLA area of the Customer's business where the standard working week is 37 hours. For Temporary Agency Workers in the Customer Experience area of the Customer's business only the calculation will be based on the actual hours worked by the Temporary Agency Worker during the week. This clause 1.4 shall not apply to Temporary Agency Workers in the London Fire and Emergency Planning Authority area of the Customer's business who will be charged in accordance with the table below.

National Insurance contributions for PAYE Temporary Agency Workers in the Customer Experience area of the Customer's business will be estimated for each Temporary Agency Worker, using the following formula:

$$(((TW*WW)-FP)*NI\%) / WW$$

TW = Temporary Agency Worker pay rate including holiday pay  
 WW= number of hours worked in the working week  
 FP= Actual Freepay (currently £157)  
 NI%= Actual NI percentage (currently 13.8%)

National Insurance contributions for PAYE Temporary Agency Workers in the GLA area of the Customer's business will be estimated for each Temporary Agency Worker, using the following formula:

$$(((TW*WW)-FP)*NI\%) / WW$$

TW = Temporary Agency Worker pay rate including holiday pay  
 WW= number of hours in the standard working week (37 hours)  
 FP= Actual Freepay (currently £157)  
 NI%= Actual NI percentage (currently 13.8%)

National Insurance contributions for PAYE Temporary Agency Workers in all other areas of the Customer's business will be estimated for each Temporary Agency Worker using the following formula:

$$(((TW*WW)-FP)*NI\%) / WW$$

TW = Temporary Agency Worker pay rate including holiday pay  
 WW= number of hours in the standard working week (35 hours for Lot 1 and 40 hours for Lot 2)  
 FP= Actual Freepay (currently £157)  
 NI%= Actual NI percentage (currently 13.8%)

For the avoidance of doubt the estimated actual NI will be applied to the pay rate for all hours worked by the PAYE Temporary Agency Worker including any accrual for holiday pay.

National Insurance contributions for PAYE Temporary Agency Workers in the London Fire and Emergency Planning Authority area of the Customer's business will be fixed at the below rates:

New National Insurance Rates		
	Premium rate - Including Holiday	Suggested NI
Hourly	£7.25 or less	3.51%
Hourly	£7.26 - £8.00	4.53%
Hourly	£8.01 - £9.00	5.48%
Hourly	£9.01 - £10.25	6.45%
Hourly	£10.26 - £11.50	7.30%
Hourly	£11.51 - £13.50	8.14%
Hourly	£13.51 - £15.00	8.84%
Hourly	£15.01 - £17.50	9.45%
Hourly	£17.51 - £20.00	10.03%
Hourly	£20.01 - £25.00	10.66%
Hourly	£25.01 - £32.50	11.34%
Hourly	£32.51 - £42.50	11.91%
Hourly	Over £42.51	12.27%
Daily	£100 or less	7.24%
Daily	£100.01 - £125.00	9.40%
Daily	£125.01 - £150.00	10.20%
Daily	£150.01 - £175.00	10.75%
Daily	£175.01 - £200.00	11.16%
Daily	£200.01 - £250.00	11.60%
Daily	£250.01 - £300.00	12.00%
Daily	£300.01 - £375.00	12.33%
Daily	£375.01 - £450.00	12.60%
Daily	£450.01 - £600.00	12.86%
Daily	£600.01 - £750.00	13.07%
Daily	£750.01 - £1000.00.	13.23%

The parties have agreed that the fixed rate will be applied to the pay rate for all hours worked by the PAYE Temporary Agency Workers, including any accrual for holiday pay under the Working Time Directive, and (for the avoidance of doubt) will not be subject to any deduction in respect of the secondary earnings threshold.

- 1.5 The automatic enrolment charge to the Customer will be calculated at a fixed rate of 1.1% regardless of the prevailing statutory rate which may vary from time to time. The Parties have agreed that the automatic enrolment fixed rate will be applied to the pay rate for all hours worked by PAYE Temporary Agency Workers, including any accrual for holiday pay, and (for the avoidance of doubt) will not be subject to any deduction based on any Temporary Agency Worker status whatsoever and howsoever arising. The automatic enrolment fixed rate will be amended proportionally in line with changes to the statutory requirements.
- 1.6 The apprenticeship levy charge to the Customer will be calculated at 0.5% of the PAYE Temporary Agency Worker's pay rate including Working Time Directive.

- 1.7 The ESPO fee charged to the Customer will be calculated as █████ for every hour worked by each Temporary Agency Worker, or for daily paid Temporary Agency Workers, will be calculated as █████ for every day worked.

## 2. **Introduction Fee**

- 2.1 The Introduction Fee will be █████ of the Basic Remuneration of the Temporary Agency Workers under Lot 1 and █████ of the Basic Remuneration of the Temporary Agency Workers under Lot 2. For the avoidance of doubt no Introduction Fee is payable if the Temporary Agency Worker is Engaged on a permanent basis outside the Restricted Period.
- 2.2 The Supplier will raise an invoice to the Customer for each successful engagement on the start date of the permanent candidate.

## 3. **Payment Procedure**

- 3.1 If the Customer considers that the Charges claimed by the Supplier in any invoice have:
- 3.1.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by such method and within such period as specified in Schedule 1;
- 3.1.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the Customer shall not authorise the invoice and shall be entitled to withhold payment, but shall notify the Supplier and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Supplier shall submit a revised invoice to the Customer.

## **Part 2: Permanent Workers**

### **1. Assignment Rules**

- 1.1 No work can commence on an Assignment without a valid TfL reference number generated via Taleo (TfL's Applicant Tracking System) or any other Tracking System specified by the Customer from time to time.
- 1.2 Once the successful candidate has commenced employment at the Customer, the Customer will raise a valid Purchase Order.
- 1.3 Any work undertaken by the Supplier without an approved TfL Purchase Order number will be at the Supplier's own risk and any work conducted will not be paid for by the Customer.
- 1.4 Any advertising for Permanent Workers must be done without directly referring to the Customer and all costs will be borne by the Supplier.
- 1.5 The Customer will, at its sole discretion, decide which Master Vendor arrangement each requirement for Permanent staff fits into.

**2. Commission Fee**

2.1 On the successful engagement of a permanent candidate provided by the Supplier through this Contract, the Supplier shall charge to the Customer ██████ of the first 12 months Basic Remuneration for engagements under Lot 1 and ██████ of the first 12 months Basic Remuneration for engagements under Lot 2.

**3. Fee Payment Exceptions**

3.1 No payment will be made to the Agency under any circumstances without a valid Purchase Order number as stated in section 1 above.

3.2 In the event that the same Permanent Worker is engaged by TfL for a different role and has been introduced by another agency for a different role, no fee shall be payable to the Supplier for the placement of that candidate.

3.3 If a Permanent Worker introduces themselves to TfL via a direct route, no fee shall be payable to the Supplier for the placement of that candidate.

3.4 The Customer will not pay any introduction fees for any other Permanent Worker(s) introduced by the Supplier’s successful Permanent Worker.

**4. Engagement Fee Refunds**

4.1 In the event of a successful Permanent Worker leaving within 24 completed weeks for any reason excluding redundancy the following refund terms will be applicable:

- A ██████ refund of the final payment shall be due if the resignation occurs between 0-12 completed weeks.
- A ██████ refund shall be due of the final payment if the resignation occurs between 13-18 completed weeks.
- A ██████ refund shall be due of the final payment if the resignation occurs between 19-24 completed weeks.

**5. Non-solicitation**

5.1 If Supplier solicits at anytime a successful Permanent Worker that it introduced to the Customer within one year of the commencement of such Permanent Worker’s Engagement with the Customer, the Supplier shall be liable to refund the full amount of commission fee paid by the Customer in respect of such Permanent Worker.

5.2 If the Supplier solicits any other employee of Customer, resulting in the resignation of that employee within one year of the Supplier’s most recent successful introduction of a Permanent Worker to the Customer, then the Supplier shall be liable to pay the Customer ██████ of the employee’s base salary at the time of leaving.

**6. Volume Rebates**

6.1 The Supplier shall allow the Customer a retrospective discount equal to the percentages (“Discount”) set out in the following table on all the Charges (excluding VAT) due from and payable by the Customer to the Supplier under the Contract in each TfL Financial Year (1 April – 31 March):

Discount over £50m	██████
Discount over £100m	██████

6.2 The Rebate will be calculated per Lot on an accumulative spend basis, and issued as a credit note, as per the following example:

Lot 1 Annual value of business	Rebate due
██████████	██████████

Sample Threshold 1: (██████████) Sample Volume Rebate = ██████████  
 Sample Threshold 2: (██████████) Sample Volume Rebate = ██████████

In this example, ██████████ of spend above Threshold 1 (but below Threshold 2) is added to ██████████ of spend above Threshold 2.

0 to 50m at ██████████	██████████
50m to £100m = 50m @ ██████████	██████████
£130m less £100m = £30m @ ██████████	██████████
Rebate due	██████████

6.3 For the purposes of establishing the amount of Discount due to the Supplier:

6.3.1 the Supplier shall on request send to the Customer a statement (Discount Statement) detailing the Charges for that preceding twelve month period;

6.3.2 the Customer shall, within 14 days of receipt of such Discount Statement, inform the Supplier in writing to what extent it agrees the Discount Statement and/or to what extent it cannot agree the Discount Statement; and

6.3.3 in the case of disagreement the Parties shall try to agree the Discount Statement within 14 days of the Customer informing the Supplier that it disagrees with the Discount Statement in whole or in part;

6.3.4 within 14 days of the Customer informing the Supplier of the extent (if any) to which it agrees the Discount Statement, the Discount that is so agreed shall become due and payable to the Customer. If the Supplier fails to pay such agreed Discount on time then the Supplier will be entitled to interest on any outstanding Discount at the simple interest rate of 5% per annum above the base rate as set by the Bank of England as may be amended from time to time, from the date that payment of the Discount is due until the actual date of payment.

**7. INVOICING**

7.1 The Customer will self bill in respect of the Charges due and payable in relation to Temporary Agency Workers on a weekly basis.

7.2 A self-bill agreement is included at Annex 1 to this Schedule.

7.3 Where self bill does not apply, the Supplier will, on a weekly basis, issue a separate invoice for each approved Temporary Agency Worker timesheet and any permanent or temporary to permanent placement from the preceding week.

**8 VAT**

8.1 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

**Annex 1**

This Schedule details the Self Bill Agreement that will be signed by the Parties in order to facilitate payment of the Charges for Temporary Agency Workers to the Supplier via the Customer’s self-bill system.

**SELF BILL AGREEMENT - DATED XXXX**

This is an agreement in relation to a self-billing procedure between:

Transport for London (“TfL”, the “Self Biller”) VAT number XXXXX

and

Hays Specialist Recruitment Limited (“Hays”, the “Self Billee”) VAT number [REDACTED]

1. This Self Bill Agreement relates to the Managed Services Agreement for Temporary Agency Resources between the parties.
2. In order to use self-billing, the parties will enter into this Self Bill Agreement that is kept on file for HMRC inspection purposes.
3. The self-bill invoice is a tax invoice for HMRC purposes and conforms to all the usual regulations that relate to tax invoices.
4. For the duration of this agreement the Self Biller (TfL) agrees to:
  - issue self-bill invoices for all supplies made to them by the Self Billee on a weekly basis, one week in arrears.
  - create self-bill invoices that show the Self Billee’s name, address and VAT registration number together with all other details which form a full VAT invoice as dictated by HMRC
  - create a new self-billing agreement in the event of a VAT number change for either party
  - inform the Self Billee if the issue of self-bill invoices will be outsourced to a third party.
5. For the duration of this agreement the Self Billee agrees to:
  - accept invoices raised by the Self Biller on their behalf
  - not to raise ‘hard copy’ paper invoices
  - notify TfL immediately if they change their VAT registration number or VAT status or sell their business or part of their business.

Signed: .....

Signed: .....

Name: .....

Name: .....

Position: .....

Position: .....

Date: .....

Date: .....

For and on behalf of Transport for London

For and on behalf of Hays Specialist

Recruitment Limited

## **SCHEDULE 4 to the CUSTOMER AGREEMENT**

### **LOCAL ARRANGEMENTS**

#### **1. Agencies**

- 1.1 The Supplier shall be entitled to resource suitable Temporary Agency Workers or Permanent Workers either from its own resources or through those made available for use by Agencies.
- 1.2 The Supplier may enter into one or more contracts, as appropriate, with the Agencies for the supply of Temporary Agency Workers or Permanent Workers. The Supplier shall be responsible for all Temporary Agency Workers supplied to the Supplier by a Agency and shall ensure that the Agency and each Temporary Agency Worker complies with the terms of the Contract.
- 1.3 Save as set out in **Clause 1.1**, the Supplier shall not assign or sub-contract all or any part of the Services without the prior written consent of the Customer identifying the relevant sub-contractor which may be refused or granted subject to such conditions as the Customer sees fit.
- 1.4 Where the Supplier sub-contracts all or any part of the Services to any person (including a Agency), the Supplier shall:
  - 1.4.1 ensure that such person is obliged to:
    - 1.4.1.1 comply with all of the obligations and duties of the Supplier under the Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide; and
    - 1.4.1.2 assign all Intellectual Property Rights arising out of or in connection with the Services or the Contract to the Customer (or its nominee) in accordance with **Clause 14**;
  - 1.4.2 ensure that such person, in performing its obligations under its contract with the Supplier, complies with the policies and requirements applicable to the provision of the Services under the Contract;
  - 1.4.3 ensure that such person complies with a service level agreement that is comparable to and contains minimum performance standards that are in line with and no less than the Service Levels;
  - 1.4.4 ensure that such person has procedures in place to ensure that all Temporary Agency Workers comply with the requirements of the Customer and are eligible to undertake an Assignment;
  - 1.4.5 objectively monitor the performance of such persons and place them on a tiered system based on performance and price and grade them in accordance with the criteria set out in the Specification;
  - 1.4.6 ensure that it has the ability to, and does, audit such persons from time to time (or as requested by the Customer) and notifies the Customer of the results of such audits; and
  - 1.4.7 be responsible for payments to that person.
- 1.5 If a Agency or any other sub-contractor fails to comply with the Specification and the terms of the Contract, the Supplier shall not source Temporary Agency Workers or Permanent Workers from such Agency or sub-contractor for the purpose of the Contract if so directed by the Customer.

1.6 The Supplier shall remain solely responsible and liable to the Customer for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor (including a Agency) to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Supplier.

1.7 The Supplier shall be responsible for the engagement of the Temporary Agency Workers through the Agencies or other sub-contractors in accordance with this clause 1.

## 2. **Remuneration of Temporary Agency Workers**

2.1 The Supplier shall pay, or shall procure that the Agency (or any other sub-contractor) pays, each Temporary Agency Worker for the performance of an Assignment, including without limitation, the payment of any fees or hourly rates and any other payments and disbursements to which the Temporary Agency Worker is entitled to, including but not limited to any holiday pay and any sick pay.

2.2 The Supplier shall, or shall procure that the Agency (or any other sub-contractor) shall:

2.2.1 make deductions and accounts to HM Revenue & Customs for PAYE income tax and any other tax due in respect of the remuneration of each Temporary Agency Worker; and

2.2.2 make deductions and account for all necessary National Insurance contributions relevant to the remuneration of each Temporary Agency Worker.

2.3 Upon request, the Supplier shall inform the Customer of the rate that the Supplier, or the Agency (or any other sub-contractor), is paying to the Temporary Agency Worker. The Supplier shall provide, or procure the provision of, such additional evidence to allow the Customer to verify the rates paid to Temporary Agency Workers as the Customer may reasonably request.

2.4 The Supplier shall not, and shall procure that the Agencies (and any other sub-contractors) shall not, withhold any payment due to a Temporary Agency Worker because of any failure by the Customer to pay the Supplier.

2.5 For the avoidance of doubt, the Customer shall have no liability to any sub-contractor (including a Supplier) arising out of or in connection with the supply of Temporary Agency Workers, including in respect of payments due to any sub-contractor or Supplier.

## 3. **Guarantee Period for Permanent Workers**

3.1 Subject to **Schedule 4 Paragraph 3**, if the Engagement of a Permanent Worker is terminated by the Customer (or the relevant member of the TfL Group) or the Permanent Worker terminates such Engagement under its own volition within the period of 24 weeks from the commencement of the Engagement, the Agency shall repay the Charges on a pro-rata basis as detailed in **Schedule 3**.

3.2 The Supplier shall not be liable to pay to the Customer or find a replacement Permanent Worker if the termination of an Engagement occurs after 24 weeks from commencement of the Engagement.

## 4. **Recruitment of Temporary Agency Workers**

4.1 Subject to **Schedule 4 Paragraph 4** an Introduction Fee will be payable where a Temporary Agency Worker is Engaged (other than upon the termination or expiry of the Contract) within the Restricted Period except where the Customer provides written

notice to the Supplier that it wishes the Temporary Agency Worker to be supplied for an extended period of hire.

- 4.2 If a Temporary Agency Worker has been introduced to the Customer for a permanent position by a person other than the Supplier, the Customer shall not be obliged to pay to the Supplier any Introduction Fee in respect of the employment of such Temporary Agency Worker.
- 4.3 The Supplier shall invoice the Customer for any Introduction Fee due to the Supplier no earlier than one (1) week after the commencement of direct employment of the Temporary Agency Worker and in accordance with the timescales set out in Part 1 of **Schedule 3**. Payment of the Introduction Fee shall be in accordance with **Schedule 4 Paragraph 2**.
- 4.4 **If the direct employment of a Temporary Agency Worker is terminated by the Customer or the Temporary Agency Worker leaves such employment under its own volition within 24 weeks of commencement of employment the Supplier shall refund the Customer the amount of the Introduction Fee in accordance with Part 1 of Schedule 6.**
- 4.5 The Supplier shall not solicit any of the Customer's employees with the aim of deploying them as **Temporary Agency Workers** for the purpose of the Contract or any other contract (including any contract with a Functional Body or London Borough) or otherwise deploying them in work for the Customer or any other Functional Body or London Borough.
- 4.6 For the avoidance of doubt, no fee shall be payable by the Customer in the event that a **Temporary Agency Worker** chooses to cease working for the Supplier and to work for another agent or agency on the Customer's or any other Functional Body's or London Borough's work (either during the currency of the Contract or on or after termination or expiry of the Contract).

## 5. **The Agency Workers Regulations**

- 5.1 Prior to the commencement of any work by a Qualifying Temporary Agency Worker in relation to an Assignment or by a Temporary Agency Worker who during the course of work on that Contract Assignment will become a Qualifying Temporary Agency Worker, the Supplier shall notify the Customer of this fact.
- 5.2 The Supplier shall and shall procure that any other sub-contractor or intermediary shall at all times comply with their obligations under the AWR, including but not limited to providing any Qualifying Temporary Agency Worker with the Relevant Terms and Conditions in accordance with Regulation 5 of the AWR.
- 5.3 The Customer shall at all times comply with its obligations to provide any Temporary Agency Workers with access to collective facilities and amenities and employment opportunities subject to and in accordance with Regulation 12 and 13 of the AWR.
- 5.4 The Supplier will indemnify and hold harmless the Customer and/or any member of the TfL Group for all Losses incurred by it arising out of a breach or alleged breach of the AWR by the Supplier (other than Regulation 12 or 13 of the AWR).
- 5.5 In the event that either party, or any sub-contractor of the Supplier receives an allegation by any Temporary Agency Worker that there has been a breach of the AWR in relation to the supply of that person to the Customer by the Supplier (whether that allegation has been made as a request for information under Regulation 16 of the AWR or otherwise), that party shall provide a copy (if in writing or details) of that allegation to the other party within seven days of receipt. The parties shall co-operate with each

other in relation to responding to that allegation, which shall include supplying any information which may be reasonably requested by the other party, and complying with any reasonable requests in relation to the contents of any response.

5.6 The Supplier will within seven days of receiving a written request from the Customer provide to it:-

5.6.1 the number of Temporary Agency Workers currently being supplied to the Customer or any member of the TfL Group;

5.6.2 the parts of the Customer's or any member of the TfL Group undertaking in which those agency workers are working; and

5.6.3 the type of work those Temporary Agency Workers are carrying out

together with any other information which the Customer may reasonably request in relation to any payments made by the Supplier, its sub-contractors or any other intermediaries to any Temporary Agency Workers, in order to ensure compliance with the AWR.

## 6. **Compliance with Policies and Law**

6.1 The Supplier, at no additional cost to the Customer:

6.1.1 undertakes to procure that all the Supplier's Personnel comply with all of the Customer's policies and standards that are relevant to the performance of the Services, (including where the GLA is the Customer the Customer's Dignity at Work policy as updated from time to time and with the GLA's Code of Ethics as updated from time to time, and where TfL is the Customer, TfL's workplace harassment policy as updated from time to time (copies of which are available on request from TfL) and with TfL's Code of Conduct (which is available on TfL's website, [www.tfl.gov.uk](http://www.tfl.gov.uk))) including the provisions set out in **Schedule 10** and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Customer for personnel working at Customer Premises or accessing the Customer's computer systems. The Customer shall provide the Supplier with copies of such policies and standards on request. In the event that the Services are being provided to both the GLA and TfL, then the policies and standards of each of the GLA and TfL shall apply as appropriate;

6.1.2 shall provide the Services in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Supplier's business and/or the Customer's business, from time to time in force which are or may become applicable to the Services. The Supplier shall promptly notify the Customer if the Supplier is required to make any change to the Services for the purposes of complying with its obligations under this **Clause 6.1.2**;

6.1.3 without limiting the generality of **Clause 6.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;

6.1.4 acknowledges that the Customer is under a duty under section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and under section 49A of the Disability Discrimination Act 1995 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex or marital

status, race or disability (as the case may be) and to promote equality of opportunity between persons of different racial groups and between disabled people and other people (as the case may be). In providing the Services, the Supplier shall assist and cooperate with the Customer where possible in satisfying this duty;

6.1.5 acknowledges that where the Customer is the GLA, the GLA is under a duty under section 404(2) of the Greater London Customer Act 1999 and where the Customer is TfL, TfL is under a duty by virtue of a direction under section 155 of the Greater London Customer Act 1999 in respect of section 404(2) of that Act to have due regard to the need to:

6.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;

6.1.5.2 eliminate unlawful discrimination; and

6.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation,

and in providing the Services, the Supplier shall assist and co-operate with the Customer where possible to enable the Customer to satisfy its duty;

6.1.6 shall assist and co-operate with the Customer where possible with the Customer's compliance with its duties under section 1 and section 149 of the Equality Act 2010 as and when section 1 and/or section 149 come into force, including any amendment or re-enactment of section 1 or section 149, and any guidance, enactment, order, regulation or instrument made pursuant to these sections;

6.1.7 where the GLA is the Customer the Supplier shall:

6.1.7.1 comply with policies developed by the Customer with regard to compliance with the Customer's duties referred to in **Clauses 16.1.4 - 16.1.6** as are relevant to the Contract and the Supplier's activities;

6.1.7.2 obey directions from the Customer with regard to the conduct of the Contract in accordance with the duties referred to in **Clauses 6.1.4 - 6.1.6**;

6.1.7.3 assist, and consult and liaise with, the Customer with regard to any assessment of the impact on and relevance to the Contract of the duties referred to in **Clauses 6.1.4 - 6.1.6**;

6.1.7.4 on entering into any contract with a sub-contractor in relation to this Contract, impose obligations upon the sub-contractor to comply with this **Condition 16.1.7** as if the sub-contractor were in the position of the Supplier;

6.1.7.5 provide to the Customer, upon request, such evidence as the Customer may require for the purposes of determining whether the Supplier has complied with this **Clause 6.1.7**. In particular, the Supplier shall provide any evidence requested within such timescale as the Customer may require, and co-operate fully with the Customer during the course of the Customer's investigation of the Supplier's compliance with its duties under this **Clause 6.1.7**; and

6.1.7.6 inform the Customer forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract

by any person for breach of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, or the Equality Act 2010.

- 6.1.8 without prejudice to any other provision of this **Clause 6.1** or the Schedules, shall where TfL is the Customer comply with any provisions set out in the Schedules that relate to traffic management and shall comply with the reasonable instructions of TfL's Traffic Manager as may be made available to the Supplier from time to time. For the purposes of this **Clause 6.1.8**, "Traffic Manager" means TfL's traffic manager appointed in accordance with section 17 of the Traffic Management Act 2004;
- 6.1.9 shall promptly notify the Supplier's Personnel and the Customer of any health and safety hazards that exist or may arise in connection with the performance of the Services;
- 6.1.10 without limiting the generality of **Clause 6.1.2**, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it.

In all cases, the costs of compliance with this **Clause 6.1** shall be borne by the Supplier.

- 6.2 In providing the Services, the Supplier shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Supplier's activities may impact on the environment) to the need to:
  - 6.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
  - 6.2.2 enhance the environment and have regard to the desirability of achieving sustainable development;
  - 6.2.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
  - 6.2.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
- 6.3 The Supplier, at no additional cost to the Customer undertakes to procure that all the Supplier's Personnel comply with all of the Customer's policies and standards that are relevant to the performance of the Services, including (without limitation) the Customer's:
  - a) Code of Conduct, including the provisions set out in and those relating to safety, security, and any other on site regulations specified by the Customer for personnel working at the Customer Premises or accessing the Customer's computer systems; and
  - b) Drugs and Alcohol Policy.

The Customer shall provide the Supplier with copies of such policies and standards that may apply from time to time on request.

## 7. **Basis of Appointment**

- 7.1 The Customer has appointed the Supplier to supply the Services to the Customer as may be requested by the Customer from time to time and the Supplier agrees to provide the Services to the Customer in accordance with the terms and conditions of this Agreement.
- 7.2 In entering into this Agreement, the Customer has relied upon the Supplier's representation that it is an independent company, business or partnership carrying on a business on its own account and that it has the skills, resources, experience and qualifications to enable it to perform the Services to the standards specified in this Agreement.
- 7.3 For the purpose of this Agreement, the Supplier shall be deemed to act as an "employment business" in respect of the supply of Temporary Agency Workers and an "employment agency" in respect of the introduction of Permanent Workers as respectively defined in the Employment Agencies Act 1973. The Supplier shall at all times comply with the provisions of, and the obligations on an employment business or employment agency (as the case may be) under, the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
- 7.4 The Supplier;
- 7.4.1 acknowledges that it has sufficient information about the Customer, the Specification and the Service Levels and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement;
- 7.4.2 shall neither be entitled to any additional payment nor excused from any obligation or liability under this Agreement due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the Specification, Service Levels or otherwise to this Agreement; and
- 7.4.3 shall comply with all lawful and/or reasonable directions of the Customer relating to the performance of the Services.
- 7.5 Notwithstanding anything to the contrary in this Agreement, the Supplier acknowledges that the Customer's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of this Agreement.

## 8. **Management of the Services**

- 8.1 The Supplier and the Customer shall each nominate a representative who shall be authorised to make decisions relating to the Services and who will be responsible for:
- 8.1.1 organising and conducting regular meetings throughout the duration of the Contract (other than where the Parties agree that such a periodic meeting is not necessary); and
- 8.1.2 providing and/or allowing access to all information and documentation to which the Supplier or the Customer (as the case may be) and/or their agents, contractors or professional advisors reasonably require or are otherwise entitled to pursuant to the Contract (subject to the provisions in respect of confidentiality set out in **Clause 16**).

For the purpose of this **Clause 8**, the representative of the Supplier will be the Services Manager and the representative for the Customer will be the Contract Manager.

- 8.2 The Supplier shall, at the Customer's request, provide promptly to the Customer at no additional cost such reports on the provision of the Services as the Customer may reasonably request.
- 8.3 Each Party shall inform the other of any change in the identity of its representative set out in **Clause 8.1** during the course of the Contract, provided that:
- 8.3.1 any change in the Services Manager shall be approved by the Customer; and
- 8.3.2 there will be a representative nominated by each party at all times during the Contract.
- 8.4 Unless otherwise agreed by the Customer in writing, the Supplier shall be responsible for all office accommodation, administration, transport and support services as are necessary in the proper performance of the Services and all costs and expenses relating thereto.
- 8.5 The Supplier shall:
- 8.5.1 observe all reasonable directions and instructions given by the Customer in relation to the finding, evaluation and selection of Temporary Workers and Permanent Workers; and
- 8.5.2 be available to the Customer upon reasonable request for the purposes of consultation and advice relating to the Services and the Temporary Agency Workers and Permanent Workers from time to time.
- 8.6 The Supplier shall, and shall procure that all Agencies shall, at all times comply with the provisions of **Schedule 10** regarding Diversity, Equality and Employment.
- 8.7 The Customer reserves the right to change the criteria for Temporary Agency Workers and/or Permanent Workers as notified to the Supplier in line with any changes in applicable legislation, regulations or codes of practice from time to time at no cost to the Customer.
- 8.8 The Supplier shall not (and does not have any authority to) enter into a contract with a Temporary Agency Worker on behalf of the Customer or in the Customer's name.
- 8.9 The Customer shall notify the Supplier of the Engagement of a Permanent Worker Introduced solely and directly by the Supplier and the Fees relating to such Engagement will become due and payable to the Supplier in accordance with clause 3 of this **Schedule 4**.
- 8.10 The Supplier shall not have any authority to enter into a contract of employment with a Permanent Worker on the Customer's (or any member of the TfL Group's) behalf. The Supplier acknowledges that any Engagement shall be by the Customer (or the relevant member of the TfL Group) and upon the Customer's (or the relevant member of the TfL Group's) conditions of employment.
- 8.11 The Supplier agrees to ensure that Temporary Workers pay appropriate income tax and national insurance contributions to the United Kingdom HM Revenue and Customs and in particular that Temporary Workers are not engaged directly or indirectly through any structures intended to avoid this commitment including without limitation through any overseas intermediaries. The Supplier will promptly adhere to all guidance and instruction provided by the Customer in this regard and will immediately withdraw and replace any Temporary Worker working for the Customer who contravenes this provision. For the avoidance of doubt, this clause 8.11 will not apply to Temporary Workers engaged via an umbrella company or a personal services company in accordance with IR35 under the Finance Act 2014.

## 9. **Changes to the Services**

- 9.1 At any time during the Term, the Customer may request and the Supplier may recommend changes to any part or parts of the Services which shall be in the form set out in Schedule 9 or as otherwise specified by the Customer from time to time ("Change Request").
- 9.2 Within five (5) Business Days (or such longer period as may be agreed) of receipt of a Change Request, the Supplier shall notify the Customer in writing of any time required to investigate the effect upon the Contract of implementing such Change Request. If the Customer instructs the Supplier to proceed with such investigation, the parties will follow the procedure set out in the remaining provisions of this **Schedule 4 Paragraph 9**. For the avoidance of doubt, the Supplier will not be entitled to any fees or expenses for investigating the effect of implementing such Change Request.
- 9.3 Notwithstanding **Schedule 4 Paragraph 9.2**, the Supplier will submit to the Customer as soon as reasonably practicable a full written quotation for such Change Request specifying the increase or decrease (if any) which will be required to the Charges and the changes (if any) which will be required to the Contract, together with such other information as the Customer may reasonably request.
- 9.4 Upon receipt of such quotation, the Customer may elect either to:
- 9.4.1 request such amendments to the change to which such quotation relates as it may require, in which case the Supplier will amend the quotation accordingly (including any consequential amendment to the Charges) and will resubmit such amended quotation to the Customer in accordance with **Schedule 4 Paragraph 9.3**; or
  - 9.4.2 accept such quotation, in which case the Contract will be amended accordingly; or
  - 9.4.3 withdraw the proposed change, in which case the Contract will continue in force unchanged.
- 9.5 Until such time as any change is formally agreed between the parties in accordance with this **Schedule 4 Paragraph 9**, the Supplier shall, unless otherwise agreed in writing, continue to perform and be paid as if such change had not been requested or recommended. For the avoidance of doubt, the Supplier agrees that any investigation under **Schedule 4 Paragraph 9.2** or the preparation of a quotation under **Schedule 4 Paragraph 9.3** will not cause any delay in the provision of the Services.
- 9.6 No change made necessary directly or indirectly by any default, defect, act or omission of the Supplier will constitute a formal change under this Clause or will justify an increase in the Charges or vary any programme or schedule of the Services.

## 10. **Access to Premises**

- 10.1 The Customer shall permit the Temporary Workers access to the Premises for the performance of their Assignment and in connection with the proper performance of the Contract.
- 10.2 The Supplier shall procure that the Temporary Workers:
- 10.2.1 carry any identity passes issued to them by the Customer at all relevant times and comply with the Customer's or any TfL Group member's security procedures as may be notified by the Customer from time to time; and

10.2.2 do not damage the Premises or any assets or equipment on the Premises or any assets or equipment of the Customer or any member of the TfL Group.

10.3 Without prejudice to any of the Customer's other rights, powers or remedies, the Customer may (without liability to the Supplier) deny access to any Temporary Worker to, or remove any Temporary Worker from, any Premises if such Temporary Worker in the Customer's view does not comply with the Customer's requirements or has not been properly verified in accordance with the Customer's applicable security policy or trained in any way required by the Contract and/or is otherwise incompetent, negligent, and/or guilty of misconduct and/or who could be a danger to any person and shall notify the Supplier of such denial or removal in writing. The Supplier shall immediately remove such Temporary Workers and provide a suitable replacement(s) with the Hiring Manager's prior consent.

10.4 The Supplier acknowledges and agrees that nothing in the Contract will give the Supplier exclusive possession of any part of the Premises nor is intended to create the relationship of landlord and tenant or otherwise grant any rights of occupation to the Supplier or the Temporary Workers.

10.5 All rights of access granted to the Supplier and Temporary Workers under the Contract will immediately cease upon expiry or termination of the Contract howsoever arising.

## 11. **Records, Audit and Inspection**

11.1 The Supplier shall, and shall procure that the Agencies (and any other sub-contractors) shall:

11.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Supplier's obligations under the Contract and all transactions entered into by the Supplier for the purposes of the Contract (including time-sheets for the Temporary Agency Workers) ("Records"); and

11.1.2 retain all Records during the Term and for a period of not less than 6 years (or such longer period as may be required by law) following termination or expiry of the Contract ("Retention Period").

11.2 The Customer and any person nominated by the Customer has the right to audit any and all Records at any time during the Retention Period on giving to the Supplier what the Customer considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Supplier's performance of the Services and the Supplier shall give all reasonable assistance to the Customer or its nominee in conducting such inspection, including making available documents and staff for consultation, including Records and staff of the Agencies (and any other sub-contractors).

## 12. **Set-Off**

The Customer will be entitled but not obliged at any time or times to set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

## 13. **Data Transparency**

13.1 The Supplier acknowledges that the Customer is subject to the Transparency Commitment. Accordingly, notwithstanding **Clause 16** and **Clause 18**, the Supplier

hereby gives its consent for the Customer to publish the Contract Information to the general public.

- 13.2 The Customer may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Customer may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Customer may in its absolute discretion consult with the Supplier regarding any redactions to the Contract Information to be published pursuant to **Clause 12.1**. The Customer shall make the final decision regarding publication and/or redaction of the Contract Information.

#### 14. **Change of Ownership**

14.1 The Supplier shall:

- 14.1.1 not without the prior written consent of the Customer undergo any change in the ownership or control of the Supplier where such change relates to [REDACTED] or more of the issued share capital or voting rights of the Supplier; and
- 14.1.2 give notice to the Customer in the event that there is any change in the ownership or control of the Holding Company where such change relates to [REDACTED] or more of the issued share capital or voting rights of the Holding Company, such notice to be given within ten (10) Business Days of the date on which such change takes effect.

#### 15. **Relationship of the Parties**

Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties or a relationship or employer and employee or principal and agent. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

#### 16. **Rights of Third Parties**

16.1 The Supplier acknowledges that:

- 16.1.1 the Customer is procuring the Services for itself and the members of the TfL Group; and
- 16.1.2 each member of the TfL Group has the right to request and receive the provision of the Services and the supply of Temporary Agency Workers in accordance with the Contract. In such circumstances:
- 16.1.2.1 the member of the TfL Group will be treated as if they were the Customer for the purpose of the Contract;
- 16.1.2.2 without prejudice to **Schedule 4 Paragraph 16**, any loss suffered or incurred by such member of the TfL Group arising out of or in connection with the Contract to the extent not recovered by the Client pursuant to **Schedule 4 Paragraph 16** will for the purpose of the Contract be regarded as being suffered by the Customer; and
- 16.1.3 each member of the TfL Group will be entitled to enforce (or request the Customer to enforce on their behalf) the terms of the Contract against the Supplier.

16.2 Save that:

- 16.2.1 any Functional Body or London Borough as set out in **Clause 5.5**;
- 16.2.2 a Replacement Supplier under **Schedule 8**; and

16.2.3 any member of the TfL Group,

has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("Third Party Act"), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

16.3 Notwithstanding **Schedule 4 Paragraph 16**, the Parties are entitled to vary or rescind the Contract without the consent of any or all members of the TfL Group or any other person set out in **Schedule 4 Paragraph 16**.

## 17. **The Customer's Data**

17.1 The Supplier acknowledges the Customer's ownership of Intellectual Property Rights which may subsist in the Customer's data. The Supplier shall not, and shall procure that Temporary Agency Workers and Permanent Workers under its care or control do not, delete or remove any copyright notices contained within or relating to the Customer's data.

17.2 The Supplier and the Customer shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of the Customer's data and to prevent any corruption or loss of the Customer's data.

## 18. **Protection of Personal Data**

18.1 For the purposes of this Clause 18, unless the context indicates otherwise, the following expressions shall have the following meanings:

**"Data Protection Laws"** means: (a) any legislation in force from time to time in the United Kingdom which implements the European Community's Directive 95/46 EC and Directive 2002/8/EC, including but not limited to the Data Protection Act 1998 and the Privacy and Electronic Communication (EC Directive) Regulations 2003, the Data Protection Act 1998; and (b) from 25 May 2018 only, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "General Data Protection Regulation"); and (c) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the processing of Personal Data.

**"Data Subject"** has the meaning given to that term in the Data Protection Laws.

**"EEA"** means the member states of the European Union and Iceland, Liechtenstein and Norway.

**"Personal Data"** has the meaning given to that term in the Data Protection Laws.

**"Security Incident"** means any accidental or unlawful destruction, loss or alteration of Personal Data, or any unauthorised disclosure of or access to Personal Data. For the purposes of the Data Protection Laws, the parties agree that each party is a data controller in its own right in relation to Personal Data processed by each party under this Agreement.

18.2 Each party shall process Personal Data in compliance with the Data Protection Laws and shall deal promptly and in good faith with all reasonable and relevant enquiries from the other party relating to its processing of Personal Data under this Agreement.

18.3 To the extent that a party ("Disclosing Party") provides Personal Data to the other party ("Receiving Party") under this Agreement, the Disclosing Party shall be responsible for ensuring that it has provided all relevant Data Subjects with all necessary fair

processing information and has taken appropriate steps to legitimise the disclosure of such Personal Data to the Receiving Party in accordance with the applicable Data Protection Laws.

- 18.4 The Receiving Party shall process Personal Data that the Disclosing Party provides to it pursuant to Clause 25.3: (i) for the purposes of exercising any rights it has under this Agreement and for the performance of its obligations under or in connection with this Agreement (including to allow it to comply with any legal obligation or the request of any regulatory authority); or (ii) as otherwise agreed between the parties in writing.
- 18.5 Each party shall:
  - 18.5.1 implement and maintain at all times appropriate technical and organisational measures to ensure a level of security appropriate to the risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data;
  - 18.5.2 comply with reasonable requests of the other party in relation to any obligations of that party under Data Protection Laws associated with any duties of that party as a data controller of Personal Data processed by it under this Agreement;
  - 18.5.3 if it receives any complaint, notice, request or communication from a regulator, Temporary Contractor or third party which relates to the other party's processing of Personal Data under this Agreement or a potential failure to comply with Data Protection laws, without undue delay forward such complaint, notice, request or communication to the other party and provide the other party with reasonable cooperation and assistance in relation to the same; and
  - 18.5.4 upon becoming aware of a Security Incident in connection with the provision or receipt of the Services;
    - 18.5.4.1 notify the other party as soon as reasonably practicable and provide the other party with a reasonable description of the Security Incident promptly upon such information becoming available;
    - 18.5.4.2 together with the other party acting reasonably and in good faith to mitigate any adverse effects of that Security Incident; and
    - 18.5.4.3 not release or publish any filing, communication, notice, press release or report concerning that Security Incident without first consulting the other party with regards to the content of that notice and giving due regard to the other party's reasonable comments, save that it may disclose a breach to the extent required by the Data Protection Laws.
- 18.6 Each party shall notify the other of any written request from a Data Subject:
  - 18.6.1 requesting information concerning the processing of, or copies of, Personal Data processed by it under this Agreement (including a copy of the request);
  - 18.6.2 requiring the rectification of any inaccurate or incomplete Personal Data processed by it under this Agreement;
  - 18.6.3 requiring the erasure of Personal Data processed by it under this Agreement;

- 18.6.4 restricting the processing of Personal Data processed by it under this Agreement;
- 18.6.5 exercising his or her right to data portability in respect of Personal Data processed by it under this Agreement;
- 18.6.6 objecting to the processing of Personal Data processed by it under this Agreement; or
- 18.6.7 objecting to being subject to a decision based solely on automated processing, including profiling, carried out by it pursuant to this Agreement,

in each case made in accordance with the Data Protection Laws.

- 18.7 The Supplier shall not transfer Personal Data to any country or territory outside the EEA (other than within the scope of a European Union ("EU") finding of adequacy in respect of that country or territory pursuant to Article 25(6) of the EC Data Protection Directive 95/46/EC or Article 45(3) of the GDPR) unless the Supplier has ensured that such transfer complies with applicable Data Protection Laws, either by having in place EU-approved standard contractual clauses to govern the transfer, or using another basis to ensure the transfer complies with the applicable Data Protection Laws.

## 19. Intellectual Property Rights

- 19.1 The Supplier agrees and acknowledges that all Intellectual Property Rights created or developed in the provision of the Services or otherwise arising from or in connection with the Services or the Agreement, including all Intellectual Property Rights created or developed by or on behalf of the Supplier or the Temporary Workers, shall vest in and belong absolutely and exclusively to the Customer (or its nominee). The Supplier hereby assigns, or shall procure the assignment of, with full title guarantee and at no charge or royalty all such Intellectual Property Rights capable of present assignment to the Customer (or its nominee) together with the right to sue for past infringement. Where such future rights cannot be assigned by present assignment the Supplier agrees to take all such steps and do all such things, including executing all documents, as may be necessary to vest such Intellectual Property Rights in the Customer (or its nominee) on their creation.
- 19.2 The Supplier shall provide the Customer and the members of the Tfl Group with copies of all work and materials relied upon or referred to in the creation or development of the Intellectual Property Rights referred to in Clause 28.1 and with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such work and materials in connection with the use of such Intellectual Property Rights.
- 19.3 Pursuant to Clause 28.1, the Supplier undertakes that it:
  - 19.3.1 has (or that it will have in place prior to the commencement of an Assignment), or will procure that the Secondary Suppliers (or any other sub-contractors) have, contracts with the Temporary Workers such that any Intellectual Property Rights arising out of or in connection with an Assignment shall (subject to the Clause 28.3.2) vest in the Supplier, or the Secondary Suppliers or any other sub-contractor, as applicable, and that each Temporary Worker is obliged to waive all moral rights and rights of a like nature in such Intellectual Property Rights. The Customer may on demand at any time require the Supplier to produce all and any Temporary Worker contracts for inspection by the Customer; and
  - 19.3.2 will, or will procure that the Temporary Workers will, execute such further documents and do such acts as may be necessary for securing, confirming or

vesting absolutely the Customer's (or its nominee's) full rights, title and interest in the Intellectual Property Rights referred to in Clause 28.1 and for conferring on the Customer (or its nominee) all rights of action in respect of any claim for infringement by third parties.

19.4 The Supplier shall have no right (save where expressly permitted under the Agreement or with the Customer's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Customer or any member of the TfL Group.

20. **Novation**

20.1 The Customer may novate or otherwise transfer the Agreement (in whole or in part).

20.2 Within ten (10) Business Days of a written request from the Customer, the Supplier shall at its expense execute such agreement as the Customer may reasonably require to give effect to any such transfer all or part of its rights and obligations under the Agreement to one or more persons nominated by the Customer.

20.3 Subject to **Clause 1 of this Schedule 4**, the Agreement is personal to the Supplier who shall not assign the benefit or delegate the burden of the Agreement or otherwise transfer any right or obligation under the Agreement without the prior written consent of the Customer.

21. **Further Assurance**

Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Agreement.

22. **Survival**

any other provision of the Agreement which by its nature or implication is required to survive the termination or expiry of the Agreement shall do so.

23. **Entire Agreement**

23.1 Subject to **Clause 23.2**:

23.1.1 the Contract and all documents referred to in the Agreement, contain all of the terms which the Parties have agreed relating to the subject matter of the Agreement and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Agreement by a statement which it does not contain; and

23.1.2 without prejudice to the Supplier's obligations under the Agreement, the Supplier is responsible for and shall make no claim against the Customer or any member of the TfL Group in respect of any misunderstanding affecting the basis of the Supplier's tender in respect of the Agreement or any incorrect or incomplete information howsoever obtained.

23.2 Nothing in this **Clause 23** excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

## **SCHEDULE 5 to the CUSTOMER AGREEMENT**

### **MOBILISAION PLAN**

- a) The Supplier and Customer's joint project team will manage the transition from contract TFL90747/1&2 to this new agreement, including the capturing, management and processing of ESPO MSTAR2 framework management information and framework fee on a quarterly basis.

**SCHEDULE 6 to the CUSTOMER AGREEMENT**  
**SERVICE LEVEL AGREEMENT**

Between  
 Transport for London (the Customer)  
 and  
 Hays Specialist Recruitment Ltd (the Supplier)

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

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

Note 1: All days indicated are working days

Note 2: All metrics to be reported for a.) total contract TfL b.) by cluster of business areas (to be agreed)

Note 3: In line with Hays guidance and best practice, the deliver of an SLA is wholly within the control of the supplier, the KPI is an indicator of performance that is not necessarily entirely within the control of the supplier

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
SLA 1	Periodic and Quarterly	Expected number of shortlisted CVs per vacancy	A minimum of 3 CVs submitted to the hiring manager, following shortlisting by the Hays On Site Team per head required in each role, unless a deviation is agreed by exception between the hiring/resourcing manager and Hays (and record of agreement sent to NPL Recruitment Manager).  Role dependent exceptions to this SLA will be agreed in writing with the hiring manager and excluded from the calculation.	FROM TALEO Key status: <b>Hiring Manager Review</b> Key status: <b>No. of openings</b> Include HAYS Second Tier CV's	Report average number per vacancy  For Example: <ul style="list-style-type: none"> <li>• 1 Vacancy for 1 head: minimum 3 CVs</li> <li>• 1 Vacancy for 2 heads: minimum 6 CVs</li> </ul>		

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
KPI 1	Periodic and Quarterly	Ratio of CVs received by hiring manager shortlisted by hiring manager	The average number of CVs submitted for consideration by TfL after shortlisting and excluding any agreed deviation as per SLA 1	FROM TALEO Key status: <b>Hiring Manager Review to Shortlisted</b> (Hiring manager status) Include HAYS Second Tier CV's Gifted candidates excluded	5:1 and lower ratio	4:1	Less than or equal to 3:1
SLA 3	Periodic and Quarterly	CV Submission timescales, in days  This metric requires the continued use of Taleo of 'Authorized' step to be effective	If target CVs are not received within agreed timescales the vacancy will be released to the Hays 2nd Tier.  Timescales outside of those on the right and agreed with the hiring manager/resourcing manager for specific roles. (A record of that agreement should be sent to NPL Recruitment Manager or Team Leader).  As SLA 3 above. Where there is a delay from the hiring manager, working days are not counted as part of this SLA/KPI	Information from Hays, manually collated  FROM TALEO Key status:  Include CV's from second tier suppliers and detail separately  24 hours is scheduled in Taleo for a skills match	<ul style="list-style-type: none"> <li>This metric will be self reported by Hays and referenced with Taleo data</li> <li>CVs to be submitted within 3 working days of receipt from TfL's NPL Team (Authorized step in Taleo) followed by 3 days to receive hiring manager feedback during which time Hays can supply more CVs, on the 7<sup>th</sup> day from <b>authorized</b> if no relevant CVs have been submitted the vacancy can be released to the appropriate Hays second tier agency or released in tandem with Hays if the area is known to be difficult to source</li> <li>If no CV's have been received by the 7<sup>th</sup> day from <b>authorized</b> or if the CV's have been rejected by the hiring manager or HR, TfL will request a review with the Hays Recruitment Partner and/or Hays Service Manager.</li> <li>From the 10<sup>th</sup> day from <b>authorized</b> , If no CV's have been received or accepted by the hiring manager or the line manager, or earlier by mutual agreement, TfL may request an alternative supplier to be briefed on the role</li> <li>If Hays are unable to supply CV's for the role due to supply or the specialist nature of the role, Hays will notify TfL as soon as possible who will source via an alternative supplier</li> </ul>		

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
KPI 3a	Periodic and Quarterly	CV Submission timescales, in days	As SLA 3 above. Where there is a delay from the hiring manager, working days are not counted as part of this SLA/KPI		<p>Below 70% received by hiring manager 0-3 days from <b>draft</b> inclusive</p> <p>State % of total hires against total for the period</p> <p>State number of total hires outside of 3 day SLA</p> <p>List role details outside of 3 day SLA including business area and number of days to submit</p>	<p>70% to 79.9% received by hiring manager 0-4 days from <b>draft</b> inclusive</p> <p>State % of total hires against total for the period</p> <p>State number of total hires outside of 3 day SLA</p> <p>List role details outside of 3 day SLA including business area and number of days to submit</p>	<p>80% received by hiring manager in 0-3 days authorized inclusive</p> <p>State % of total hires against total for the period</p> <p>State number of total hires outside of 3 day SLA</p> <p>List role details outside of 3 day SLA including business area and number of days</p>
KPI 3b	Quarterly	Volume of Hays 2 <sup>nd</sup> tier release %	<p>Percentage of vacancies that require to be released to Hays second tier following a service decision on the part of Hays.</p> <p>All specific requests by Tfl to go to an 'off contract' named supplier outside of the Hays contractual agreement will be excluded from this calculation</p>	This metric applies to Hays second tier suppliers only. It does not apply to non-Hays suppliers selected by Tfl.	<p>Greater than or equal to 20.1%</p> <p>List roles and agencies for second tier release</p>	<p>20%-10.1%</p> <p>List roles and agencies for second tier release</p>	<p>Less than or equal to 10%</p> <p>List roles and agencies for second tier</p>

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
KPI4	Periodic and Quarterly	CV to Interview ratio	The average number of CVs required for an interview request. For each campaign for every 3 candidate CVs submitted, at least 1 candidate is expected to be progressed to interview stage.	Taleo: Shortlist to assessment	5:1 and lower ratio	4:1	Less than or equal to 3:1
KPI5	Periodic and Quarterly	Interview to offer ratio	The average number of interviews required for an offer	TALEO Offer to be made	5:1 and lower ratio	4:1	Less than or equal to 3:1
SLA6	Quarterly	Hays 2 <sup>nd</sup> Tier Pre-employment screening compliance	Hays will audit a random selection of temporary worker files for those supplied through second tiers in line with the contractual clause 5.3 or equivalent clause in MSTAR contract:  5.3. Referencing 5.3.1. The Service Provider must ensure that all Temporary Workers are fully cleared to work for the Authority and the Service Provider will undertake all necessary checks at no cost to the Authority. Mandatory requirements for all Temporary Worker Roles include: • Identity checks & right to work in the UK • Proof of address • Employment history – two recent (one within last 3 months minimum) written work related references which have been confirmed and cleared and date back to 2 years maximum. For certain roles, The Authority reserves the right to request the Temporary Worker be referenced for 5 years • Criminal records checks • Reasonable adjustments and Health & Safety assessment. 5.3.2. Candidates submitted for interview must have the legal right to work in the United Kingdom and, where necessary, hold a valid visa. On no account must candidates be sent for interview if they do not meet this requirement. 5.3.3. For selected Temporary Worker Roles there may be additional requirements including some or all of the following: • Occupational Health questionnaire • Occupational Health medical • Basic disclosure • Enhanced disclosure • Qualifications and / or professional membership • Drivers Licence • Financial Probity • Government Security 5.3.4. The Service Provider will provide the following scanned documents to the Authority upon offer of Assignment and before the start date, countersigned by a member of the Service Provider's team with the words 'I confirm this is a true copy of the original seen by me today' together with a printed name, signature and date. • Proof of identity and right to work in the United Kingdom as defined by the Home Office (authorised document that form a	Hays 2 <sup>nd</sup> tier hires only: Every new starter in a 10% random selection of suppliers every quarter.  Audit required against the PES requirements detailed in Clause 5.3 as detailed in the contract and opposite  Record details of audit and second tier agencies not complying with audit			

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
			<p>reference from List 1 and List 2)</p> <ul style="list-style-type: none"> <li>• Proof of address from one of the following documents that must be less than 3 months old: utility bill, a letter from any government department or organisation, bank or building society statement or credit card statement. A mobile phone bill is not acceptable</li> <li>• Visa (if required).</li> </ul> <p>5.3.5. The Authority reserves the right to amend the requirements for references and clearances in line with any introduction of new Government legislation or TfL policy at no extra cost.</p> <p>5.3.6. As part of the supplier performance monitoring, the Authority will arrange and undertake and the Service Provider will permit compliance audits to be undertaken by a third party to ensure that all pre-employment screening is undertaken as agreed.</p> <p>5.3.7. The Service Provider may be required to ensure that it does not provide Temporary Workers in certain circumstances such as:</p> <ul style="list-style-type: none"> <li>• where the Temporary Worker has previously been an employee of the Authority and has left within the last 2 years on grounds of early retirement and/or redundancy; or</li> <li>• an ex-employee of the Authority who has been fairly dismissed under the Authority's disciplinary or probationary procedures.</li> </ul> <p>5.3.8. See Pre-Employment Screening matrix for more detail on referencing requirements (Appendix 3). The Service Provider is required to adhere to data protection principles in accordance with the terms of the Contract.</p> <p><b>5.3A. Criminal Record Declarations</b></p> <p>5.3A.1 In this section 5.3A:</p> <ul style="list-style-type: none"> <li>• "Relevant Conviction" means any unspent criminal conviction relating to actual or potential acts of terrorism or acts which threaten national security.</li> <li>• "Relevant Individual" means any Temporary Worker, servant, employee, officer, consultant or agent of the Service Provider or any Secondary Supplier carrying out, or intended to carry out, any aspects of the Services or any Assignment.</li> </ul> <p>5.3A.2 The Service Provider shall procure from each Relevant Individual a declaration that it has no Relevant Convictions ("Declaration") or disclosure of any Relevant Convictions committed. A Declaration shall be procured prior to a Relevant Individual carrying out any Services or Assignment. The Service Provider shall confirm to the Authority in writing on request and in any event not less than once in every year that each Relevant Individual has provided a Declaration. The Service Provider shall procure that a Relevant Individual notifies the Service Provider immediately if that Relevant Individual commits a Relevant Conviction throughout the Term and the Service Provider shall notify the Authority in writing immediately on becoming aware that a Relevant Individual has committed a Relevant Conviction.</p> <p>5.3A.3 The Service Provider shall not engage or allow any Relevant Individual that has disclosed a Relevant Conviction to provide Services or act on any Assignment.</p> <p>5.3A.4 The Authority may, in accordance with the audit rights set out in Clause 23 of the Contract, audit and check any and all such records as are necessary in order to monitor compliance with this section 5.3A.</p> <p>5.3A.5 If the Service Provider fails to comply with the requirements under Paragraphs 5.3A.2 and/or 5.3A.3, the Authority may, without prejudice to any of its other rights powers or remedies, serve notice on the Service Provider requiring it to immediately remove or procure the removal of (as the case may be) any Relevant Individual who has not provided a Declaration with immediate effect and take such steps as are necessary to ensure that the Relevant Individual has no further involvement with carrying out any Services or Assignment unless (in the case of non-compliance with Paragraph 5.3A.2) within 7 days of receipt of the notice the Service Provider confirms to the Authority it has procured all of the Declarations required under Clause 5.3A.2.</p> <p>5.3A.6 Any breach of Paragraphs 5.3A.2 and/or 5.3A.3 by the Service Provider shall constitute a material breach of this Contract and entitles the Authority to terminate the Contract in accordance with Clause 34.2 of the Contract.</p> <p>5.3A.7 If either Party becomes aware that a Relevant Individual has committed a Relevant Conviction, the Service Provider shall remove or procure the removal (as the case may be) of the Relevant Individual with immediate effect and take such steps as are necessary to ensure that the Relevant Individual has no further involvement in carrying out any Services or Assignment.</p> <p>5.3A.8 Nothing in this section 5.3A in any way waives, limits or amends any obligation of the Service Provider to the Authority arising under this Contract and the Service Provider may not claim any extra costs or time as a result of any actions under this section 5.3A.</p>				

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
KPI6	Periodic and Quarterly	<b>Interviewee Quality</b>	<p>Average score on candidates submitted by Hays.</p> <p>Excludes any candidates that have not been graded</p> <p>Requires a minimum of 10 candidates or 50% of the hires, whichever is the greater, in one month to be graded, to be applicable</p>	From Hiring Managers Survey on Survey Gizmo. Data supplied by TfL NPL to Hays periodically	Less than or equal to 1.99	Between 2 – 2.99	Greater than or equal to 3
SLA 7	Periodic and quarterly	<b>Hiring Manager Satisfaction</b>	<p>Each hiring manager is required to grade each candidate at the end of their assignment, against the criteria on the right</p> <p>All Hiring Managers who have rated 1,2 to be contacted to understand where service could have been improved by the Hays Service Manager or team Leader/Principal Recruitment Partner.</p> <p>Candidates graded 1 and 2 must have reasons/detail included on the report.</p>	<p>Hiring Manager Survey</p> <p>Survey Gizmo</p> <p>TfL NPL to provide Hays with data extract periodically</p> <p>Hays to provide breakdown of data</p>	<p>1 Very dissatisfied</p> <p>2 Dissatisfied</p> <p>3 Satisfied</p> <p>4 Good</p> <p>5 Very good</p>		
KPI7	Periodic and Quarterly	<b>Time-to-Offer, %, volumes and details</b>	<p>Average target from date of release to Hays on site team; by being set to 'Authorized' on Taleo to the offer being accepted.</p> <p>Please note that Skills matching for redeployment employees is carried out before allocation by the NPL in-house team:</p> <p>Time to offer excludes the following where this should be reported as an exception:</p> <ul style="list-style-type: none"> <li>Time spent with another supplier where vacancy has been issued to that supplier directly by TfL</li> </ul>			All Roles	

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
			<ul style="list-style-type: none"> <li>Any unreasonable delay where the vacancy sits with TfL (for example: a week to feedback on a CV or interview) and the role is placed 'on hold' by Hays, the SLA for a manager to come back to Hays when shortlisting is 3 days</li> </ul>	<p>TALEO Authorized to Offer to be made excluding</p> <p>Taleo adjusts and excludes 'on hold' days from the timescale (when on-hold applied for the first time only)</p>	<p>Average of 26 working days or greater since 'Authorized'</p> <p>%, volumes and details of roles</p> <p>Detail exclusions separately where service affected by TfL including %, volumes and details, include role name and full details</p>	<p>Average of between 16-25 working days since 'Authorized' inclusive</p> <p>%, volumes and details of roles</p> <p>Detail exclusions separately where service affected by TfL including %, volumes and details, include role name and full details</p>	<p>Average within 3 weeks of 'Authorized'</p> <p>Average of 15 working days or less label '3 weeks or less'</p> <p>%, volumes and details of roles</p> <p>Detail exclusions separately where service affected by TfL including %, volumes and details, include role name and full details</p>
KPI8	Periodic and Quarterly	Cost of Hires made at min to mid point of rate card	% of Temporary Workers engaged at mid- point pay rate or below, of contracted charge rate. Hires to be made at min to mid point by all Hays Recruitment Partners as standard. Hires over mid point to be authorised by NPL Recruitment Manager, Contract Support Manager or delegated authority to Hays Service Manager and Hays Team Leader/Principal Recruitment Partner	TALEO Mid point is between the rate amount From and To (fields on Taleo to record rate card amount from May 2017)	Less than or equal to 49.9%	Between 50% - 64.9% inclusive	65% or greater
					Details of role and area when over mid point	Details of role and area when over mid point	Details of role and area when over mid point
KPI 9	Periodic and Quarterly	MV Performance – fulfilment and capability	Percentage of roles allocated to Hays by TfL and not cancelled or withdrawn by TfL or Hays. Roles will ordinarily be withdrawn from Hays' scope by mutual agreement with TfL Contract Support Manager.	TALEO NPL roles Recorded as a 'cancelled' role and verified by TfL Contract Support	Less than or equal to 94.9%	Between 95%-97.9%	98% or greater
					With manual	With manual commentary from	With manual commentary from

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
			Measures: Roles filled by other suppliers. Roles withdrawn by TfL or cancelled by Hays without Hays sourcing taking place successfully Note: This can be due to the complexity of a role and/or MV capability	Manager as withdrawn from Hays  Category is not an Engineering or Engineering Category	commentary from Hays	Hays	Hays
KPI 10	Quarterly	NPL No shows	Percentage of candidates who are offered and accept a role with TfL but who do not start; calculated as a percentage of total hires that period  Must be a minimum of 25 starters in a period for calculation to be valid.	TALEO: Offer to be made Offer withdrawn status / offer rescinded if they do not start (this needs to be checked)	Greater than or equal to 12%  Note: 3 out of 25  List roles, candidate name and business area	Between 12.1% - 3.9%  Note: 2 out of 25  List roles, candidate name and business area	Less than or equal to 4%  Note: 1 out of 25  List roles, candidate name and business area
KPI 11	Quarterly	Leavers – poor performance or conduct	Percentage of leavers in a period who are non-regretted with [X timescale to be populated by Sam M]  Calculated from the total number of leavers Non-regretted leavers are those leaving due to poor performance, contract breach, breach of health and Safety, IPR, confidentiality etc., it does not include those leaving because their assignment is coming to a natural end.	From TfL Contract Support Manager FLM Leavers form E-form original request for length of assignment SAP R3 data Shows on leaver form as 'do not reengage' or where quality is below 'Satisfactory' in any metric	Greater than or equal to 12%  Note: 3 out of 25  List roles, candidate name and business area	Between 12.1% - 3.9%  Note: 2 out of 25  List roles, candidate name and business area	Less than or equal to 4%  Note: 1 out of 25  List roles, candidate name and business area
KPI 12	Quarterly	Equality and inclusion	TfL to report on Equality and inclusion including the following (this is not a HAYS KPI to achieve)  <ul style="list-style-type: none"> <li>• Ethnicity</li> <li>• Religion</li> <li>• Age bracket</li> <li>• Gender</li> <li>• Transgender status</li> <li>• Sexual Orientation</li> <li>• Religion</li> </ul>	TALEO  E&I statistics reported by TfL.	RED = report submitted by TfL 3 days late or not submitted	AMBER = report submitted by TfL within 2 days of target	GREEN = report submitted by TfL to Hays on time

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
KPI I3	Periodic and quarterly	Hiring Manager satisfaction	RAG status	Survey Monkey Results passed from Contract Support Manager/TfL in-house team	Below 75% at 3-5 rating	At 75% or below 85% at 3-5 rating	85% and above at 3-5 rating
KPI I4	Quarterly	Candidate satisfaction	Hays to report on candidate satisfaction	Hays to provide metrics	<p>Hays to provide qualitative and quantitative feedback from a defined sample of candidates who are:</p> <ul style="list-style-type: none"> <li>Appointed</li> <li>Interviewed</li> </ul> <p>Metrics should include comments from candidates, unedited plus a scale with numbers detailing where the standard is met and where the standard has not been met. Name and/or departments of Hays should be identified for service improvement and negative comments fed back to relevant Hays managers for monitoring and remedial action.</p> <p>An overall % candidate satisfaction score should be included.</p>		
KPI I4a	Periodic and quarterly	Temperature check – candidate satisfaction – NEW HIRES	TfL to report on candidate satisfaction of new hires including onboarding experience		Below 7	7-8 average	8/10 average
KPI I4b	Periodic and quarterly	Temperature check – candidate satisfaction EXISTING HIRES	TfL to report on candidate satisfaction of existing hires including onboarding experience		Below 7	7-8 average	8/10 average
SLA I5a	Quarterly	Standard Reporting	Provision of report covering all KPIs contained within this SLA in agreed format.  Data shared by TfL ahead of time for stats and revision	TfL periodic meetings	Not produced	Partly produced N/A	Produced or the majority produced where the data has been provided by TfL

SLA or KPI	Frequency / measure	Title	Measure/Description	Clarification of measurement discussed with Hays/ Reporting & Tec. Mgr	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
SLA 17	Period and quarterly	Contract management team reporting	Review ratings and feedback for KPI 17-18, discussion with NPL Manager and provide Hays response and resolution	Periodic KPI report	Telephone or face to face review does not take place and response not provided, or one or the other	N/A	Telephone or face to face review takes place and response provided
KPI17	Periodic and quarterly	Escalation handling and quality of resolution by Hays from NPL HR	Numbers and raised to Hays by TfL contract management team and quality of resolution. Figures/examples gathered by TfL and verified by Hays team before publishing	Periodic KPI report	Below standard required	Improvements required	Satisfied/ at standard required or Exceeded the standard required
KPI18	Periodic and quarterly	Escalation handling and quality of resolution from Business areas to NPL	Numbers and quality of escalations resolution raised to NPL Teams <u>from the TfL business</u> and quality of resolution Figures/examples gathered by TfL and verified by Hays team before publishing	Periodic KPI report	Below standard required	Improvements required	Satisfied/ at standard required or Exceeded the standard required

Permanent SLA & KPI Agreement

SLA or KPI	Frequency	Title	Measure/Description	Red (Unacceptable)	Amber (Improvement identified)	Green (Acceptable)
SLA1	N/A	Expected number of shortlisted CVs	A minimum of 3 CVs submitted to the hiring manager by the Hays delivery unless a deviation is agreed by exception between the hiring/resourcing manager and Hays (and record of agreement sent to NPL Team Leader) .  Role dependent exceptions to this SLA will be agreed in writing with the hiring manager and excluded from the calculation.	For Example: <ul style="list-style-type: none"> <li>• 1 Vacancy for 1 head: minimum 3 CVs</li> <li>• 1 Vacancy for 2 heads: minimum 6 CVs</li> </ul>		
SLA2	N/A	Highlighting applicability to each role	Hays delivery team are required to highlight in yellow on each CV submitted the relevant aspect of each candidate's ability in relation to the key requirement of each vacancy.  Calculation excludes CVs submitted to IM and CE	100% of CVs submitted		
SLA3	N/A	Receipt of CVs	The required number of CVs will be submitted per requirement unless a deviation is agreed with the hiring manager.	<ul style="list-style-type: none"> <li>• 5 working days.</li> </ul>		
KPI1	4 weekly period	Receipt of CVs	The percentage of roles that receive their CVs in required timescale	Less than or equal to 79.9%	Between 80-89%	90% or greater
KPI2	4 weekly period	CV to Interview ratio	The average number of CVs required for an interview request.	4:1	3:1	2:1
KPI3	4 weekly period	Interview to offer ratio	The average number of interviews required for an offer.	4:1	3:1	2:1
SLA4	N/A	Interview Quality	Each hiring manager is required to grade each candidate interviewed against the criteria on the right  All candidates graded 1-3 must have reasons/detail included.	1: Does not match criteria 2: Matches criteria in some respects but some important omissions 3: Matches criteria fairly well but has weaknesses in a few aspects 4: Matches criteria very well with only slight discrepancies 5: Fully matches criteria		



## 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 the contract.

<b>Data required by Customers</b>	
<b>Measure</b>	<b>Additional summary data to be provided</b> (beyond that listed in the Data Definition)
<b>1 Financial</b>	
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
<b>2 Process / Operations</b>	
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 Supplier 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
<b>3 Customer and Quality ( * denotes measures which will be assessed using feedback from customer satisfaction survey, see below example)</b>	
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
<b>4 Contract &amp; Supply Chain Management</b>	
4.1 % SMEs in supply chain	% of spend that is going through SMEs % of tiered suppliers 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 clause 5.3 of this Customer Agreement.
4.2.1 I hereby agree and have complied with clause 5.3 within this Agreement.	Yes / No                      Signed .....
4.3 Agencies passing audit	% agencies which have passed an audit
4.4 Supplier complaints	Summary and/or number of complaints received from supply chain
4.5 Assignments > 13 weeks	Summary of number of assignments which are longer than 13 weeks

## Example of Customer Satisfaction Survey

Sample customer satisfaction survey to be used to support data provision

### To be completed by recruiting/ hiring managers for each assignment

#### To what extent did you:

receive submitted CVs to your specified timescale?

Better than expected

As expected

Worse than expected

receive as many CVs as requested/ expected?

Better than expected

As expected

Worse than expected

find the CVs matched your specified requirements?

Better than expected

As expected

Worse than expected

Did all candidates offered an interview turn up?

Yes

No

If not – were you notified ahead of time?

Yes

No

Did you appoint?

Yes

No

#### Did the candidate:

arrive on time?

Yes

No

If not – were you notified ahead of time?

Yes

No

dress appropriately?

Yes

No

Perform the required tasks to the required standard?

Yes

No

Promptly submit accurate timesheets?

Yes

No

Behave  
appropriately?

Yes

No

**Comments:**

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

**SCHEDULE 8 to the CUSTOMER AGREEMENT**  
**ACTION ON EXPIRY OR TERMINATION**

**1. TRANSFER OF RESPONSIBILITY**

- 1.1 The Supplier acknowledges that on termination or expiry of this Agreement for any reason, the continuity of the Service is of paramount importance. The Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier or its subcontractors which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, and which the Supplier may otherwise be obliged to disclose under this Agreement or otherwise beneficial to orderly transfer.
- 1.4 The Supplier 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 Supplier 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 Suppliers who have qualified to tender or/have been successful in being selected as the Supplier following a tender exercise for the future provision of temporary agency worker services. The Customer shall require that such suppliers 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 Supplier 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 Supplier is required to provide under paragraph 1.5 above.

## **2. TRANSFER OF UNDERTAKINGS**

- 2.1 Where, in the opinion of the Supplier and/or the Authorised Representative, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are likely to apply on the termination or expiration of the Agreement, the information to be provided by the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier.
- 2.7 The Supplier 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 Supplier 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 Supplier 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 Supplier and 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 Supplier 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 Supplier in respect of or in any way relating to any period on or after the date of the employee transfer.

### **3. Consequences of Termination or Expiry**

- 3.1 Notwithstanding the provisions of Clause 30 of the Customer Agreement, wherever the Customer chooses to put out to tender for a replacement service provider for either some or all of the Services, the Supplier shall disclose to tenderers such information concerning the Services as the Customer may reasonably require for the purposes of such tender (whether for purposes related to Transfer Regulations or otherwise). The Supplier may impose upon any recipient of such information such obligations of confidentiality as it may reasonably require.
- 3.2 The termination or expiry of the Agreement shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 3.3 Upon expiry or termination of the Agreement (howsoever caused):
- 3.3.1 the Service Supplier will, at no further cost to the Customer:
- 3.3.1.1 take all steps as reasonably necessary to implement the orderly handover of the Services to the Customer or a replacement service provider, such that the Services can be carried on with the minimum of interruption and inconvenience and to effect such handover, which shall include an obligation to promptly provide a copy of all relevant records in whatever format the Customer or a replacement service provider may reasonably require and any information the Customer or a replacement service provider may require for purposes related to the Transfer Regulations or otherwise;
- 3.3.1.2 on receipt of the Customer's written instructions to do so (but not otherwise), arrange to remove or deliver up to the Customer all relevant electronically held information by a mutually agreed date; and
- 3.3.2 the Customer shall pay the Supplier any Charges remaining due in relation to any Services properly performed in accordance with the Agreement up to the date of termination or expiry calculated so far

as is possible in accordance with **Schedule 3** or otherwise reasonably agreed by the Parties; and

- 3.4 On termination of the Agreement by the Customer under clause 15.3 of the Customer Agreement the Customer may enter into any agreement with any third party or parties as the Customer thinks fit to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure reasonably incurred by the Customer in having such services carried out and all other costs and damages reasonably incurred by the Customer in consequence of such termination. The Customer may deduct such costs from the Charges or otherwise recover such costs from the Supplier as a debt.
- 3.5 Subject always to any provision for notice periods (or any other statutory time period) contained in the applicable law, including but not limited to the Employment Agencies Act, upon expiry of the Agreement the Supplier will:
  - 3.5.1 accept or agree to the transfer of Temporary Agency Workers to or from its organisation, as applicable, without passing on any charge to the Customer; and
  - 3.5.2 assist the Customer and any replacement service provider in respect of the handover of the Services including complying with the Customer's reasonable instructions with regard to all aspects of the handover including timescales.

## **SCHEDULE 9**

### **Form of Change Request**

Contract Parties: *[to be inserted]*

Call-Off Contract Number: *[to be inserted]*

Variation Number: *[to be inserted]*

Customer Contact Telephone *[to be inserted]*

Fax *[to be inserted]*

Date: *[to be inserted]*

#### **CUSTOMER FOR VARIATION TO CONTRACT**

Pursuant to Clause 25 of this Contract, Customer is given for the variation to the Services and the Charges as detailed below. The duplicate copy of this form must be signed by or on behalf of the Supplier and returned to the Call-Off Co-ordinator as an acceptance by the Supplier of the variation shown below.

<b>DETAILS OF VARIATION</b>	<b>AMOUNT (£)</b>
<b>ALLOWANCE TO THE CUSTOMER</b>	
<b>EXTRA COST TO THE CUSTOMER</b>	
<b>TOTAL</b>	

.....  
For the Customer

<b>ACCEPTANCE BY THE SUPPLIER</b>	
<b>Date</b>	<b>Signed</b>

## **SCHEDULE 10**

### **Diversity, Equality and Employment**

#### **1. INTRODUCTION**

##### 1.1 This Schedule covers:

- 1.1.1 principles of Diversity, Equality and Employment for the Project, derived from the London Skills and Employment Board strategy;
- 1.1.2 the creation of the Diversity, Equality and Employment Delivery Plan;
- 1.1.3 Diversity, Equality and Employment Infractions; and
- 1.1.4 the obligations of the Customer and the Supplier in implementing and achieving Diversity, Equality and Employment requirements.

#### **2. PRINCIPLES OF DIVERSITY, EQUALITY AND EMPLOYMENT**

- 2.1 The Supplier acknowledges that the Customer is under a positive legal duty to pay due regard to the need to eliminate discrimination and to promote equality of opportunity and good relations in carrying out its functions, including those delivered on its behalf by an external supplier.
- 2.2 The Supplier acknowledges that the Customer places great emphasis on promoting equality and diversity and improving employment and skills outcomes for Londoners through its procurement activity.
- 2.3 The Supplier shall be responsible for delivering the Services in a manner which:
  - 2.3.1 is in accordance with good industry practice and all laws;
  - 2.3.2 promotes equality of opportunity and diversity; and
  - 2.3.3 supports the objectives of the London Skills and Employment Board Strategy.

#### **3. DIVERSITY, EQUALITY AND EMPLOYMENT DELIVERY PLAN**

##### 3.1 Introduction

3.1.1 The Supplier shall develop, implement and maintain a Diversity, Equality and Employment Delivery Plan to apply during the Term which will be approved by the Customer, periodically updated and audited in accordance with this Schedule.

3.1.2 A draft Diversity, Equality and Employment Delivery Plan is provided by the Supplier as part of its bid is set out in **Appendix 1** to the Contract.

### 3.2 Development

3.2.1 Within fifteen (15) Business Days after the Contract Commencement Date and in accordance with **paragraph 3.4** (Amendment and Revision) of this Schedule, the Supplier will prepare and deliver to the Customer for approval the full and final Diversity, Equality and Employment Delivery Plan which will be based on the draft Diversity, Equality and Employment Delivery Plan set out in **Appendix 1**.

3.2.2 If the Diversity, Equality and Employment Delivery Plan is approved by the Customer it will be adopted immediately. If the Diversity, Equality and Employment Delivery Plan is not approved by the Customer the Supplier shall amend it within ten (10) Business Days of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Business Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Diversity, Equality and Employment Delivery Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure set out in **Schedule 12**. No approval to be given by the Customer pursuant to this **paragraph 3.2.2** of this Schedule may be unreasonably withheld or delayed. However any failure to approve the Diversity, Equality and Employment Delivery Plan on the grounds that it does not comply with the requirements set out in **paragraphs 3.1 to 3.3** of this Schedule shall be deemed to be reasonable.

### 3.3 Content

3.3.1 The Diversity, Equality and Employment Delivery Plan will set out the measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify Diversity Equality and Employment measures and procedures which are sufficient to ensure that the Services comply with:

3.3.1.1 the objectives of the London Skills and Employment Board strategy;

3.3.1.2 the provisions of this schedule (including the principles set out in **paragraph 2** of this Schedule);

3.3.1.3 the data protection compliance guidance produced by the Customer.

3.3.2 The references to standards, guidance and policies set out in **paragraph 3.3.1** of this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

3.3.3 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier shall notify the Customer's Contract Manager of such inconsistency immediately upon becoming aware of the same, and the Customer's Contract Manager shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

3.3.4 The Diversity, Equality and Employment Delivery Plan will be structured in accordance with the draft Diversity, Equality and Employment Delivery Plan provided at **Appendix 1**, cross-referencing if necessary to other schedules of the Contract which cover specific areas included within that standard.

3.3.5 The Diversity, Equality and Employment Delivery Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in the Services and shall not reference any other documents which are not either in the possession of the Customer or otherwise specified in this schedule.

#### 3.4 Amendment and Revision

3.4.1 The Diversity, Equality and Employment Delivery Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:

3.4.1.1 emerging changes good industry practice;

3.4.1.2 any change or proposed change to the Services and/or associated processes; and

3.4.1.3 all reasonable requests by the Customer.

3.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amend the Diversity, Equality and Employment Delivery Plan at no additional cost to the Customer.

3.4.3 Any change or amendment which the Supplier proposes to make to the Diversity, Equality and Employment Delivery Plan (as a result of an Customer request or otherwise) shall not be implemented until approved in writing by the Customer.

### 4. **DIVERSITY, EQUALITY AND EMPLOYMENT OBLIGATIONS**

#### 4.1 General

The Supplier and all Agencies and other sub-contractors used in the performance of the Contract shall:

- 4.1.1 prepare a Diversity, Equality and Employment Delivery Plan in accordance with **paragraph 3** above;
- 4.1.2 work with local, regional and national organisations to support the Customer's aim to maximise the economic and social benefits of the Contract by encouraging diverse and underrepresented communities to register for temporary work opportunities with the Customer;
- 4.1.3 appoint a Diversity, Equality and Employment Co-ordinator as set out in **paragraph 4.9** below;
- 4.1.4 openly advertise temporary work opportunities arising from the Contract in accordance with **paragraph 4.4** below;
- 4.1.5 ensure small to medium enterprises and diverse owned businesses have the opportunity to access sub-contracting opportunities arising from the Contract;
- 4.1.6 sign up to the Diversity Works for London programme ([www.diversityworksforlondon.com](http://www.diversityworksforlondon.com)) and commit to using the Diversity Works for London tools and support services to achieve the equality "Gold Standard"; and
- 4.1.7 operate a recruitment process in accordance with the Statutory Code of Practice on Racial Equality in Employment (Commission for Racial Equality 2005), Statutory Code of Practice: Employment and Occupation (Disability Rights Commission 2004), Statutory Code of Practice on Equal Pay (Equal Opportunities Commission 2003), Statutory Code of Practice – Sex Discrimination (Equal Opportunities Commission) and the Statutory Code of Practice on Gender Equality Duty (Equal Opportunities Commission 2007).

#### 4.2 Customer's Obligations

The Customer will aim to:

- 4.2.1 use reasonable endeavours to procure that the processes used to attract and manage employees are demonstrably fair and offer equal opportunities to all;
- 4.2.2 work with partner organisations to encourage individuals from diverse and underrepresented communities to apply for temporary work opportunities for the Customer, particularly in areas of traditional under representation;
- 4.2.3 use reasonable endeavours to procure that Temporary Agency Workers, particularly those requiring basic skills development, are provided with relevant information on opportunities to develop their skills and employability;
- 4.2.4 work with partner organisations and the Supplier to provide London's diverse businesses the opportunity to secure sub-contracting business with the Customer,

but nothing herein sanctions discrimination whether positive or otherwise.

#### 4.3 Diversity, Equality and Employment Delivery Plan

4.3.1 For the duration of the Contract the Supplier shall at all times comply with the Diversity, Equality and Employment Delivery Plan.

4.3.2 The Supplier shall procure that each of the Agencies and other sub-contractors used in the performance of the Contract:

4.3.2.1 adopts and implements; and

4.3.2.2 in respect of other tiers of sub-contractors beneath the Supplier's direct sub-contractors uses reasonable endeavours to procure that those indirect sub-contractors adopt and implement,

a diversity, equality and employment delivery plan in relation to the performance of the Contract which is as least as extensive as the Diversity, Equality and Employment Delivery Plan.

#### 4.4 Advertising and Candidate Attraction

4.4.1 The Supplier shall co-operate with the Customer in engaging with London's diverse communities to communicate temporary work opportunities to the Customer's equality target TfL Groups and TfL Groups which are under-represented in the Customer's workforce.

4.4.2 The Supplier shall attend up to six relevant external events specified by the Customer to publicise temporary work opportunities arising under the Contract.

4.4.3 The Supplier shall procure that each of its Agencies complies with the requirements of this **paragraph 4.4** and uses reasonable endeavours to ensure that the Agencies encourage their sub-contractors to do likewise.

#### 23.5 Monitoring & Reporting

4.4.4 The Supplier shall operate monitoring and reporting as defined in **paragraphs 4.6, 4.7 and 4.8** below in relation to the process used to attract and submit Temporary Agency Workers.

4.4.5 The Supplier shall procure that each of its Agencies complies with the requirements of this **paragraph 4.5** and uses reasonable endeavours to encourage their respective sub-contractors to do likewise.

4.4.6 All such monitoring and reporting shall be used purely for statistical analysis of equality of opportunity and will not be used to identify individuals. The Supplier shall ensure that at all times that it complies with the requirements of the Data Protection Act 1998 (as may be amended) in the collection and reporting of the information to the Customer.

4.4.7 The Supplier shall provide the Contract Manager with a monthly Diversity, Equality and Employment Monitoring Report including the requirements of **paragraphs 4.6, 4.7 and 4.8** below. The Diversity, Equality and Employment Monitoring Report must be completed and supplied to the Contract Manager within seven (7) days of the end of the month to which it relates.

#### 4.5 Temporary Workforce Composition Monitoring

4.5.1 The Supplier shall keep a record of the following information, in respect of all Temporary Agency Workers engaged by the Customer under the Contract:

4.5.1.1 the date that their placement commenced;

4.5.1.2 their home address (rather than a local accommodation address) including the full post-code;

4.5.1.3 the role title;

4.5.1.4 date placement ended;

4.5.1.5 ethnicity (see **paragraph 5** below for a definition of ethnic categories);

4.5.1.6 gender;

4.5.1.7 disability (see **paragraph 5** below for a definition of disability); and

4.5.1.8 age.

4.5.2 To the extent that it is reasonably possible, the Supplier shall maintain the above records in respect of Agency's workforce.

#### 4.6 Candidate Attraction Monitoring

4.6.1 The Supplier shall monitor the ethnicity, gender, disability, age and postcode of residence of those registering for temporary work, being introduced to the Customer, and being selected by the Customer.

4.6.2 The Supplier shall report this information on a monthly basis and produce a breakdown showing the proportions of individuals registered for temporary work, being short-listed for work, and being selected by the Customer broken down by the criteria listed in **paragraph 4.7.1**.

4.6.3 To the extent that it is reasonably possible, the Supplier shall produce a similar report in respect of the workforce of its Agencies.

#### 4.7 Supplier Diversity Monitoring

23.5.1 Where the Supplier needs to appoint a sub-contractor, in order to maximise the number and diversity of businesses contributing to the delivery of the Contract, the Supplier shall use the CompeteFor electronic brokerage service (or an alternative web-based tool as may

be directed by the Customer for the purpose of advertising sub-contracts and/or short-listing suppliers) (“CompeteFor”) to make available all appropriate opportunities for goods, works and services directly from the Supplier and those of the Supplier’s sub-contractors relating to the Contract on a non-exclusive basis. The Supplier shall:

23.5.1.1 use all reasonable endeavours to ensure that sub-contractors utilise CompeteFor to make all appropriate business opportunities available within their supply chain relating to the Contract;

23.5.1.2 monitor the number, type and value of opportunities made available via CompeteFor within the supply chain relating to the Contract, and shall report this information to the Customer in a manner at an agreed frequency suitable to the Supplier and the Customer.

4.7.1 The Supplier shall report on a monthly basis the proportion of Black, Asian and Minority Ethnic-owned, women-owned and disabled-owned business at the stages of expression of interest, pre-qualification, submission of tenders, short-listing and tender award for every subcontracted works or service let in that month.

4.7.2 The Supplier shall report on a monthly basis the proportion of businesses awarded tenders which are Small to Medium Enterprises and by postcode of location of business.

#### 4.8 Supplier Diversity

4.8.1 The Supplier shall be aware of “Diverse Suppliers” that are available to undertake work required within the Contract and will put in place strategies that will ensure that barriers preventing supplier opportunities are removed.

4.8.2 The Supplier will ensure that “Diverse Suppliers” are aware of potential opportunities to supply services, receive assistance in understanding the bidding process and are offered support when deemed appropriate.

4.8.3 The Supplier shall advertise all sub-contracting opportunities (with a minimum of ten (10) in the first year) in relation to the Services on the CompeteFor system.

#### 4.9 Diversity, Equality and Employment Co-ordinator

4.9.1 The Diversity, Equality and Employment Co-ordinator is responsible for implementing the Supplier’s Diversity, Equality and Employment Delivery Plan. The Supplier shall ensure that the person appointed is suitably qualified and experienced to undertake this role. He/she will be the main point of contact for the Contract Manager on all Diversity, Equality and Employment issues. His/her role is not required to be an exclusive appointment and may be combined with other duties on Site.

4.9.2 In particular the duties of the Diversity, Equalities and Employment Co-ordinator includes:

- 4.9.2.1 ensuring that the Diversity, Equalities and Employment requirements are met;
- 4.9.2.2 discussions with the Customer's Contract Manager;
- 4.9.2.3 managing sub-contractor compliance;
- 4.9.2.4 collection and presentation of the monitoring information including the monthly Diversity, Equalities and Employment report.

4.10 Diversity, Equality and Employment (DEE) Infractions

4.10.1 If the Supplier or any of Agencies or other direct sub-contractors commits a DEE Infraction (as defined in **paragraph 4.11.3** below), the Customer shall be entitled (but not obliged) to act as follows:

4.10.1.1 if a DEE Infraction is committed by the Supplier then the Customer may serve written notice upon the Supplier identifying in reasonable detail the nature of the DEE Infraction, and the Supplier shall cease committing and remedy, at its own cost, the DEE Infraction, within thirty (30) days of receipt of such notice (or such longer period as may be specified in the notice); or

4.10.1.2 if the DEE Infraction is committed by a Agency or a direct sub-contractor of the Supplier, the Customer may serve written notice upon the Supplier identifying in reasonable detail the nature of the DEE Infraction, and the Supplier shall procure that the Agency or direct sub-contractor ceases committing and remedies, at its own cost, the DEE Infraction within thirty (30) days of receipt by the Supplier of such notice (or such longer period as may be specified in the notice). If the Supplier fails to procure the remedy of the DEE Infraction, the Customer may serve a further written notice upon the Supplier and within thirty (30) days of receipt of such further notice (or such longer period as may be specified in the notice), the Supplier shall terminate, at its own cost, the relevant contract with its Agency or direct sub-contractor and procure performance of the affected works or services by another person which also complies with the obligations specified in **paragraphs 4.1 to 4.10** above.

4.10.2 It shall be a fundamental term and condition of the Contract that the Supplier complies with its obligations under **paragraph 4.11.1** above. Where, following receipt of a notice given pursuant to **paragraph 4.11.1.1** or **4.11.1.2**, the Supplier fails to remedy a DEE Infraction to the satisfaction of the Customer or in the case of **paragraph 4.11.1.2** fails to terminate the contract with a defaulting Agency or direct sub-contractor and procure performance by another person on the terms specified in **paragraph 4.11.1.2**, the Supplier will be in breach of the Contract and the Customer shall be entitled (but not obliged) to terminate the Contract, without further notice to the Supplier, in accordance with the rights of the Customer elsewhere in the Contract.

4.10.3 For the purposes of this **paragraph 4.11** "DEE Infraction" means any breach by the Supplier of its obligations specified in **paragraphs 4.1 to 4.8** above and/or any failure by a direct sub-contractor to adopt and implement the Diversity, Equality and Employment Delivery Plan, as described in **paragraph 4.3** above.

#### 4.11 Diversity, Equality and Employment Audit

4.11.1 The Customer or its nominee may, from time to time, undertake any audit or check of any and all information regarding the Supplier's compliance with **paragraphs 4.1 to 4.10** above. The Customer's rights pursuant to this paragraph shall include any and all documents and records of the Supplier and its Agencies and direct and, where applicable, subject to the provisions of **paragraphs 4.1 to 4.10**, indirect sub-contractors and shall include the Minimum Records (as defined in **paragraph 4.12.5** below).

4.11.2 The Supplier shall, maintain and retain the Minimum Records for a minimum of six (6) years with respect to all matters in respect of the performance of **paragraphs 4.1 to 4.10** above. The Supplier shall procure that each of its Agencies and direct and, where applicable subject to the provisions of **paragraphs 4.1 to 4.10** above, indirect sub-contractors shall, maintain and retain the Minimum Records for a minimum of six years with respect to all matters in respect of the performance of **paragraphs 4.1 to 4.10** above. The Supplier shall procure that each subcontract between it and its Agencies and direct sub-contractors and, where applicable, subject to the provisions of **paragraphs 4.1 to 4.10**, each subcontract between its Agencies or direct sub-contractor and any indirect sub-contractor of the Supplier and each subcontract between the Supplier's indirect sub-contractors shall contain rights of audit in favour of and enforceable by the Customer substantially equivalent to those granted by the Supplier pursuant to **paragraph 4.12.1**.

4.11.3 The Customer shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Supplier and each Agencies or direct sub-contractor is not, without due cause, disrupted or delayed in the performance of its obligations under the Contract and/or relevant subcontract (as the case may be).

4.11.4 The Supplier shall promptly provide, and procure that its Agencies or direct sub-contractors and, where applicable, subject to the provisions of **paragraphs 4.1 to 4.10**, indirect sub-contractors promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:

4.11.4.1 granting or procuring the grant of access to any premises used in the Supplier's performance of the Contract or in the relevant Agency's or sub-contractor's performance of its subcontract, whether the Supplier's own premises or otherwise;

- 4.11.4.2 granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Supplier's or the relevant sub-contractor's obligations specified in **paragraphs 4.1 to 4.10**, wherever situated and whether the Supplier's own equipment or otherwise; and
- 4.11.4.3 complying with the Customer's reasonable requests for access to senior personnel engaged in the Supplier's performance of the Contract or the relevant Agency's or sub-contractor's performance of its subcontract.
- 4.11.5 For the purposes of this **paragraph 4.12** the expression "Minimum Records" means all information relating to the Supplier's performance of **paragraphs 4.1 to 4.10** and the adoption and implementation of a Diversity, Equality and Employment Delivery Plan by each Agency or direct and, where applicable, subject to the provisions of **paragraphs 4.1 to 4.10**, indirect sub-contractor of the Supplier.

4.12 Action by The Customer

- 4.12.1 The inclusion of Diversity, Equality and Employment requirements does not comprise or imply any promise on the part of the Customer or its agents to provide suitable labour. Any action taken by the Customer to broker relationships between the Supplier and local individuals/firms/ agencies does not imply and should not be deemed to imply that the Customer or its agents consider the individual/firm/agency as suitable for engagement by the Supplier. Within this context the Customer will work with local agencies to help facilitate the achievement of these Diversity, Equality and Employment requirements.

5. **DEFINITIONS**

The Customer shall be entitled to amend, update and add to the definitions used in this Schedule and the Supplier shall incorporate (and comply with) such amended, updated and additional definitions in the Diversity, Equality and Employment Delivery Plan.

- 5.1 In this Schedule unless the context indicates otherwise the following expressions shall have the following meanings:

- "Diverse Suppliers"** for the purposes of TfL's Procurement Supplier Diversity Programme, diverse suppliers comprise the following four subsets:
    - (a) Small and Medium Enterprises (SMEs);
    - (b) Black, Asian and Minority Ethnic (BAME) businesses;
    - (c) Suppliers from other under-represented or protected TfL Groups;

	(d) Suppliers demonstrating a diverse workforce composition;
<b>“Diversity, Equality and Employment Co-ordinator”</b>	means the person named as such in <b>paragraph 4.10</b> of this <b>Schedule 10</b> or such other person as notified to the Supplier by the Customer from time to time;
<b>“Diversity, Equality and Employment Delivery Plan”</b>	means the plan produced in accordance with <b>paragraph 3.1</b> of this <b>Schedule 10</b> detailing how the Supplier shall deliver the Customer’s diversity, equality and employment objectives for the Contract;
<b>“Large Enterprise”</b>	means a business which has both the following: (a) 250 and over Full Time Equivalent employees; AND EITHER (b) Turnover per annum over £34.3 million (over €50 million) in the last financial year; OR (c) Balance sheet total of over £29.4 million (over €43 million).
<b>“Medium Enterprise”</b>	means a business which has both the following: (a) 50-249 Full Time Equivalent employees; AND EITHER (b) Turnover per annum of up to and including £34.3 million (up to €50 million) in the last financial year; OR (c) Balance sheet total of up to and including £29.4 million (up to €43 million);
<b>“Small Enterprise”</b>	means a business which has both the following: (a) 0-49 Full Time Equivalent employees; AND EITHER (b) Turnover per annum of up to £6.9 million (up to €10 million); in the last financial year; OR (c) Balance sheet total of up to £6.9 million (up to €10 million).

## 5.2 Black, Asian and Minority Ethnic (BAME) owned businesses

A Black, Asian and Minority Ethnic (BAME) owned business is a business which is 51% or more owned by members of one or more Black, Asian or Minority ethnic TfL Groups.

Minority ethnic TfL Groups are all people including those who have classified themselves as members of ethnic TfL Groups other than 'White British'. The minority ethnic classification TfL Groups used by TfL for monitoring purposes are:

<i>Ethnic TfL Group</i>	<i>Racial origin</i>
White	Irish Any other White background
Mixed	White & Black Caribbean White & Black African White & Asian Any other Mixed background
Asian or Asian British	Indian Pakistani Bangladeshi Any other Asian background
Black or Black British	Caribbean African Any other Black background
Chinese or other Ethnic TfL Group	Chinese Any other Ethnic TfL Group

## 5.3 Suppliers from other under-represented TfL Groups or protected TfL Groups

5.3.1 A Supplier from an under-represented TfL Group is one which is 51% or more owned by members of one or more of the following TfL Groups (where not covered by previous definitions):

5.3.1.1 Women (gender)

5.3.1.2 Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;

5.3.1.3 Lesbians, Gay men, Bisexual and Transgender people (sexual orientation); and

5.3.1.4 Older people (aged 60 or over), young people (aged 24 or under) (age)

5.3.2 A Supplier from a protected TfL Group is one which is 51% or more owned by members of a TfL Group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief TfL Groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

#### 5.4 Suppliers demonstrating a diverse workforce composition

This relates to Full Time Equivalent employees in the Supplier's workforce who may be from one or more minority ethnic TfL Groups, and/or under-represented TfL Groups and/or protected TfL Groups as listed above.

#### 5.5 Other Definitions & Information

##### 5.5.1 *Full-Time Equivalent Employees*

Where employee numbers are used, these refer to Full-Time Equivalents (FTEs) expressed in Annual Work Units (see below). Staff headcount should include full-time, part-time and seasonal staff and includes the following:

- Employees
- Persons working for the enterprise being subordinated to it and considered to be employees under national law
- Owner managers
- Partners engaged in regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Full-time workers are expressed as hours worked per week. The Customer refers to standard UK hours of work as full time workers – i.e. those who work 35 hours a week and 52 weeks a year (including annual leave).

##### 5.5.2 *Annual Work Units*

Refer to anyone who worked, over the past year, full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit.

##### 5.5.3 *Turnover*

Turnover is in line with that defined in the Companies Act 2006:

The amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of:

- i) trade discounts
- ii) value added tax

Please refer to **paragraph 5.5.8** below regarding ownership categorisation to understand how to interpret ownership, where an enterprise is part of a parent organisation.

#### 5.5.4 Financial Year

Financial Year relates to 1<sup>st</sup> April – 31<sup>st</sup> March or any other 12 month period as defined by the company.

All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

#### 5.5.5 Balance Sheet Total

The annual balance sheet total refers to the value of your company's main assets.

#### 5.5.6 Ownership

Individual or those in named control holding capital or voting rights - either through private or shared ownership - of any given business entity.

#### 5.5.7 Definition of Size

Where headcount and turnover and/or balance sheet conditions apply to different size definitions, headcount acts as the more predominant aspect, in defining size.

An organisation does not need to satisfy both turnover and balance sheet total, only one of the conditions and may exceed one of them without losing its status. This is illustrated by an organisation which has 30 employees, a turnover of £12 million and a balance sheet total of £10 million. The number of employees figure would class the organisation as a small organisation, however the turnover and balance sheet total define the organisation as medium. In this case, the headcount would be used to define the classification of the organisation. This organisation would be classed as a small organisation.

To illustrate this, the following scenarios have been mapped for the different characteristics of supplier diversity definitions (based on information from the Department for Trade & Industry (*now Department for Business Enterprise & Regulatory Reform*)):

Turnover/Balance Sheet Total			
	<b>£6.9m(up to €10 m)/ £6.9m (up to €10m)</b>	<b>£34.3m(up to/incl. €43m)/ £29.4m (up to/incl. €43m)</b>	<b>£34.3m(over €43m)/ £29.4m (over €43m)</b>
- ○	0-49	✓	Employees more

		<i>Employees more predominant</i>	<i>predominant</i>
<b>50-249</b>	<i>Employees more predominant</i>	✓	<i>Employees more predominant</i>
<b>250+</b>	<i>Employees more predominant</i>	<i>Employees more predominant</i>	✓

### 5.5.8 Ownership Categorisation

#### EU Commission Definition on Enterprise Ownership Categorisation

The European Commission's Guidance published in 2005 "The New SME Definition: User Guide and Model Declaration", outlines parameters for defining an organisation's ownership categorisation and whether an organisation is autonomous, partner or linked.

(a) *Autonomous*: This is the most common category of ownership. An organisation is autonomous if:

- It is totally independent, i.e. there is no participation in other enterprises and no enterprise has a participation.
- It has a holding of less than 25% of the capital or voting rights (whichever is the higher) in one or more other enterprises and/or outsiders do not have a stake of 25% or more of the capital or voting rights (whichever is the higher) in your enterprise.

If an organisation is autonomous, it means that it is not a partner or linked to another enterprise

(b) *Partner*: An enterprise is a partner enterprise if:

- It has a holding equal to or greater than 25%, of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25% in the other.
- It is not linked to another enterprise. This means, among other things, that voting rights in the other enterprise (or vice versa) do not exceed 50%.

(c) *Linked*: Enterprises formed as a TfL Group through the direct or indirect control of the majority of voting rights. An enterprise owned by another or through the ability to exercise a dominant influence on another enterprise.

Two or more enterprises are linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another.
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.

- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other.
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

## SCHEDULE 11

### Driving Provisions

In this Schedule unless the context indicates otherwise the following expressions shall have the following meanings:

<b>“Approved Driver Training”</b>	the Safe Urban Driving course as accredited by the Joint Approvals Unit for Periodic Training the details of which can be found at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Bronze Membership”</b>	the minimum level of FORS membership, the requirements of which are more particularly described at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
<b>“Car-derived Vans”</b>	<b>a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;</b>
<b>“Class VI Mirror”</b>	a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;
<b>“Class VI Mirror”</b>	a mirror fitted to a Freight Vehicle that allows the driver to see what is immediately in front of the vehicle and that complies with Directive 2003/97/EC;
<b>“Close Proximity Sensor”</b>	a device consisting of either a camera and/or a sensor system that detects objects in a vehicle’s blind spot and alerts the driver via in-cab visual and/or audio stimuli and which alerts other road users to the planned movement of the vehicle when the vehicle’s indicators are engaged;
<b>“Driver”</b>	<b>any employee of the Supplier (including an agency driver), who operates Freight Vehicles on behalf of the Supplier while delivering the Services;</b>
<b>“DVLA”</b>	<b>Driver and Vehicle Licensing Agency;</b>
<b>“FORS”</b>	the Fleet Operator Recognition Scheme, which is an accredited membership scheme for businesses operating van and lorry fleets. It is free to join and offers impartial, independent advice and guidance to motivate members to improve their compliance with relevant laws and their environmental, social

“FORS Membership Terms”	and economic performance; the terms of the membership agreement of the Fleet Operator Recognition Scheme, a copy of which can be found at: <a href="http://www.fors-online.org.uk">www.fors-online.org.uk</a>
“Freight Vehicle”	a Lorry, a Van or a Car-derived Van;
“Lorry”	a vehicle with an MAM exceeding 3,500 kilograms;
“MAM”	the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Guards”	guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
“Van”	a vehicle with a MAM not exceeding 3,500 kilograms; and

## 1. Fleet Operator Recognition Scheme Membership

- 1.1 Where the Supplier operates Freight Vehicles, it shall within 90 days of executing the Contract:
- 1.1.1 (unless already registered) register for membership of FORS or a scheme, which in the reasonable opinion of the Customer, is an acceptable substitute to membership of FORS (the “Alternative Scheme”); and
  - 1.1.2 have attained the standard of Bronze Membership of FORS (or higher) or the equivalent within the Alternative Scheme.
- 1.2 The Supplier shall maintain the standard of Bronze Membership (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Membership Terms or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Supplier has attained Silver or Gold Membership of FORS, the maintenance requirements shall be undertaken in accordance with the periods set out in their FORS Silver or Gold membership agreement.
- 1.3 The Supplier shall use its best endeavours to ensure that those of its sub-contractors who operate Freight Vehicles shall comply with **Clauses 1.1** and **1.2** as if they applied directly to the sub-contractor.

## 2 Safety Equipment on Vehicles

- 2.1 The Supplier shall ensure that every Lorry, which it uses to provide the Services, shall:

- 2.1.1 have Side Guards, unless the Supplier can demonstrate to the reasonable satisfaction of the Customer that the vehicle will not perform the function for which it was built if Side Guards are fitted;
- 2.1.2 have a Close Proximity Sensor;
- 2.1.3 have a Class VI Mirror; and
- 2.1.4 bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

### **3 Driver Licence Checks**

3.1 The Supplier shall ensure that each of its Drivers has a driving licence check with the DVLA before that Driver commences delivery of the Services and that the driving licence check with the DVLA is repeated in accordance with either the following risk scale, or the Supplier's risk scale, provided that the Supplier's risk scale has been approved in writing by the Customer within the last 12 months:

- 3.1.1 0 – 3 points on the driving licence – annual checks;
- 3.1.2 4 – 8 points on the driving licence – six monthly checks;
- 3.1.3 9 – 11 points on the driving licence – quarterly checks; or
- 3.1.4 12 or more points on the driving licence – monthly checks.

### **4 Driver Training**

4.1 The Supplier shall ensure that each of its Drivers who has not undertaken:

- 4.1.1 Approved Driver Training in the last three years, undertakes Approved Driver Training within 60 days of the commencement of this Contract;
- 4.1.2 a FORS e-learning safety module in the last 12 months, undertakes a FORS e-learning safety module (or an equivalent safety module provided by the Alternative Scheme).

### **5 Collision Reporting**

5.1 Within 15 days of the commencement of this Contract, the Supplier shall provide to the Customer a Collision Report. The Supplier shall provide to the Customer an updated Collision Report on a quarterly basis and within five working days of a written request from the Customer.

### **6 FORS Reports**

6.1 Within 30 days of its becoming a member of FORS or of the Alternative Scheme, the Supplier shall make a written report to the Customer at [fors@tfl.gov.uk](mailto:fors@tfl.gov.uk) detailing its compliance with **Clauses 2, 3 and 4** of this Contract (the "Safety, Licensing and Training

Report”). The Supplier shall provide updates of the Safety, Licensing and Training Report to the Customer at [fors@tfl.gov.uk](mailto:fors@tfl.gov.uk) on each three month anniversary of its submission of the initial Safety, Licensing and Training Report.

## **7 Obligations of the Supplier Regarding Subcontractors**

7.1 The Supplier shall procure that each of its subcontractors that operates the following vehicles shall comply with the corresponding provisions of this Contract as if those subcontractors were a party to this Contract:

7.1.1 For Lorries – **Clauses 2, 3, 4 and 5**; and

7.1.2 For Vans – **Clauses 2.1.4, 3, 4 and 5**.

## **8 Failure to Comply with Freight-related Obligations**

8.1 Without limiting the effect of **clause 26**, if the Supplier fails to comply with **Clauses 1.1, 1.2, 1.3, 2, 3, 4, 5, 6 and 7**:

8.2.1 the Supplier has committed a material breach of this Contract; and

8.2.2 the Customer may refuse the Supplier, its employees, agents and Freight Vehicles entry onto any property that is owned, occupied or managed by the Customer.