

**Client Body Agreement between Cabinet Office and Green Park
Interim & Executive Ltd**

Crown Commercial Service Reference: SO13767

APPENDIX 1 to the FRAMEWORK AGREEMENT
STRATEGIC HUMAN RESOURCES (HR) SERVICES
CLIENT BODY AGREEMENT

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

CONDITIONS OF CONTRACT

THIS AGREEMENT is made the day of 20

BETWEEN:

- (1) Cabinet Office of 1 Horse Guards Road, London, SW1A 2HQ (the Client Body)
And
(2) Green Park Interim & Executive Ltd whose registered office is at 15 Portland Place, London, W1B 1PT (the Service Provider)

WHEREAS:

- A. The Client Body wishes to purchase the Services.
B. The Service Provider having been awarded Service Provider 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 Client Body.

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;

Agreement	means this agreement between the Client Body and the Service Provider, comprised of the Conditions and the Schedules and Annexes thereto and any Order.
Authorised Representative	means a representative of the Client Body or the Service Provider as appropriate for the purposes of this Agreement
Charges	means the charges set out in the Pricing Schedule
Commencement Date	Means 1 st September 2015
Confidential Information	means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, Client Bodies and Service Providers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.
Contract Manager	means the nominated officer or employee of the Client Body responsible for managing this Agreement for the provision of the Services

Default	means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other.
EIR	means the Environmental Information Regulations 2004
ESPO	means the Eastern Shires Purchasing Organisation being the central purchasing body responsible for creating the Framework Agreement
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation
Framework Agreement	means the Agreement between ESPO (on behalf of Pro5) and the Service Provider under which this contract is entered into by the Client Body and the Service Provider for the supply of the Services
Implementation Plan	means the plan to be developed by the Client Body and the Service Provider in accordance with Schedule 5 and which will contain a schedule of tasks to be done, the timescale for completion of those tasks, identifying the party responsible for those tasks, together with the milestones to be achieved and against which payment will be made
Invitation to Tender	means the invitation to tender issued to the Service Provider in response to a request following the publication of the OJEU notice for the procurement of the Services
Interim Manager	means a temporary (non-permanent) worker offered and provided on assignment by the Service Provider to fulfil a specific role for a defined period of time in return for a Fee. The Interim Manager is not an employee of the Client Body and will not be treated as if he/she is. The Interim Manager will complete a timesheet, signed by a hiring manager of the Client Body, which will be processed by the Service Provider in order to invoice for the fee(s) defined in the Pricing Schedule at Schedule 3
Order	means an official order in such form as may be issued by the Client Body to the Service Provider in respect of the Services
Parent Company	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term Holding Company shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto

Pricing Schedule	means the Pricing Schedule attached to the Service Provider's Framework Agreement – attached hereto at Schedule 3
Protocol	means the Client Body Protocol describing the Client Body's obligations in relation to their local arrangements and contract management requirements and which is attached hereto as Schedule 1
Pro5	means all or any of the following professional buying organisations: Central Buying Consortium (CBC), Eastern Shires Purchasing Organisation (ESPO), North Eastern Procurement Organisation (NEPO), and Yorkshire Purchasing Organisation (YPO).
Requests for Information	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR
Services	means the Client Body requirements for advertising and/ or human resource related services more particularly set out in the Specification attached as Schedule 2 hereto
Specification	means the Specification for the Services which the Service Provider is authorised to provide under the Framework Agreement and which is more particularly set out in Schedule 2 hereto
Tender	means the Service Provider's tender submitted in response to the Invitation to Tender and attached to the Framework Agreement as Schedule 2
Term	means the period of initially from 1 st September 2015 to 31 st December 2015, with a possible extension up to 31 st March 2016. Any extension shall be subject to the Authority's discretion.
Working Day	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. SERVICE PROVIDER'S OBLIGATIONS

2.1 The Service Provider shall supply the Services in accordance in all respects with the terms of the Framework Agreement and the terms of this Agreement and the terms and conditions of the relevant Order and in accordance with any local arrangements agreed and set out in [Schedule 4](#)

- 2.2 For the avoidance of doubt the Client Body shall not be responsible for any Services that are delivered by the Service Provider and are not the subject of a valid Order.
- 2.3 For the avoidance of doubt any terms that the Service Provider may seek to impose and which in any way vary or contradict the terms of this Agreement shall be excluded and not form part of the Order.
- 2.4 The Services to be supplied under the Order shall be provided in accordance with the terms of the Order. Where the Order identifies that provision will be in accordance with an Implementation Plan, the Implementation Plan will be agreed between the Client Body and the Service Provider unless otherwise agreed in writing by the Client Body. The Service Provider acknowledges the importance to the Client Body 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 Service Provider shall use all reasonable endeavours to ensure that the Services meet the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.
- 2.6 The Service Provider warrants to all its reasonable endeavours that the Services to be supplied under the Order shall comply in all respects with all relevant requirements of any 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 Service Provider shall be deemed to have satisfied itself as to the sufficiency and correctness of the Pricing Schedule. Unless otherwise expressly stated in the Order the Pricing Schedule shall cover all the Service Provider's obligations and everything necessary for the supply of the Services under the Order.
- 2.8 Unless otherwise expressly stated in the Framework Agreement or the Order no claim by the Service Provider will be allowed for any addition to the charges specified in the Pricing Schedule on the grounds of any matter relating to any document forming part of the Framework Agreement or the Order or any ambiguity or discrepancy therein on which an experienced Service Provider could have satisfied himself by reference to the Client Body or any other appropriate means.

3. CLIENT BODY'S OBLIGATIONS

- 3.1 The Client Body shall select a Service Provider for Orders in accordance with the criteria outlined in the Framework Agreement.
- 3.2 The Client Body will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 3.3 The Client Body shall respond to any reasonable request for information from the Service Provider.
- 3.4 The Client Body will assign an Authorised Representative who will interface with the Service Provider's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 3.5 The Client Body 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 Client Body hereby agrees to comply with the Protocol set out in [Schedule 1](#) hereto.

4. PROVISION OF THE SERVICES

- 4.1 The Service Provider shall provide the Services identified in the Order in accordance with the [Services Description and Specification in Schedule 2 and the Service Level Agreement in Schedule 6](#). In addition, the Service Provider shall host and grant access to any software solution forming part or all of the Services for the Term of the Agreement in accordance with the [End User License Agreement in Schedule 7](#). The Charges in respect of such Services shall be as detailed in the [Pricing Schedule at Schedule 3](#). And as may be supplemented by any [Local Arrangements](#) as set out in [Schedule 4](#).
- 4.2 Without prejudice to any other remedies available, if the Service Provider fails to provide the Services in accordance with the Specification and the Service levels are not met then the Client Body shall be entitled to Service Credits calculated in accordance with the Service Level Agreement in [Schedule 6](#)

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 Client Body shall pay the Charges calculated in accordance with the

Pricing Schedule of the Framework Agreement and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in **Schedule 3**

5.2 Payment shall be made within thirty (30) days of receipt by the Client Body (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of **Schedule 3**, from the Service Provider.

5.3 The Charges are exclusive of Value Added Tax. The Client Body 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 sum of money shall be due from the Service Provider, the same may be deducted from any sum then due or which at any time thereafter may become due to the Service Provider under this Agreement or any other agreement with the Client Body.

7. IMPLEMENTATION PLAN

7.1 The Service Provider shall provide the Services in accordance with any Implementation Plan as agreed with the Client Body as attached hereto as **Schedule 5**.

7.2 The Service Provider shall deliver a draft Implementation Plan to the Client Body on or before the commencement of the Services to the Client Body. The draft Implementation Plan shall be sufficiently detailed as is necessary to manage the implementation of the Services effectively. Once agreed with the Client Body (agreement not to be unreasonably delayed or withheld) the Service Provider shall monitor its performance jointly with the Client Body against the Implementation Plan.

8. MONITORING AND REPORTING

8.1 The Service Provider shall:

8.1.1 appropriately manage the provisions of the Services that it provides under this Agreement;

8.1.2 be required to provide to the Client Body such management information as it reasonably requires including but not limited to the information identified in **Schedule 8** and the Framework Agreement.

8.1.3 on reasonable notice grant to the Client Body'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 Client Body (including the Client Body's Authorised Representative, the chief financial officer and the internal and external auditors of the Client Body) reasonable access and co-operation with regard to such records.

9. SERVICE LEVELS

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

10. SERVICE PROVIDER'S PERSONNEL

10.1 The Service Provider shall select, employ, train, furnish and deploy in and about the performance of the Services only such persons as are of good character and who are appropriately skilled and experienced.

10.2 The Service Provider shall comply with any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Service Provider shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this Agreement who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall be appropriately checked by the Criminal Records Bureau and shall upon reasonable request produce evidence of such satisfactory disclosure.

10.3 The Service Provider and the Service Provider's sub-contractors, staff and agents shall comply with all reasonable requirements of the Client Body whilst present at the Client Body's premises.

10.4 The Service Provider shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of **conditions 10.1, 10.2 and 10.3** above.

- 10.5 The Service Provider, its agents, sub-contractors and Service Providers shall employ sufficient staff to ensure that the Services are provided at all times in accordance with this Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Service Provider to ensure that a sufficient reserve of staff is available to provide the Services in accordance with this Agreement during staff holidays or absence through sickness or any other cause.
- 10.6 The Client Body, acting reasonably, shall have the right to refuse access to its premises at any time to any employee of the Service Provider, its agents, sub-contractors or Service Providers. The exercise of this right shall not diminish the Service Provider's obligation of performance arising under this Agreement.

11. DEFAULT IN PERFORMANCE OF THE SERVICE

- 11.1 The Service Provider shall respond promptly to all complaints, oversights and omissions and shall immediately make good any default on its part at its own expense.
- 11.2 Where Services are required or ordered under the Agreement and the Service Provider fails to provide such Services or any element thereof in accordance with the Agreement, or in the event of breach or default by the Service Provider (which ESPO or the Client Body has invited the Service Provider to remedy upon service of a written notice of at least 30 calendar days but which has not been remedied) ESPO or the Client Body may take whatever action it reasonably considers necessary or appropriate to effect a suitable remedy which may include (but not be limited to) ESPO 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 Client Body shall be entitled to claim from the Service Provider any reasonable and demonstrable excess of costs so directly incurred by ESPO and/ or the Client Body over the rates contained in the Pricing Schedule together with all associated costs, charges and expenses as direct losses (including professional fees and VAT). Such amount shall be due as a debt from the Service Provider to ESPO or the Client Body and payable within 28 days of demand.
- 11.4 Any dispute as to the reasonableness of any debt owed to ESPO and/or the Client Body under [Condition 11.3](#) may be referred for determination in accordance with [Condition 29](#).
- 11.5 The rights of ESPO and/ or the Client Body under any of the [Conditions 11.1 to 11.4](#) shall be without prejudice to its rights under any other provision of this Agreement.

12. WARRANTIES AND REPRESENTATIONS

- 12.1 The Service Provider warrants and represents that:
- 12.1.1 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
 - 12.1.2 the Service Provider 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 Service Provider shall indemnify and keep indemnified the Client Body against all losses, damages, costs, charges and expenses at any time incurred or suffered by the Client Body and arising directly from any breach by the Service Provider of this Agreement, or any of its obligations to the Client Body, or from any negligence, negligent act, negligent omission, default, or breach of Contract, on the part of the Service Provider or, its employees, and provided always that the Service Provider's liability to indemnify the Client Body shall be reduced proportionately to the extent that an act or omission the Client Body, its servants or officers may have contributed to the said death, loss, injury or damage. The Service Provider shall effect and maintain at all times during the continuance of this Agreement and for twelve months thereafter (or such longer period as, depending on the basis of claims covered by the insurance, will effect cover for the limitation period applicable to any relevant claim):
- 13.1.1 Public Liability insurance in the minimum sum of five million pounds
 - 13.1.2 Employers Liability insurance of not less than ten million pounds
 - 13.1.3 Professional Indemnity insurance of not less than two million pounds

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

- 13.2 Interim Managers engaged via this Agreement by the Service Provider will be insured under the Service Provider's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 13.3 Interim Managers engaged via this Agreement will be insured under the Client Body's own Employer's Liability and Public Liability insurance policies whilst under its discretion 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 Client Body the Service Provider shall indemnify the Client Body 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 Client Body in connection with any interim 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 Service Provider's failure to co-operate or provide information in relation to any Interim Manager;
 - 13.4.2 The Service Provider's failures to pay the Interim Manager 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 Interim Managers arising out of the Service Provider's failure to comply with its legal obligations;
 - 13.4.4 Any circumstance where the either the Service Provider or the Client Body might be deemed to have become the employer of any Interim Manager engaged by the Client Body under this Agreement.
- 13.5 Save to the extent that the claim, cost or proceeding is caused by the Client Body, the Service Provider shall indemnify the Client Body against any claim, cost or proceeding arising directly as a result of:
 - 13.5.1 Any claim by a trade union, staff association or staff body in respect of any or all of the Interim Managers arising out of the Service Provider's failure to comply with its legal obligations;
 - 13.5.2 Any circumstance where the Service Provider is deemed to be the employer of any Interim Manager engaged by the Client Body under this Agreement.
 - 13.5.3 Provided that if any third party makes a claim, or notifies an intention to make a claim, against the Client Body which may reasonably be considered likely to give rise to a liability under this indemnity (in this clause referred to as "the Claim"), the Client Body shall:
 - i) as soon as reasonably practicable, give written notice of the Claim to the Service Provider, 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 Service Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Client Body may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Service Provider, but without obtaining the Service Provider's consent) if the Client Body reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - iii) give the Service Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, directors, employees, agents, representatives or advisers, and to any relevant accounts, documents and records within the power or control of the Client Body, so as to enable the Service Provider and its professional advisers to examine them and to take copies (at the Service Provider's expense) for the purpose of assessing the Claim; and
 - iv) permit the Service Provider to take over the handling of the Claim and if the Service provider considers it appropriate to compromise or settle the Claim.
- 13.6 Neither party shall do anything or refrain from doing or omit doing anything, which might render any of the foregoing insurance policies void or voidable.

- 13.7 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence.
- 13.8 Notwithstanding **13.2** above, the parties liability to each other under or in connection with this Agreement and the Services or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall be the levels of cover specified in **Condition 13.1** where a claim falls within the Service Providers' insurance policy, or where a claim is not required to be covered by an insurance policy, [£1 million (one million pounds)].
- 13.9 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.
- 13.10 Neither party shall other than as a consequence of fraud or wilful default by that party, be liable for any claim by the other party for loss of profit or revenue, consequential, economic, special or indirect loss.
- 13.11 For the avoidance of doubt the Service Provider will not be responsible for the acts and omissions of Interim Managers under the direction, supervision and control of ESPO or the Client Body.

14. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Service Provider shall fully indemnify and hold the Client Body harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of confidential information by the use or possession of the Services or any part thereof provided by the Service Provider or licensed by the Service Provider to the Client Body under the Agreement subject to:
- 14.1.1 the Client Body promptly notifying the Service Provider of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the Service Provider at their own expense to conduct all negotiations for settlement or litigation;
- 14.1.2 the Client Body making no admission without the Service Provider's written consent unless and until the Service Provider shall have failed to take over the conduct of the negotiations or litigation;
- 14.1.3 the conduct by the Service Provider of such negotiations or litigation shall be conditional upon the Service Provider having given the Client Body such reasonable security as the Client Body may require for the compensation, damages, costs and expenses for which the Client Body may become liable. The Client Body at the Service Provider's expense shall give the Service Provider all available assistance.
- 14.2 If the Services or any part thereof becomes, or in the Service Provider's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **sub-condition 14.1.1** above, the Service Provider shall at its own expense negotiate to obtain the right for the Client Body 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 Client Body's requirements as specified by the Agreement.
- 14.3 The Service Provider shall indemnify the Client Body against all losses, costs, damages and expenses whatsoever during the period that the Client Body is deprived of the use of the Services by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by the issue of a Change Request which shall not entitle the Service Provider to any addition to the Charges or any extension of the Order lead time.
- 14.4 The Service Provider shall not be liable under **sub-condition 14.1.1 and 14.1.2** above for any such infringement or alleged infringement which arises as a result of the including in the Services or any element supplied by the Client Body 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 Client Body may at any time by notice in writing terminate this Agreement forthwith, if the Service Provider is in Default of any material or fundamental breach of any obligation under this Agreement
- 15.2 15.2 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:
 - 15.2.1 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
 - 15.2.2 the Default is not capable of remedy.
- 15.3 The Client Body may by not less than three month's notice in writing to the Service Provider expiring at any time terminate the Agreement.
- 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 Client Body under this Agreement or otherwise, the Client Body shall be entitled to obtain a refund of any Charges paid by the Client Body in respect of any Services which have not been performed by the Service Provider in accordance with the terms of this Agreement.
- 16. CONFIDENTIALITY**
- 16.1 Each Party:
 - 16.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
 - 16.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
- 16.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Client Body 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 Client Body, the Service Provider shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Service Provider shall ensure that its staff, sub-contractors and agents are aware of the Service Provider's confidentiality obligations under this Agreement.
- 16.4 The Service Provider shall not use any Confidential Information it receives from the Council, Contracting Authority or the Client Body 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 Client Body from:
- 16.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Client Body's accounts
 - 16.6.2 disclosing any Confidential Information obtained from the Service Provider to any person engaged in providing any services to the Client Body for any purpose relating to or ancillary to the Agreement;
 - 16.6.3 provided that in disclosing information under **condition 16.6.2** the Client Body discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.
- 16.7 The Service Provider shall not without the prior written consent of the Client Body 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 Service Provider fails to comply with this **Condition 16** the Client Body 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 Service Provider acknowledges that the Client Body is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Client Body (at the Service Provider's expense) to enable the Client Body to comply with these information disclosure requirements.
- 18.2 The Service Provider shall and shall procure that its sub-contractors shall;
- 18.2.1 transfer any request for information to the Client Body 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 Client Body requesting the information); and
- 18.2.2 provide the Client Body with a copy of all information in its possession or power in the form that the Client Body requires within seven (7) Working Days (or such other period as the Client Body requesting the information); and
- 18.2.3 provide all necessary assistance as reasonably requested by the Client Body to enable the Client Body to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 18.3 The Client Body shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;
- 18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
- 18.3.2 is to be disclosed in response to a request for information and in no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Client Body.
- 18.4 The Service Provider acknowledges that the Client Body may be obliged under the FOIA or the EIR to disclose information;
- 18.4.1 without consulting the Service Provider; or
- 18.4.2 following consultation with the Service Provider and having taken its views into account.
- 18.5 The Service Provider shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Client Body to inspect such records as requested from time to time.
- 18.6 The Service Provider acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Client Body may nevertheless be obliged to disclose Confidential Information in accordance with [Condition 18.4](#).
- 19. SOCIAL RESPONSIBILITY**
- 19.1 The Parties agree that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.
- 19.2 The Parties shall in all matters arising in the performance of the Agreement comply with the provisions of the Disability Discrimination Act 1995 and any regulations made there under.
- 19.3 The Parties shall in all matters arising in the performance of the Agreement comply with the provisions of the Employment Equality (Age) Regulations 2006.
- 19.4 The Parties must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.
- 19.5 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 the Contract 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.

- 19.6 ESPO and the Client Body shall be entitled at ESPO's and the Client Body's expense to inspect such books, accounts and records belonging to the Service Provider as are necessary to demonstrate compliance with **Conditions 19.1 to 19.5** above.
- 19.7 The cost to the Service Provider of complying with this **Condition 19** shall be included in the Charges.
- 20. CORRUPT GIFTS AND PAYMENTS**
- 20.1 The Client Body shall be entitled to cancel and terminate the Agreement and to recover from the Service Provider the amount of any loss resulting from such cancellation or termination if the Service Provider or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Client Body or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Client Body or if like acts shall have been done by any person employed by the Service Provider or acting on its behalf (whether with or without the knowledge of the Service Provider) or if in relation to any contract with the Client Body the Service Provider or any person employed by the Service Provider or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 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 Client Body 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 Client Body 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 Service Provider to perform or any delay by the Service Provider 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 Service Provider shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 21.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.
- 22. HEALTH AND SAFETY**
- 22.1 Both Parties shall comply with the provisions of the Health & Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and the Provision and Use of Work Equipment Regulations 1998. All other health and safety assessments required by specific regulation and codes of practice

relating to your business must also be strictly applied. The Service Provider is to have monitoring, inspection, review and, where appropriate, health surveillance arrangements in place to meet its responsibilities and may be required to produce documentation to prove that procedures have been carried out in accordance with the regulations upon reasonable request. All Temporary Agency Workers must be aware of and abide by Health & Safety standards and be aware of their duty of care to other employees and members of the public. Interim Managers shall adhere to a Client Body's health and safety requirements at all times and work within the Client Body's culture and values.

- 22.2 Both Parties shall in performing the Services 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 Client Body and all other persons, including members of the public provided that the Client Body shall be responsible for the Health and Safety of the Interim Managers whilst they are under the Client Body's control and shall supply the Service Provider with any pertinent Health and Safety information relating to any Services. Save to the extent that the losses, costs, or damages are caused or contributed to by ESPO or the Client Body, the Service Provider shall indemnify ESPO and the Client Body for any direct losses, costs, or damages, caused to ESPO and/ or the Client Body for any breaches of health and safety laws, policies, or codes of practice, by the Service Provider.
- 22.3 The Service Provider shall request that any sub contractors used are bound by the requirements of this **Condition 22**.
- 22.4 In respect of each Interim Manager assignment, the Client Body shall provide the Service Provider full details of:
- 22.4.1 the intended duties of the Interim Manager;
 - 22.4.2 any special skills which it requires the Interim Manager 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 Client Body 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 Client Body wishes to be passed on to the Interim Manager.
- 22.5 The Client Body acknowledges that the Service Provider does not have the obligation (or the opportunity) to supervise, direct or control the manner, time or place of any Interim Manager's work. The Client Body shall provide on behalf of the Service Provider sufficient supervision, direction and control over the Interim Manager throughout the assignment.

23. TUPE

- 23.1 The Client Body warrants that it has to the best of its ability prior this agreement given to the Service Provider sufficient and accurate information regarding each and every Relevant Employee as is necessary to enable the Service Provider to assess fully the impact of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) and the consequences for the Service Provider
- 23.2 In the event that the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) apply upon expiry or termination of this Agreement or any of the contracts of employment of any person employed or engaged by the Service Provider shall be transferred from the Service Provider to any third party (replacement service provider) engaged by Client Body to perform any of the Services or any service equivalent or similar to any of the Services the Service Provider shall indemnify and keep indemnified Client Bodies and the replacement service provider(s) from and against all employment liabilities arising directly as a result of the acts or omissions of the Service Provider and which relate to claims brought by any of the employees or by a Trade Union or other employee representative against Client Bodies or any replacement service provider 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**
- 23.3 For the purposes of this clause "Relevant Employee" means person employed or engaged by the Client Body or by any third party engaged by Client Body 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 Service Provider. The Service Provider shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Client Body.
- 24.2 Notwithstanding any sub-contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.
- 25. AMENDMENTS TO 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 Client Body and by a duly authorised representative of the Service Provider. No variation of this Agreement shall limit or remove the Service Provider's obligations under the Framework Agreement.
- 26. COMMUNICATIONS**
- 26.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Order form either by (a) hand, (b) first class post or recorded delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.
- 26.2 Either party may change its address for service by notice as provided in 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 Client Body and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.
- 28. WAIVER**
- 28.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 28.2 A waiver of any Default shall not constitute a waiver of any subsequent Default whether of the same or a different nature.
- 28.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of [Condition 26](#).
- 29. DISPUTE RESOLUTION**
- 29.1 If any dispute or difference of any kind whatsoever shall arise between the Client Body and the Service Provider 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 Client Body (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 Client Body and the Service Provider shall meet to endeavour to resolve the conflict.
- 29.2 If the respective Authorised Representatives of the Client Body and the Service Provider 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 Client Body and the Managing Director (or equivalent) of the Service Provider 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 9](#) 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 Client Body and its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

33. ENTIRE AGREEMENT

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

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

SIGNED for and on behalf of

Cabinet Office - the Client Body

By:

Name: REDACTD

Title:

Date:

SIGNED for and on behalf of

Green Park Interim & Executive Ltd - the Service Provider

By:

Name: REDACTED

Title:

Date:

**SCHEDULE 1 to the CLIENT BODY AGREEMENT
PROTOCOL**

ESPO on behalf of Pro5 is the lead contracting body and as such will maintain overall responsibility for the performance management, review and renewal of the Framework Agreement unless otherwise agreed within Pro5.

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

As such Client Bodies will be required to:

- a) Agree the local implementation of the provision of the Services between their own organisation and the Service Provider.
- b) Identify a named officer (Contract Manager) who shall be a single point of contact for the Service Provider and ESPO and/or Pro5 member.
- c) Specify individual requirements for the provision of Management Information reporting.
- d) Be responsible for the payment of invoices issued by the Service Provider in respect of the Services delivered to them and to specify any local variations to invoicing requirements.
- e) Attend overarching contract review meetings as organised by ESPO from time to time.
- f) Manage locally any performance issues or continuous improvement actions and to escalate to ESPO only those matters that frustrate the local arrangements.
- g) Note that ESPO shall need to access all management information for the purpose of managing the Agreement.

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

SCHEDULE 2 to the CLIENT BODY AGREEMENT

**SERVICES DESCRIPTION (Service Delivery proposal offered by the Tenderer) and
SPECIFICATION (Specification provided in the Invitation to Tender)**

REDACTED

SCHEDULE 3 to the CLIENT BODY AGREEMENT

PRICING SCHEDULE

(Including Invoicing Procedures)

Name of Contractor: REDACTED

Job Title: REDACTED

Total charge payable: REDACTED

Commencement Date: 1st September 2015

Term / Expiry Date: The initial duration shall be until 31st December 2015, followed by a possible extension of up to 31st March 2016. The granting of any extension shall be at the discretion of the Authority.

Notice Period: Within the first month – 1 week. Thereafter 1 Month

Invoices: To be paid within 30 days of receipt

SCHEDULE 5 to the CLIENT BODY AGREEMENT

IMPLEMENTATION PLAN – NOT USED

SCHEDULE 8 to the CLIENT BODY AGREEMENT
MONITORING AND MANAGEMENT INFORMATION – NOT USED
