

## AGREEMENT FOR THE SUPPLY OF RECRUITMENT SERVICES

### PART 1 APPOINTMENT TERMS

The Company appoints the Agency to provide the Services on the terms set out in Part 1 (Appointment Terms), Part 2 (Agreement Terms), the Schedules of this Agreement and in the Order Forms (if any) throughout the Term, in consideration of payment by the Company of the Fees at the rates set out in Schedule 3 (Fees) and in accordance with Clause 11 of this Agreement.

<b>SUPPLIER</b>	<b>Company Name</b> (registered in England and Wales under company number Company Number) whose registered office is at .....( <b>"the Agency"</b> ).
<b>CUSTOMER</b>	<b>Customer Name</b> (registered in England and Wales under company number xxxxx) whose registered office is at xxxx ( <b>"the Company"</b> ).
<b>COMMENCEMENT DATE</b>	
<b>TERM</b>	No fixed term – agreement for ad hoc Labour supply
<b>IMPLEMENTATION PERIOD</b>	Not applicable
<b>SERVICES</b>	Employment Business Services. The Agency shall supply temporary Agency Workers to the Company as set out in this Agreement.
<b>PEAK PERIOD(S)</b>	
<b>VOLUME AND SITE(S)</b>	

This Agreement consists of the Appointment Terms (Part 1), the Agreement Terms (Part 2), the Schedules of this Agreement and any Order Forms attached to this Agreement ("**the Agreement**").

To the extent there is any inconsistency or conflict between any of the provisions of this Agreement, the following order of precedence shall apply: the Order Forms (if any), Part 1 (Appointment Terms), Part 2 (Agreement Terms), the Schedules and the Annex.

**IMPORTANT:** Please read carefully Clause 2.10 and Clause 3.3 of Part 2.

<p>..... Signed on behalf of <b>Company Name</b></p> <p>Name:.....</p> <p>(In block capitals)</p> <p>Date: .....</p> <p><b>Position:</b> .....</p>	<p>..... Signed on behalf of <b>Customer Name</b></p> <p>Name: .....</p> <p>(In block capitals)</p> <p>Date: .....</p> <p><b>Position:</b> .....</p>
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## PART 2

## AGREEMENT TERMS

### 1. DEFINITIONS AND INTERPRETATION

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

<b>"Account Manager"</b>	means a competent and appropriately qualified and experienced person appointed by each of the Company and the Agency to be its representative in relation to the performance of this Agreement
<b>"Affiliate"</b>	means any person which is, in relation to a company, its parent undertaking or its subsidiary undertaking, or a subsidiary undertaking of its parent undertaking or any other person controlled by or under the same control either directly or indirectly. " <b>Parent undertaking</b> " and " <b>subsidiary undertaking</b> " will have the meanings attributed to them in section 1162 of the Companies Act 2006;
<b>"Agency Worker"</b>	means a person supplied by the Agency to the Company to carry out work temporarily for the Company, under the Company's direction and supervision, not as an employee of the Company;
<b>"Applicable Laws"</b>	means all laws, statutes, regulations and all judgments or orders of any applicable court or competent authority or tribunal, including applicable EU laws and any official guidance and codes of practice which apply to the provision of the Services;
<b>"Assignment"</b>	means the period during which an Agency Worker performs services or carries out work for or on behalf of the Company, beginning when the Agency Worker first reports to the Company to take up duties, or, if earlier, the commencement of such work or services by the Agency Worker, and ending on the cessation of all such work or services;
<b>"AWR"</b>	means the Agency Workers Regulations 2010 (SI 2010/93);
<b>"Business Day"</b>	means a day other than a Saturday, a Sunday, bank or public holiday when banks in London are open for business;
<b>"Commencement Date"</b>	means the date set out in Part 1 (Appointment Terms) of this Agreement; or if no date is specified, the last date on which this Agreement has been signed;
<b>"Conduct Regulations 2003"</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319);

<b>"Confidential Information"</b>		any and all information (however recorded, preserved or disclosed, and whether before or after the date of this Agreement) in respect of the business of each party, including but not limited to any ideas and know-hows; software, program and specifications: business, financial, and marketing methods and details; any information concerning one party's relationships with any actual or potential customers or suppliers; the requirements of that party, any personal data and special categories of personal data within the meaning of the GDPR, the subject matter of this Agreement, and any information that may reasonably be regarded as the confidential information of the Disclosing Party;
<b>"Control"</b>		has the meaning given in the Corporation Tax Act 2010, section 1124 and <b>"Controls"</b> and <b>"Control"</b> shall be interpreted accordingly;
<b>"Data Protection Laws"</b>		means all applicable laws, regulations, regulatory requirements and codes of practice in connection with the use, processing and disclosure of personal data or personally identifiable information (as amended, consolidated or re-enacted from time to time), including but not limited to the Data Protection Act 2018, the GDPR, and any code of practice or guidance published by the Information Commissioner's Office (ICO) from time to time;
<b>"Fees"</b>		means any fees payable by the Company to the Agency for the Services at the rates set out in Schedule 3 (Fees), in accordance with Clause 11 of this Agreement;
<b>"GDPR"</b>		means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
<b>"The Customer"</b>	<b>Company's</b>	means the company for which the Company provides services with involvement of the Agency Workers;
<b>"Intellectual Rights"</b>	<b>Property</b>	means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>"KPIs"</b>		means the Key Performance Indicators (KPIs) specified in Schedule 2;
<b>"Order"</b>		means the Company's formal instruction (whether verbal or written) to the Supplier requesting the Supplier to source an Agency Worker for the Company;
<b>"Order Form"</b>		means the order form set out in Schedule 5;

<b>“Peak Period”</b>	means the period(s) defined in Part 1 (Appointment Terms) of this Agreement, and/or the period as notified by the Company in writing from time to time;
<b>“Personal Data”</b>	has the meaning set out in the Data Protection Laws and for the purposes of this Agreement, including Special categories of personal data;
<b>“Site”</b>	means the site/s defined in Part 1 (Appointment Terms) of this Agreement and/or any other site as notified by the Company in writing from time to time;
<b>“VAT”</b>	means value added tax chargeable under the Value Added Tax Act 1994;
<b>“Volume”</b>	means the indicative order volume set out in Part 1 (Appointment Terms), subject to Clause 3.3 of this Agreement and attached to this Agreement as Annex 1;
<b>“WTR”</b>	Working Time Regulations 1998 (SI 1998/1833).

1.2 Unless the context otherwise requires:-

- 1.2.1 reference to the singular includes the plural and vice versa, and reference to any gender includes every gender;
- 1.2.2 reference to a "**person**" includes any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having a separate legal personality);
- 1.2.3 reference to any statute or any statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/ or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/ or replaced and in force from time to time;
- 1.2.4 any words following the words "**include**", "**includes**", "**including**", "**in particular**" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them;
- 1.2.5 the headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- 1.2.6 references to recitals, clauses, schedules and sub-divisions of them are references to the recitals and clauses of, and schedules to, this Agreement and subdivisions of them respectively; and
- 1.2.7 references to "**writing**" or "**written**", , includes emails, unless expressly stated to the contrary within the relevant provision.

## 2. TERM, TERMINATION AND THE AGREEMENT

- 2.1 This Agreement shall commence on the Commencement Date and subject to Clauses 2.2 to 2.4 (inclusive), shall continue in force, for a consecutive period of six (6) months (Implementation Period) and a period of three (3) years (the Implementation Period and the period of three (3) years are together the "**Term**").

- 2.2 The Agency shall not terminate this agreement during Peak Period(s) without the Company's prior written consent.
- 2.3 The Agency acknowledge that the Company may terminate this Agreement at any time (including the during the Implementation Period) fully or partly with immediate effect, should the Company's Customer/s terminate its/their agreement with the Company.
- 2.4 Without affecting any other rights or remedies available to it, a party may terminate this Agreement, at any time, with immediate effect by providing written notice to the other party if:-
- 2.4.1 the other party commits a material breach or persistent breaches of any term of this Agreement which breach/es is/are incapable of remedy or (if such breach/es is/are remediable) fails to remedy that breach/es within a period of 30 (thirty) days after being notified in writing to do so;
- 2.4.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party; suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (except solvent amalgamation, reconstruction or merger where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement); an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party; the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; has a freezing order made against it; any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause 2.4.2;
- 2.4.3 any consent, licence, or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under this Agreement;
- 2.4.4 the other party breaches the Bribery Act 2010 and/or the Criminal Finances Act 2017 (**Criminal Finances Act**);
- 2.4.5 a party to this Agreement commits an act which could or does negatively affect the reputation or the goodwill of that party, or the other party.
- 2.5 Subject to Clause 2.2, either Party may terminate this Agreement at any time by giving not less than 4 (four) weeks' notice in writing to the other party if the other party undergoes a direct or indirect change of control.
- 2.6 If a party becomes aware that any event has occurred, or circumstances exist, which may entitle the other party to terminate this Agreement under Clauses 2.3 and 2.4, it shall immediately notify the other party in writing.
- 2.7 On termination of this agreement, the Company shall pay for all Services provided up to the date of termination.
- 2.8 Where the Agreement is terminated under Clauses 2.1 to 2.5 (inclusive) and Clause 23.3 (Force Majeure) the Company may, during any notice period:-

2.8.1 direct the Supplier, where the Services or part of them have not commenced, to refrain from commencing such Services or part of them or where the Services have commenced, to cease work immediately; or

2.8.2 direct the Supplier to complete in accordance with the Agreement all or any part of the Services, which shall be paid in in accordance with Clause 11 of this Agreement, at the rates set out in Schedule 1 (Services).

2.9 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry.

2.10 This Clause 2.10 only applies to Orders in relation to Agency Workers for driver vacancies. This Agreement is incorporated in each and every Order placed by the Company via the Order Form set out in Schedule 5 and accepted by the Supplier, whether in writing, orally or by conduct. Each accepted Order shall create a separate agreement that fully incorporates the terms of this Agreement.

### **3. PREFERRED SUPPLIER STATUS**

3.1 In appointing the Agency, the Company has relied upon the Agency's representation that it has the resources, skills, experience and the qualifications to enable it to perform the Services according to the standards specified in this Agreement and in accordance with Applicable Laws.

3.2 Subject to Clauses 4.5.3 (KPIs) and 23.3 (Force Majeure), the Agency shall be the preferred supplier of the Company in relation to the Services and the Site/s during the Term of this Agreement. For the avoidance of doubt, nothing in this Clause 3.2 intends to give the Agency preferred supplier status in respect of any workers other than the Agency Workers for the Site/s, or in respect of any other site of the Company, nor intends to give an exclusive supplier status in relation to the Services and/or the Site/s.

3.3 The Agency acknowledges and agrees that the Volumes set out in Part 1 (Appointment Term) of this Agreement are estimates and shall not be binding on the Company.

### **4. SERVICES**

4.1 The Agency acts as an Employment Business as such term is defined by the Conduct Regulations 2003.

4.2 The Agency shall, and shall procure that, its employees, agents and sub-contractors, at all times during the Term of this Agreement:-

4.2.1 provide the Services in accordance with the terms of this Agreement and perform the Services with all reasonable care and skill, in accordance with best industry practice and, in full compliance with Applicable Laws;

4.2.2 fully comply with Applicable Laws, all relevant laws, codes of practice and guidance, and the policies of the Company, in relation to health and safety, fire, and environment (including, but not limited to, the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, the Provision and Use of Work Equipment Regulations 1992), and shall use its best endeavours to ensure that the Agency Workers comply with the same;

4.2.3 in relation to supplying Agency Workers for heavy good vehicles (HGV) driver vacancies, fully comply with Clause 4.2.2 and all relevant laws, codes of practice and guidance in relation to HGV drivers. and shall use its best endeavours to ensure that the Agency Workers comply with the same.

- 4.2.4 not unlawfully discriminate either directly or indirectly on grounds of age, disability, ethnic or national origin, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation in recruitment or in employment;
  - 4.2.5 fully comply with the Equality Act 2010 and adopt a policy to comply with their statutory obligations under the Equality Act 2010;
  - 4.2.6 prevent illegal working, fully comply with Applicable Laws, all relevant laws, codes of practice and guidance made available by the Home Office (or any successor or replacement body from time to time) or other governmental body in relation to prevent illegal working;
  - 4.2.7 prior commencement of each Assignment, conduct online and/or manual right to work check in relation to each Agency Worker, and where applicable, contact the Home Office to verify right to work; and conduct follow up checks, retain evidence documents of right to work in the United Kingdom ("**UK**"), and use its best endeavours to make sure that each Agency Worker has the right to work in the UK during the Assignment.
- 4.3 The Agency shall upon written request from the Company provide evidence of compliance with Clause 4.2.
- 4.4 The Agency and its sub-contractors shall indemnify, and keep the Company indemnified against all actions, claims, demands, proceedings, losses, damages, fines, costs, charges and expenses (including legal fees) incurred by, awarded against or agreed to be paid by the Company in respect of any breach by the Agency and/or its sub-contractors in relation to Clause 4.2. This Clause 4.4 shall survive termination or expiration of this Agreement for a period of six (6) years.
- 4.5 The Agency shall meet or exceed any performance dates and/or KPIs specified in Schedule 2 (KPIs). Time is of the essence in respect of any such Agency performance. If the Agency fails to meet or exceed such performance dates and/or KPIs, without prejudice to any other rights the Company may have, the Company may seek compensation (if any) set out in Schedule 2 (KPIs) and the Company may:-
- 4.5.1 terminate this Agreement in whole or in part without liability to the Agency where the Agency has failed to meet its performance obligations such that it constitutes a material breach in accordance with Schedule 2 (KPIs);
  - 4.5.2 refuse to accept any subsequent performance of the Services which the Agency attempts to make;
  - 4.5.3 appoint an agency other than the Agency for the provision of the Services (or any part of the Services) for the Site/s; and
  - 4.5.4 recover on a full indemnity basis any loss and additional costs incurred by the Company which results from such failure.
- 4.6 Neither the Company nor the Agency shall knowingly do or omit to do anything which may interfere with compliance by the other party of its obligations under this Agreement.
- 4.7 The Parties shall regularly conduct meetings to review the Services ("**Operations Review Meetings**") as set out in Schedule 1 (Services).

## **5. OBLIGATIONS OF THE COMPANY**

- 5.1 The Company shall, during the Term of this Agreement:-
- 5.1.1 act diligently and in good faith in all its dealings with the Agency;

- 5.1.2 pay the Fees in accordance with Clause 11 (Fees, VAT and Payment) and Schedule 3 (Fees) of this Agreement;
  - 5.1.3 use its reasonable endeavours to supply to the Agency with such information and documents relating to the Services as reasonably necessary for the performance of this Agreement, and as is required by the Agency, to comply with its obligations under the AWR, the Conduct Regulations 2003, the WTR, and any other Applicable Laws; such information and documents shall be subject to Clause 14 (Confidentiality);
  - 5.1.4 provide the Agency with the information required by Regulation 18 of the Conduct Regulations 2003;
  - 5.1.5 not allow any Agency Worker to undertake any work other than which has been notified to the Agency by the Company in placing the request for that Agency Worker; and
  - 5.1.6 provide the Agency Worker:-
    - 5.1.6.1 with access to collective facilities and amenities; and
    - 5.1.6.2 information regarding any relevant vacant posts,in accordance with and to the extent required by Regulations 12 and 13 of the AWR.
- 5.2 The Company shall advise the Agency of its daily requirement for Agency Workers ("**Daily Requirement**") in writing in advance giving xxxx hours notice. If the Company's Daily Requirement changes ("**Amended Daily Requirement**"), the Company shall immediately notify the Agency in writing, and the Agency shall, from the time specified in the notice, change the number of Agency Workers supplied to the Company to reflect the Amended Daily Requirement.

## 6 OBLIGATIONS OF THE AGENCY

- 6.1 The Agency shall provide the Services with reasonable skill, care and diligence and due propriety and with the utmost good faith. The Agency shall co-operate and comply with all reasonable directions of the Company in all matters relating to the Services.
- 6.2 The Agency shall provide the following information to the Company before commencement of each Assignment:-
- 6.2.1 the Agency Worker's identity;
  - 6.2.2 that the Agency Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work on the Assignment (including criminal records check, where relevant);
  - 6.2.3 the fact that the Agency Worker is employed by the Agency under a contract of service or apprenticeship or a contract for services;
  - 6.2.4 that the Agency Worker is willing to work on the Assignment;
  - 6.2.5 that the Agency Worker has completed the Qualifying Period as defined in Regulation 7 of the AWR ("**Qualifying Period**") or will potentially complete during the Assignment, and such information shall include the first date of the Qualifying Period.
  - 6.2.6 that the Agency Worker is suitable for the Assignment;
  - 6.2.7 that the Agency Worker meets the compliance criteria required by the Company and provided to the Agency in accordance with Clause 5.1.4, and/or such other reasonable criteria that the Company may require in writing from time to time; and



6.2.8 that the Agency Worker has been provided by the Agency with appropriate personal protective equipment, that meets all relevant British Standards and official guidelines.

6.3 The Agency shall:-

6.3.1 where the vacancy includes driving motor vehicles, take all reasonable practicable steps to enquire whether the Agency Worker is the holder of a current licence to drive a vehicle of the class or description that the Company has notified to the Agency, and provide copies to the Company of the relevant licence;

6.3.2 where the Agency Worker is required by law or any professional body to have any qualifications or authorisations to work on the Assignment, take all reasonably practicable steps to obtain and offer to provide to the Company:-

6.3.2.1 copies of any relevant qualifications or authorisations of the Agency Worker; and

6.3.2.2 two references from persons not related to the Agency Worker who have agreed that the references they provide may be disclosed to the Company.

6.4 Where the Agency Worker is due to complete the Qualifying Period during the Assignment, the Agency shall notify the Company of this fact within one (1) week in advance of completion of the Qualifying Period, and agree with the Company in writing in the Fees applicable from the completion of the Qualifying Period.

6.5 The Agency shall, and shall ensure that it and any sub-contractor or intermediary shall at all times comply with their obligations under the AWR, including but not limited to providing the Agency Worker:-

6.5.1 with the key information document before agreeing in any contractual terms with the Agency Worker, and any amendments to the key information document, where necessary, in the format and content as required by the Conduct Regulations 2003; and

6.5.2 with the relevant terms and conditions (and any variations to it) in accordance with Regulation 5 of the AWR; by the end of the Qualifying Period

6.6 The Agency shall:-

6.6.1 pay each Agency Worker the wages, reimbursement of expenses, and all other statutory and/or contractual payments to which the Agency Worker is entitled in relation to this Agreement;

6.6.2 where appropriate, make deductions (including but not limited to National Insurance contributions) and account to HM Revenue and Customs ("**HMRC**") for income tax, and/or other contributions in respect of the remuneration of an Agency Worker; and

6.6.3 submit all necessary reports and submissions in relation to each and all Agency Workers to HMRC that is required by Applicable Laws.

6.7 Nothing in this Agreement shall render any Agency Worker an employee, a directly engaged worker, an agent or a partner of the Company. The Agency shall not, and shall procure that its employees, agents, sub-contractors and intermediaries shall not, and shall use all reasonable endeavours to procure that the Agency Worker does not, refer to himself as or hold himself out as an employee, a directly engaged worker, an agent or a partner of the Company.

6.8 The Agency shall, at all times during the Term of this Agreement, and after termination or expiration of this Agreement, indemnify the Company and keep the Company indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees and penalties) incurred by, awarded against or agreed to be paid by the Company arising from any breach of the Agency's obligations under Clauses 6.2 to 6.7 (inclusive).

- 6.9 Should the Agency become aware that, any employee of the Company, worker, sub-contractor or agent is not, or may not, be complying with any of the Company's obligations under this Agreement, it shall only be entitled to rely on it as a relief of the Agency's performance under this Agreement:-
- 6.10.1 to the extent that it restricts or precludes performance of the Services by the Agency; and
- 6.10.2 if the Agency as soon as reasonably practicable, but no later than within two (2) Business Days after become aware of the actual or potential non-compliance, notify the Company in writing.
- 6.10 The Agency shall operate a self-regulatory system of quality assurance and quality measures relevant to the Services, and upon request from the Company provide evidence of such system.
- 6.11 The Agency shall:-
- 6.11.1 perform this Agreement, and shall use its best endeavours to ensure that, its employees, agents, sub-contractors, and the Agency Workers perform this Agreement, without causing any damage or harm to the Company's business; and to the public image, the reputation or the goodwill of the Company; and
- 6.11.2 notify the Company in writing of any reputational risk to the Company as soon as reasonably practicable after become aware of such risk.
- 6.12 Without prejudice to any other rights or remedy of the Company, any failure by the Agency to comply with Clause 6.11, shall be considered a material breach of this Agreement, such breach is incapable of remedy, and shall give the Company the right to terminate this Agreement in accordance with Clause 2.4.1.

## **7 ACCOUNT AND CONTRACT MANAGEMENT**

- 7.1 The Agency shall appoint a properly and sufficiently qualified, competent and skilled Account Manager to act for and on behalf of the Agency in relation to this Agreement.
- 7.2 In case of the absence of the Account Manager for any reasons, the Agency shall use its best endeavours to promptly replace the Account Manager ("**Replacement Account Manager**") on the same requirements set out in Clause 7.1.
- 7.3 Any notices, information, instructions or any other communication given to the Account Manager or the Replacement Account Manager shall be deemed to have been given to the Agency.
- 7.4 The Account Manager or the Replacement Account Manager shall be available to meet the Company at all reasonable times and shall provide such written reports as the Company may reasonably request.
- 7.5 The Agency shall place a representative of the Agency ("**Agency Representative**") on the Site where reasonably required by the Company in writing. The Company shall provide the Agency Representative suitable work area.
- 7.6 The Agency Representative shall:-
- 7.6.1 successfully complete the Company's training as reasonably required by the Company); and
- 7.6.2 hold relevant Health and Safety qualifications to provide training to the Agency Workers when necessary.
- 7.7 The Company and the Agency shall review the KPIs and the financial performance via the Operations Review Meetings.

## **8. TERMINATION OF AN ASSIGNMENT; ABSENCE**

- 8.1 The Company may terminate an Assignment at any time without prior written notice.
- 8.2 If the Company reasonably considers that the services of any Agency Worker are unsatisfactory, the Company may terminate that Agency Worker's Assignment immediately without prior written notice, either by instructing the Agency Worker to leave the Assignment immediately, or by directing the Agency to remove the Agency Worker immediately.
- 8.3 Where the Agency terminates an Agency Worker's Assignment due to performance, attendance, attitude of the Agency Worker or other reasonable circumstances that seriously affect the Assignment, and which would require disciplinary action against the Agency Worker, the Agency shall notify the Company in writing of such termination as soon as reasonably practicable but no later than within two (2) Business Days of such termination.
- 8.4 If Assignment is terminated early, the Fees payable by the Company in respect of the relevant Agency Worker shall be calculated to reflect the hours actually worked by the Agency Worker.
- 8.5 The Company shall notify the Agency as soon as reasonably practicable, and in any event within two (2) hours from the beginning of an Assignment, if the Agency Worker fails to attend work.
- 8.6 The Agency shall notify the Company in writing immediately after becoming aware that the Agency Worker is unable to attend work for any reason, and provide the likely duration and the reason of the absence. The Agency shall use its best endeavours to mitigate the loss suffered by the Company due to such non-performance of the Services and if requested by the Company in writing, subject to its obligations in Clause 6, arrange for a replacement Agency Worker.
- 8.7 The Agency shall notify the Company without undue delay if it receives or otherwise obtains information which gives it reasonable grounds to believe that an Agency Worker supplied to the Company is unsuitable for the Assignment, and shall terminate the Assignment immediately.

## **9. COMPLAINTS PROCEDURE**

- 9.1 The Parties shall deal with any complaints relating to this Agreement, received from whatever source, in a prompt, courteous and efficient manner.
- 9.2 The Agency shall maintain Complaint and Grievance policies in compliance with Applicable Laws.
- 9.3 The Parties shall notify the other party in writing without undue delay of all complaints (including any Trade Union complaint, involvement or action) received and of all steps taken in response.
- 9.4 The Agency shall keep accurate written records in accordance with this Clause 9 and Clause 12.1, of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Company, its agents or advisors, at all reasonable times.

## **10. TIME SHEETS**

- 10.1 At the end of each week of an Assignment, or if an Assignment has been terminated earlier, at the end of such Assignment, the Company shall, via the agency management system, for each Agency Worker, verify the number of hours worked by that Agency Worker.
- 10.2 The Company's verification of the time sheet will be confirmation of the number of hours worked by each Agency Worker. If the Company does not verify the time sheet because it disputes the number of hours claimed, the Company will inform the Agency as soon as reasonably practicable but no later than by the end of the following Business Day and will co-operate fully and promptly with the Agency to establish what hours, if any, were worked by the Agency Worker.

10.3 Any failure by the Company to verify the time sheet will not absolve the Agency's obligation to pay the Agency Worker in respect of the hours actually worked the Agency Worker, as required in Clause 6.6 of this Agreement.

## 11. FEES, VAT AND PAYMENT

11.1 The Fees comprise all employments costs including :-

11.1.1 the agreed hourly Fees in respect of each Agency Worker for all hours worked by that Agency Worker;

11.1.2 the Agency Worker`s holiday pay;

11.1.3 National Insurance contributions in relation to the Agency Worker;

11.1.4 the Agency`s commission;

11.1.5 any travel or other expenses agreed by the parties in advance in writing.

11.1.6 Apprenticeship levy (if any)

11.1.7 Pension contribution ( if any)

11.2 The Fees are exclusive of VAT. Where applicable, the Agency shall provide to the Company a valid VAT invoice.

11.3 The Company shall not be entitled to decline to pay the Fees in relation to an Agency Worker on the ground that it is dissatisfied with the Agency Worker`s work.

11.4 The Company shall not be obliged to pay the Fees for any absences of an Agency Worker other than the Fees set out in Clause 11.1.2.

11.5 The Parties acknowledge that the Fees set out in Schedule 3 (Fees) comprise the full agreement between the Parties in relation to the rates of the Fees, and the rates are an accurate description of the agreement between the Parties.

11.6 Any amendments to the Fees, including amendments initiated by either Party due to changes in Applicable law, shall be agreed by the Parties in writing prior to its occurrence and shall be subject to Clause 23.5 (Variation). If the Parties cannot reach agreement in relation to the amended Fees within ten (10) Business Days from the date of receiving a written notice of request in relation to amendment of the Fees, Clause 22 shall apply.

11.7 If the Company requests the Agency to provide services beyond the scope of this Agreement, the Agency shall provide written quotation for its Fees for such services and the Agency shall not commence the services prior receiving a written consent from the Company, such consent shall be subject to Clause 23.5 (Variation).

11.8 If the Company cancels an Assignment after requesting the Agency to supply an Agency Worker but before the Agency Worker has commenced the Assignment, the Company shall not be liable for any Fees.

11.9 Without prejudice to any other provisions of this Agreement, where an Agency Worker has been on Assignment with the Company for a period of eight (8) weeks commencing on the day after the day on which the Agency Worker last worked for the Company or fourteen (14) weeks commencing on the first day on which the Agency Worker, having been supplied by Agency worked for the Company, the Company may at its sole discretion but providing reasonable notice to the Agency in advance) offer employment to such Agency Worker, without any liability to pay any fees to the Agency.

- 11.10 The Parties shall issue a valid invoice, via the agency management system specified by the Company, weekly in arrears. The Agency shall provide the Company with a Purchase Order number. The invoice shall be accompanied by a report reasonably required by the Company from time to time.
- 11.11 The Company shall pay the undisputed invoice or the undisputed part of the invoice within sixty three (63) days from the date of a validly submitted invoice. The disputed amount or part of it as agreed by the parties shall be paid at the same time with the subsequent invoice.
- 11.12 The Parties shall at all times act in good faith in respect of raising and resolving any disputes in respect of the Fees and shall use all reasonable endeavours to resolve such disputes expeditiously.
- 11.13 Subject to Clause 11.11, the Company shall pay interest on the outstanding amount from the due date to the date of payment at a rate equal to two (2)% above the base lending rate of National Westminster Bank plc from time to time (whether before judgment or after). The Parties agree that this Clause 11.13 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

## **12 AUDIT**

- 12.1 For a period of at least six (6) years (or for any longer period required by Applicable Laws or as agreed between the parties in writing) after the expiry or termination of this Agreement, the Agency shall maintain and retain complete and accurate records of and supporting documents for all transactions, work and activities relating to this Agreement, including but not limited to accurate records of, and supporting documents for, invoices submitted to the Company; recruitment packs and health and safety documents.
- 12.2 Subject to Clause 9.4, from time to time after the Commencement Date, but not more than three (3) times in each Contract Year, the Company, (including its internal or external audit representatives), at its expense, has the right, (subject to not less than five (5) Business Days' prior written notice to the Agency) to perform audits and inspections of the Agency to:-
- 12.1.1 examine the Agency's performance in relation to the Services and compliance with its obligations under this Agreement including but not limited to verifying compliance with the KPIs and the financial provisions; and
- 12.1.2 carry out any other audit relating to the Services to the extent required pursuant to Applicable Laws.
- 12.3 On completion of an audit, the Company shall procure that the audit representative prepares a written audit report detailing the findings. The Parties shall proceed diligently to resolve any issues raised in any such audit report. If there is a dispute in relation to the audit report, then such dispute will be referred to Dispute Resolution Procedure in accordance with Clause 22 of this Agreement.
- 12.4 For the avoidance of doubt, neither the Company nor its auditors have the right to access any information or data which does not relate to the Agency or the Services, including all information which is confidential to the Agency's other customers.

## **13. ACCESS TO THE COMPANY'S PREMISES**

- 13.1 Subject to Clauses 13.2 to 13.4 (inclusive), the Company shall provide access to the Company's premises only to the extent the Agency reasonably require to fulfil its obligations under this Agreement.
- 13.2 The Agency shall, and shall procure that its employees, agents, sub-contractors, and the Agency Workers shall at all times:-

- 13.2.1 comply with all security requirements of the Company, including but not limited to providing identity details, submitting to security checks upon request and complying with rules relating to security passes;
  - 13.2.2 properly use the time and attendance system in place at the Site; and
  - 13.2.3 obtain the prior written authorisation of the Company (to be given at its absolute discretion) prior inviting or taking any person to the Site other than the Agency Worker, the Account Manager, the Replacement Account Manager and the Agency Representative of this Agreement.
- 13.3 The Company shall inform the Agency as soon as reasonably practicable but no later than 3 (three) Business Days after become aware of any failure by any Agency employee, agent, sub-contractor, or Agency Worker to comply with the provisions of this Clause 13.
- 13.4 The Company reserves the right to refuse admission to or require removal of any person any of the Company's premises who is considered unacceptable for any reason, as the Company may at its sole discretion determine.

## 14 CONFIDENTIALITY

### 14.1 Each Party warrants to the other that:-

- 14.1.1 it will keep the Confidential Information (including confidential information disclosed before signing this Agreement, whether or not, separate Confidentiality Agreement has been signed by the Parties) of the other Party ("**Supplying Party**") confidential and secret;
- 14.1.2 only use the received Confidential Information ("**Receiving Party**") for the purpose of and for performing the obligations under this Agreement;
- 14.1.3 inform its officers, employees and agents of the confidential obligations under this Agreement, and ensure that its officers, employees and agents meet these obligations;
- 14.1.4 not to disclose the Confidential Information to another party not subject to this agreement other than its Affiliate, parent company, auditors (whether internal or external) and for the purposes of taking legal advice, without the other Party's prior written consent.

### 14.2 The obligations of Clause 14.1 shall not apply to any information which:-

- 14.2.1 lawfully obtained after the Commencement Date, free of any duty of confidentiality otherwise than directly or indirectly from the other party;
- 14.2.2 necessarily disclosed pursuant to a statutory obligation;
- 14.2.3 disclosed to the Recipient Party's professional advisors, auditors and bankers under terms of confidentiality; or
- 14.2.4 was known to or in the possession of the Receiving Party (other than as a result of a breach of this Agreement) before it was provided to the Receiving Party by the Supplying Party;
- 14.2.5 is, or becomes, publicly available through no fault of the Receiving Party;
- 14.2.6 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;

- 14.2.7 was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
- 14.2.8 is required to be disclosed by order of a court of competent jurisdiction.
- 14.3 Each of the parties shall notify the other party promptly of any unauthorised use or disclosure of the Confidential Information and will provide such assistance and co-operation as is reasonably required or requested by the other party to prevent or minimise further unauthorised uses or disclosures.
- 14.4 Each of the parties shall, on termination or expiry of this Agreement, or otherwise at the request of the other party, immediately return all documents (including copies), in whatever medium stored, held by it, or under its control, which contain any Confidential Information of the other party.
- 14.5 The Agency shall:-
- 14.5.1 only take instructions from the Company's Account Manager and shall not take instructions from any of the Company's other employees, workers, agents or sub-contractors, and the Company's customer(s) directly; and
- 14.5.2 not provide any information about Agency Workers, by any means, to any other department, employees, workers, agents or sub-contractors of the Company or to the Company's Customer(s) directly, without the express prior written consent of the Company's Account Manager.
- 14.6 Without prejudice to any other right or remedy that the Company may have, breach of Clauses 14.1 to 14.3 (inclusive) and Clause 14.5 shall be considered material breach of this Agreement which is incapable of remedy, and shall provide the Company the right to terminate this Agreement immediately, according to Clause 2.4.1.
- 14.7 The obligations set out in this Clause 14 shall survive termination or expiration of this Agreement for a period of six (6) years.
- 14.8 Except as otherwise set out in this Agreement, no announcement, circular, advertisement or other publicity in connection with the Company or this Agreement, its subject matter or any ancillary matter shall be made or issued by or on behalf of the Agency without the prior written consent of the Company.

## 15 DATA PROTECTION

- 15.1 For the purpose of this Clause 15, the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Data Protection Impact Assessment**", "**Personal Data Breach**", "**Processing**", and "**Sensitive Personal Data**" shall have the meaning given to those terms in the Data Protection Laws, and "**Process**" and "**Processed**" shall be construed accordingly.
- 15.2 This Clause 15 is in addition to, and does not relieve, remove or replace, the Parties respective obligations under the Data Protection Laws.
- 15.3 The Parties acknowledges and agrees that Schedule 4 (**Data Protection Particulars**) is an accurate description of the Data Protection Particulars.
- 15.4 The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives, and share Personal Data with their Affiliate, group companies and other relevant parties, within or outside of the country of origin in order to carry out the activities (in their respective capacities as Data Controllers) in relation to this Agreement. The Parties shall Process such Personal Data in accordance with their privacy policies and Data Protection Laws.

15.5 The Agency shall, before providing Personal Data to the Company in accordance with Clause 6.2 inform the Agency Worker in writing that the Company will be holding the Agency Worker's Personal Data; and provide the Agency Worker with a copy of the Company's Data Protection Privacy Notice.

**15.6 The Agency, as a Data Controller, shall:-**

15.6.1 where required to do so make notifications to any relevant Regulator in relation to its Processing of the Personal Data, such notification shall not be made without the Company's prior written consent;

15.6.2 ensure that it is not subject to any prohibition or restriction which would prevent or restrict it from disclosing or transferring the Personal Data to the Company; granting the Company access to the Personal Data and/or prevent or restrict the Company from Processing the Personal Data;

15.6.3 ensure that all data processing notices have been given, and if required consents obtained to enable the Company to Process Personal Data under this Agreement;

15.6.4 ensure that Personal Data can be disclosed to and transferred to the Company's Affiliates, to the Company's Customers; their employees, contractors, workers and auditors, to the extent that allows the Company to comply with its obligations in relation to its Customer Agreements;

15.6.5 ensure that all Personal Data disclosed or transferred to, or accessed by, the Company is accurate, up-to-date, adequate, relevant and not excessive;

15.6.6 maintain technical and organisational security measures sufficient to comply with Data Protection Laws; and

15.6.7 not do anything which shall damage the reputation of the Company.

**15.7 The Parties in their respective capacities as Data Processor shall:-**

15.7.1 co-operate with the other party in order to enable the other party to comply with its obligations under Data Protection Laws;

15.7.2 implement and maintain appropriate technical and organisational measures against unauthorised and unlawful processing of Personal Data and against accidental loss and destruction of or damage to Personal Data;

15.7.3 immediately upon notification by the other party, take all appropriate action to enable the other party to properly comply with any request from a Data Subject in relation to access to and/or rectification or erasure of Personal Data;

15.7.4 immediately notify the other party of any data breach relating to Personal Data;

15.7.5 upon termination or expiry of this Agreement, cease Processing Personal Data and return or destroy all Personal Data and the available copies, unless it is required by Applicable Laws and/or relevant laws to retain such Personal Data; and

15.7.6 not transfer any Personal Data outside the United Kingdom.

15.8 The Agency provides a general authorisation to the Company that allows the Company to engage with sub-processors in relation to this Agreement. The Company shall ensure that the sub-processor provides protection not less than the protection required in this Agreement in relation to Processing the Personal Data.



- 15.9 Where the Company collect and/or retain Personal Data required by relevant law, the Company shall act as the Data Controller in relation to the collected and/or retained Personal Data, and shall Process Personal Data in accordance with Data Protection Laws and its respective policies.
- 15.10 The Agency shall indemnify and keep the Company indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Company where a Data Subject makes a claim or complaint with regards to the Company's actions or omissions to the extent that such actions or omissions directly result from instructions received from the Agency.
- 15.11 The Company shall, at all times during the Term of this Agreement indemnify the Agency and keep the Agency indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Company arising from any breach of the Company's obligations under this Clause 15, except and to the extent that such liability has resulted directly from instructions received from the Agency.
- 15.12 This Clause 15 shall continue in full force and effect for so long as the Parties as Data Processors Process Personal Data in relation to this Agreement.

## 16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 Except as otherwise expressly agreed in writing, any drawings, specifications, software, designs or other data (including working documents, maps and photographs) completed or provided by the Company in connection with this Agreement shall become and/or remain the property of the Company, and shall be delivered up to the Company on expiry or termination of the Agreement.
- 16.2 The Agency shall not, in connection with this Agreement use, manufacture, supply, deliver or purport to grant a licence or assign the benefit of any process, article, matter or thing, the use, manufacture, supply, delivery, licence or assignment of which would be an infringement of any patent or patent rights or any other Intellectual Property Rights of any third party, and the Agency shall indemnify and keep indemnified the Company against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Company may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this Clause 16.2.
- 16.3 Any Intellectual Property Rights developed under this Agreement shall belong to the Company, unless they reproduce any existing copyright or other intellectual property right in the work or a substantial part of the work.
- 16.4 All Intellectual Property Rights in relation to the training manuals, materials, processes, instructions or other documents supplied by the Company, or accessed by the Agency, the Account Manager of the Agency or any Agency Worker in performance of this Agreement ("**Training Academy Materials**"), shall be owned by the Company or its licensors, absolutely.
- 16.5 No right or licence is granted to the Agency in respect of the Intellectual Property Rights of the Company, except the right to use the Training Academy Materials in the Agency's proper performance of the Services.
- 16.6 Except in accordance with this Clause 16 or as may be otherwise expressly agreed by the Parties in writing, neither Party shall use for its own purposes, or allow to be used, any of the other Party's Intellectual Property Rights.
- 16.7 Without prejudice to any other right or remedy of the Company, any breach by the Agency of Clause 16 shall be considered a material breach of this Agreement which is incapable of remedy, and shall give the Company the right to terminate this Agreement immediately in accordance with Clause 2.4.1.
- 16.8 Whether during the Term or thereafter, neither Party shall refer to its business connection with the other Party nor shall it use the other Party's or its Affiliates' names, trade marks, trade names or logos or any other material indicating any connection with the other Party or any of the other

Party's Affiliates in any of its documentation, including customer lists, without the prior written consent of the other Party, such consent not to be unreasonably withheld.

## **17 TUPE**

- 17.1 In the event of this Agreement expiring or being terminated (howsoever arising) and/or that this Agreement gives rise otherwise to a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE Regulations**"), the Agency shall, from the date notice to terminate of this Agreement has been served until the date of termination of this Agreement:-
- 17.1.1 not make, propose or permit any increase in the remuneration or other change in the terms and conditions of any Agency Workers under this Agreement, without the Company's prior written consent (such consent not to be unreasonably withheld);
- 17.1.2 not transfer any of the Agency Workers to another part of its business or assign Agency Workers who have not been previously engaged under this Agreement, without the Company's prior written consent (such consent not to be unreasonably withheld).
- 17.2 The Agency shall comply with all of its obligations under the TUPE Regulations, in particular (but not limited to) those obligations under regulations 11, 13 and 14 of TUPE.
- 17.3 The Agency shall indemnify and keep indemnified the Company and any subsequent Agency supplier from and against all costs (including legal costs), expenses, claims, demands, proceedings and judgments ("**Losses**") in connection with, or as a result of any claim by any of the Agency Worker arising from, or connected with:-
- 17.3.1 any failure to comply with the obligations set out in Clauses 17.1 and 17.2;
- 17.3.2 non-disclosure of any contract of employment, engagement or collective agreement to the Company in relation to the transfer;
- 17.3.3 the employment of any Agency Worker with the Agency on or before the transfer date; and
- 17.3.4 any failure by the Agency to comply with any of its legal obligations in respect of the Agency Workers or any other employees.
- 17.4 The Agency shall indemnify and keep indemnified in full the Company and any subsequent Agency supplier from and against any and all Losses arising from or in connection with the transfer of employment or engagement of any person other than the Agency Workers to the Company and any subsequent supplier.
- 17.5 The Agency shall provide all reasonable assistance to the Company and any subsequent supplier in defending any claim in relation to Clauses 17.3 and 17.4, and shall provide all relevant documents and information relating to such Agency Worker.

## **18 ANTI-BRIBERY AND CRIMINAL FINANCES ACT**

- 18.1 The Agency shall ensure that it, and shall procure that its employees, agents, servants or sub-contractors or any other person acting on its behalf does not, by any act or omission, place the Company in breach of any applicable Bribery Laws (that shall include but not limited to the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010) and engage in or commit or an act prohibited under the Criminal Finances Act. The Agency shall comply with all applicable Bribery Laws at all times and the Criminal Finances Act, and ensure that it has in place adequate procedures to prevent any breach of this Clause 18 and ensure that all of the Agency's employees, workers, contractors, subcontractors, suppliers, agents, other intermediaries of the Agency, and each person employed by or acting for or on behalf of any of those persons, comply with this Clause 18.

- 18.2 Without limitation to Clause 18.1, the Agency shall not make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 18.3 The Agency shall immediately notify the Company as soon as it becomes aware of a breach or possible breach of any of the requirements in this Clause 18 and respond promptly to any enquiries made by the Company regarding any breach, potential breach or suspected breach of this Clause 18 and shall co-operate with any investigation and shall allow the Company to audit its books, records and any other relevant documentation in connection with such breach.
- 18.4 The Agency shall indemnify the Company against any loss sustained by the Company as a result of any breach of this Clause 18.
- 18.5 Any breach of this Clause 18 by the Agency shall be deemed a material breach of this Agreement that is not remediable and entitle the Company to immediately terminate this Agreement.

## **19 INSURANCE**

- 19.1 During the term of this Agreement and for a period of six (6) years thereafter, the Agency shall maintain in force with a reputable insurance company, insurance to adequately cover the Agency's liability under this Agreement, including but not limited to Driver negligence cover for an amount of not less than ten thousand pounds sterling (£10,000.00) , professional indemnity insurance for an amount of not less than five million pounds sterling (£5,000,000), and shall on the Company`s request, produce both the insurance certificates giving details of the cover and the receipts for the current year's premium.
- 19.2 During the term of this Agreement, the Company shall maintain in force with a reputable insurance company, insurance to adequately cover the Company`s liability under this Agreement, and adequate employer`s and public liability insurance cover for the Agency Worker during all Assignments.
- 19.3 Neither the Company nor the Agency shall do anything or omit to do anything which might render such insurances void or voidable.

## **20 LIABILITY AND INDEMNITY**

- 20.1 Notwithstanding any contrary provision in this Agreement, neither Party shall limit or exclude liability in respect of:-
- 20.1.1 death or personal injury caused by its negligence; or that of its employees, agents, workers or sub-contractors; or
  - 20.1.2 for fraud or fraudulent misrepresentation by it or its employees, agents, workers or sub-contractors ; and
  - 20.1.3 any statutory or other liability which cannot be excluded or limited under Applicable Laws.
- 20.2 The Company shall indemnify, and keep indemnified the Agency from and against all claims and losses arising from loss, damage, liability, injury to the Agency, arising out of, connected with, or resulting from, a breach or alleged breach by the Company, its sub-contractors or any other intermediaries, of Regulation 5 of the AWR except to the extent that the failure arises from a failure or omission by the Agency to comply with their obligations in Clause 6.2.5, or Applicable Laws.

- 20.3 The Agency shall indemnify and hold harmless the Company from and against all claims and losses arising from loss, damage, liability, injury to the Company, its employees, agents, sub-contractors and third parties, by reason of or arising out of:
- 20.3.1 any loss, injury, expense or delay suffered or incurred by an Agency Worker, however caused; and/or
  - 20.3.2 any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of an Agency Worker, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; and
  - 20.3.3 any loss, injury or delay suffered or incurred by the Company as a result of any act or omission of the Agency, that arises directly or indirectly out of or is in any way connected with the relevant Assignment, any information supplied by the Agency to the Company or the Agency's breach of this Agreement.
  - 20.3.4 In relation to this Clause 20, 'Claims' will mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' will mean all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.
- 20.4 Neither Party will be liable to the other Party in contract, tort, negligence, breach of statutory duty nor otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- 20.5 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 20 is held to be invalid under any Applicable Law, it shall, to that extent, be deemed omitted. If any Party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this Clause 20.
- 20.6 Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.
- 20.7 In the event that either Party receives an allegation by any Agency Worker that there has been a breach of the AWR in relation to this Agreement, and whether or not, that allegation has been made as a request for information under Regulation 16 of the AWR or otherwise, or the Agency Worker brings, or threatens to bring a claim under the AWR, it shall provide a copy of that allegation to the other Party immediately, but no later than within 2 (two) Business Days of receipt of such copy of allegation. The Parties shall co-operate in good-faith with each other in relation to responding to that allegation.
- 20.8 The provisions of this Clause 20 shall survive termination of this Agreement.

## **21 WARRANTIES AND UNDERTAKINGS**

- 21.1 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.
- 21.2 Each Party warrants that it has full capacity and authority to enter into and perform this Agreement.
- 21.3 The Agency warrants that it has the necessary expertise to provide the Services and will comply with Applicable Laws.

- 21.4 The Agency shall be responsible for providing to HMRC (or any successor or replacement authority) all information required as and when necessary in connection with the proper operation of PAYE in respect of each Agency Worker (including but not limited to Real Time Information reporting obligations).
- 21.5 The Agency shall procure that no Agency Worker introduced or supplied by the Agency is subject to the managed service company rules as defined in the Income Tax (Earnings and Pensions) Act 2003, section 61B (1).

## **22. DISPUTE RESOLUTION PROCEDURE**

- 22.1 The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.
- 22.2 If, during the term of this Agreement, a dispute arises relating to any matter, and the parties cannot reach agreement at local operational management level between the Agency Representative and the Company's Account Manager within 7 days, or within 10 Business Days under Clause 11.6, the unresolved matter will be escalated:-
- 22.2.1 by referral in writing in the first instance to a Director of the Company and the Account Manager of the Agency;
- 22.2.2 if a dispute is not resolved within seven (7) days of its referral under Clause 22.2.1 or such longer period as agreed between the parties at the time, the Parties shall refer the dispute to the Chief Executive Officer (or equivalent) of each party;
- 22.2.3 if a dispute is not resolved within seven (7) days of its referral pursuant to Clause 22.2.2 or such longer period as agreed between the parties at the time, subject to Clauses 22.3 and 22.4 either party may by notice to the other party issue proceedings according to Clause 22.3.
- 22.3 If parties failed to agree on resolution of the dispute pursuant to Clause 22.2, either party may refer any dispute for mediation to the (Centre for Effective Dispute Resolution) CEDR, or any other Dispute Resolution Centre, as agreed by the Parties in writing. The parties shall co-operate in good faith with the CEDR or any other Dispute Resolution Centre and the mediator.
- 22.4 Neither the Agency nor the Company shall be prevented from or delayed in seeking alternative relief in circumstances where immediate or timely relief is absolutely necessary.

## **23 GENERAL**

### **23.1 Entire Agreement**

This Agreement contains the whole agreement between the Parties in respect of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

### **23.2 Notices**

All notices to be given under this Agreement must be in writing in English and left at or sent by first class registered or recorded delivery mail or equivalent to the following address: **The Company Secretary, xxxx** and to the Agency's address as set out in Part 1 (Appointment Terms) of this Agreement or such other address as the recipient may have communicated to the sender from time to time. Notices shall not be validly served by email. Any notice is treated as having been given:-

- 23.2.1 where it is left and signed for at the addressee's address, at the time it is left;

23.2.2 where it is sent by mail, on the second Business Day after it has been properly posted, and a signature to confirm receipt obtained.

### **23.3 Force Majeure**

Neither Party will have any liability under nor be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause delay or failure in performance and when they cease to do so. Where the Agency claims to rely on this Clause 23.3, the Company may appoint an agency other than the Agency to provide same or similar Services as the services provided under this Agreement. If Force Majeure continues for a continuous period of more than 1 month either Party may terminate this Agreement immediately by written notice to the other Party.

### **23.4 Cumulative Remedies**

Except as otherwise expressly provided in this Agreement, remedies provided under this Agreement will be cumulative and in addition to, not in lieu of, any other remedies available to either Party at law, in equity or otherwise. Each Party agrees that damages alone may not be an adequate remedy for the breach of certain provisions of this Agreement and accordingly that, without prejudice to any other rights and remedies available to it, each Party will be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement by the other.

### **23.5 Variation**

This Agreement may only be varied by a document signed by duly authorised representatives of both Parties and expressly incorporating the terms of this Agreement as varied into that document. To be effective, such document must be signed by a Director or Company Secretary of the Company, and a Director or Company Secretary of the Agency.

### **23.6 Assignment and Sub-contracting**

The Agency shall not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written consent of the Company.

### **23.7 Agency, partnership, etc.**

This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary, employer and employee relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement; or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

### **23.8 Waiver**

A delay in exercising or failure to exercise a right or remedy under or in connection with this Agreement shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it is given and shall not constitute a waiver of any other right, remedy, breach or default.

### **23.9 Third Parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement, this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

### **23.10 Invalidity**

If any provision in this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

### **23.11 Applicable Law and Jurisdiction**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of England and Wales. The parties submit to the exclusive jurisdiction of the English courts.

### **23.12 Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

### **23.13 Execution**

This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, each of which when so executed shall be an original, but all counterparts shall together constitute one and the same instrument.

..... Signed on behalf of <b>Company Name</b> Name:..... (In block capitals) Date: .....	..... Signed on behalf of <b>Customer Name</b> Name: ..... (In block capitals) Date: .....
<b>Position:</b> .....	<b>Position:</b> .....



## **SCHEDULE 1**

### **SERVICES**

#### **1. The Service**

The Agency shall at its own cost install and manage the agency management system specified by the Company to manage the vacancy, booking, timesheet and invoicing processes on behalf of the Company.

The Agency will put in place an account management team that will be responsible for the implementation of service. The team will also be responsible for developing and maintaining the relationship with the Company.

The Agency will operate the following quality measures as a minimum:

- make available back-up, replacement and support personnel whenever necessary;
- ensure that there are properly organised and efficient systems and processes in place between the Agency and any permitted sub-Agency to enable full understanding and agreement concerning the Services which are to be provided and the necessary liaison with the Company;
- enable a quick response to the Company's requests or requirements for the Services and matters associated with the Services, including but not limited to attendance at meetings and requests for information;
- ensure compliance with all contractual timescales and all other reasonable response times;
- maintain and monitor all contractual or relevant key performance indicators;
- check that information, data or software supplied pursuant to this Agreement is fit for the purpose for which the Company intends to use it;
- deal properly with any potential conflicts of interest; and
- keep the Company informed about progress in the provision of the Services.

The Agency will be expected to manage the following activities:

- filling temporary bookings;
- adhering to the agreed selection criteria for all Agency Workers. The selection criteria will be based upon the needs of each role along with a quality checking criteria. The Agency will undertake regular audits to monitor the permitted sub-Agency's quality checking of Agency Workers;
- managing sickness and holiday cover for the Agency Workers;
- managing the timesheet process;
- dealing with, and supporting the Company's Account Manager, in dealing with any performance issues of the Agency Worker. The Agency's Account Manager will liaise with the Agency Worker to help resolve any issues;
- attending the Agreement and service reviews with the Company;
- provide management information and reports;

#### **2. The Company's commitments**

In addition to the Company's obligations elsewhere in this Agreement, the Company will be expected to:

- give feedback on CVs within 3 Business Days;
- give feedback on interviews within 3 Business Days;
- notify the Agency as soon as possible of any requirement to cancel a recruitment order in respect of an Agency Worker.

### 3. Operation Review Meetings

Meeting frequency	Attendees
Annual Contract Reviews	Account Managers, Director
Six Monthly Review	Account Managers; Director
Quarterly Reviews	Account Managers; Director
Monthly Reviews	Account Managers

### 4. Agency Workers

#### 4.1 Bookings

The Agency will ensure that new recruitment orders are entered appropriately on to the agency management system and upload the details of suitable Agency Workers.

#### 4.2 Management of the Agency Workers

The Agency will procure that regular progress checks are undertaken with each Agency Worker to ensure that the Agency Worker meets the Company's Account Manager's expectations as part of the audit process.

#### 4.3 Selection process for Agency Workers

**4.3.1 Checking identity:** Potential Agency Workers must be interviewed face-to-face where possible, this can include video interviewing via e.g. Skype. If not possible, a telephone interview must take place. Interviews must be conducted by suitably trained and experienced interviewers. This is to ensure that potential Agency Workers are suitable for the position applied for and that they meet the requirements of the relevant role specification. All interview feedback will be made available to the Company.

#### 4.3.2 Suitability of the Agency Worker:

- Where the Agency Worker is required by law or by any professional body to have any experience, training, qualifications or authorisations (or where the Company considers that any experience, training, qualifications or authorisations are necessary, as notified to the Agency) to work on the Assignment, the Agency will use its best endeavours to obtain and offer to provide to the Company details and/or copies, as appropriate, of any such experience, training, qualifications or authorisations of the Agency Worker.
- If no previous employer is able to provide references, the Agency must try to obtain two references from educational establishments, professional individuals and/or from organisations where the Agency Worker has been employed in a voluntary capacity.
- In addition, the Agency will take such other reasonably practicable steps as are required to confirm that the Agency Worker is suitable for the Assignment.
- If the Agency has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully, the Agency shall inform the Company of the steps taken to obtain this information in any event.

#### **4.4 Right to work checks:**

All Agency Workers must be eligible to work in the UK. The Agency is expected to use its best endeavours not to introduce to the Company any Agency Worker who does not have the right to work in the UK.

The Agency must confirm the eligibility to work in the UK of an Agency Worker by:-

- (i) checking and
- (ii) taking photocopies of the original appropriate documentation before introducing the Agency Worker to the Company.

“Appropriate documentation” means the documents listed in the then current Home Office guidance and/or Applicable laws and/or relevant legislation as being acceptable for the purposes of claiming a defence against any breach of the immigration rules.

#### **4.5 Health declaration:**

Where appropriate and where not prohibited by relevant law, a health declaration questionnaire for Agency Workers will be completed and returned for every agency worker at an appropriate time during the recruitment process.

## SCHEDULE 2

### KEY PERFORMANCE INDICATORS (KPIs)

<b>Service</b>	<b>Performance standard</b>
Orders placed with 24 hours notice will be fulfilled	90% minimum measured daily
Invoicing accuracy	Accurate weekly invoicing of correct headcount and hours
Retention of staff	75% retention of agency colleagues
Access to information as requested from time to time by the Company's Account Manager. This will include, but not be limited to, equal opportunities reporting on Agency Workers, cost savings and spend reports.	Standard reports – immediately. Non-standard reports – 72 hours.
Induction.	The Agency's Account Manager or the Agency Representative will meet all new starters to conduct a meet and greet, show the facilities etc. Health and safety will remain the Company's responsibility.

## **SCHEDULE 3**

### **FEES**

As per the table below:

## SCHEDULE 4

### DATA PROTECTION PARTICULARS

The subject matter and duration of the Processing	The subject matter of the Data Processing is to process Personal Data of each Agency Worker under this Agreement during the continuance of this Agreement and thereafter if required by Applicable Law and/or the Company policy.
The nature and purpose of the Processing	<p>The nature of the processing activity are include disclosure, alteration, transfer, and retain of Personal Data.</p> <p>The purpose of the processing activity is to comply with Health &amp; Safety and any other Applicable Laws in relation to Agency Workers.</p>
The type of Personal Data being Processed	<p>Names, payroll numbers of the Agency Workers provided by the Agency to the Company.</p> <p>Personal and Special Categories of Personal Data collected by the Company: name, photo, video records, start date, leaving date, reason of leaving, working hours, test results (in relation to <b>Training records</b>), address, medical details, gender, age, date of birth, work status, employer, job title, incident date, time, location, description of an injury, statements, (in relation to <b>Incident or accident reports</b> ) medical reports, medical data (in relation to <b>medical surveys</b>): Hearing, lung function, and dose monitors (links to chronic industrial injuries)</p> <p>Names, email addresses, phone numbers, and work addresses of the employees, workers, agents, or sub-contractors of the Agency.</p>
The categories of Data Subjects	The Agency Workers, and employees, workers, agents, or sub-contractors of the Agency.

**SCHEDULE 5**

**ORDER FORM**

Date of Order: [.....]

In accordance with Clause 2.10 of the Agreement for the Supply of Recruitment Services dated on [.....] (**the Agreement**), this Order Form forms a separate agreement between the Parties that fully incorporates the terms of the Agreement. By acceptance of this Order, the Supplier accepts the terms of the Agreement whether or not, this Order Form has been signed by the Supplier.

To the extent there is any inconsistency or conflict between any of the provisions of this Order Form and the Agreement, the following order of precedence shall apply: this Order Form, Part 1 (Appointment Terms), Part 2 (Agreement Terms), Schedules and the Annex.

Site		
Start date		
Duration of the Assignment	Ad hoc	
Job role	Ad hoc Labour Supply	
Responsibilities	Labour Duties	
Working hours	Defined my depot	
Experience	Over 1 year	
Training and Qualification	Licensed as required	
Authorisation	LP Procurement Team/Depot Operations	
Health and Safety risks	In line with role	
Payment details	As per agreement	

<p>..... Signed on behalf of <b>[insert Company`s name]</b></p> <p>Name:.....</p> <p>(In block capitals)</p> <p>Date: .....</p> <p><b>Position:</b> .....</p>	<p>..... Signed on behalf of <b>[insert Supplier`s name]</b></p> <p>Name: .....</p> <p>(In block capitals)</p> <p>Date: .....</p> <p><b>Position:</b> .....</p>
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**ANNEX 1**

**VOLUME AND SITE ALLOCATION**

**Ad hoc supply of temporary labour**