**MANAGED SERVICES AGREEMENT**

**AGREEMENT NUMBER** **[insert Agreement Number]**

**BETWEEN**

**[CLIENT NAME]**

**AND**

**[MANAGED SERVICES PROVIDER NAME]**

**DISCLAIMER**

**APSCo model agreements are not specifically tailored for any particular sector or provision of services. APSCo members should not merely duplicate the contents, APSCo members should consider its suitability for their business purposes, seeking further legal advice as necessary.**

**The contents of this model agreement are accurate to the best of our knowledge at the time of publication. It should be remembered that the legislation and interpretation of it through the courts changes frequently and we would recommend members regularly review the contracts they use.**

**Whilst this model agreement has been prepared with due care and attention, neither APSCo nor WTT Legal Limited can be responsible or held liable for any losses howsoever arising from its use. APSCo and WTT Legal Limited make no representations or warranties of any kind, express or implied about the completeness, accuracy, reliability or suitability of this model agreement.**

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**CONTENTS**

[1. DEFINITIONS 3](#_Toc94267472)

[2. TERM 9](#_Toc94267473)

[3. PROVISION OF SERVICES 9](#_Toc94267474)

[4. OBLIGATIONS OF MSP 10](#_Toc94267475)

[5. OBLIGATIONS OF CLIENT 12](#_Toc94267476)

[6. FEES and PAYMENT 15](#_Toc94267477)

[7. PERSONNEL 17](#_Toc94267478)

[8. TRANSFER REGULATIONS 18](#_Toc94267479)

[9. INTELLECTUAL PROPERTY 18](#_Toc94267480)

[10. CONFIDENTIALITY AND PUBLICITY 20](#_Toc94267481)

[11. WARRANTIES AND REPRESENTATIONS 20](#_Toc94267482)

[12. ASSIGNMENT AND SUB-CONTRACTING 21](#_Toc94267483)

[13. INDEMNIFICATION AND LIMIT OF LIABILITY 21](#_Toc94267484)

[14. INSURANCE 22](#_Toc94267485)

[15. TERMINATION 22](#_Toc94267486)

[16. AUDIT 23](#_Toc94267487)

[17. DATA PROTECTION 23](#_Toc94267488)

[18. NON-SOLICITATION 23](#_Toc94267489)

[19. SEVERABILITY 24](#_Toc94267490)

[20. NOTICES 24](#_Toc94267491)

[21. ANTI-BRIBERY 24](#_Toc94267492)

[22. WAIVER 25](#_Toc94267493)

[23. FORCE MAJEURE 25](#_Toc94267494)

[24. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 25](#_Toc94267495)

[25. NO EMPLOYEE RELATIONSHIP OR PARTNERSHIP 25](#_Toc94267496)

[26. DISPUTE RESOLUTION PROCEDURE 26](#_Toc94267497)

[27. CHANGE CONTROL PROCEDURE 26](#_Toc94267498)

[28. MODERN SLAVERY 26](#_Toc94267499)

[29. CRIMINAL FINANCES ACT 26](#_Toc94267500)

[30. GOVERNING LAW AND JURISDICTION 26](#_Toc94267501)

[31. ENTIRE AGREEMENT 26](#_Toc94267502)

[SCHEDULE 1 - IMPLEMENTATION SERVICES 28](#_Toc94267503)

[SCHEDULE 2 - SERVICES 29](#_Toc94267504)

[SCHEDULE 3 – TRANSFER REGULATIONS 34](#_Toc94267505)

[SCHEDULE 4 – SERVICE LEVELS (SLAs) 40](#_Toc94267506)

[SCHEDULE 5 - FEES 42](#_Toc94267507)

[SCHEDULE 6 – SECOND TIER SUPPLIERS 44](#_Toc94267508)

[SCHEDULE 7 – DATA PROTECTION 45](#_Toc94267509)

[SCHEDULE 8 – CHANGE REQUEST 51](#_Toc94267510)

[SCHEDULE 9 – VENDOR MANAGEMENT SYSTEM 52](#_Toc94267511)

[SCHEDULE 10 - GOVERNANCE 53](#_Toc94267512)

[SCHEDULE 11 - CLIENT RESPONSIBILITIES 54](#_Toc94267513)

[SCHEDULE 12 – ASSIGNMENT SCHEDULE 55](#_Toc94267514)

[SCHEDULE 13 - CLIENT POLICIES AND PROCEDURES 56](#_Toc94267515)

**THIS AGREEMENT is made on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_**

**BETWEEN**

1. **[CLIENT NAME]**, a company incorporated in England and Wales under company registration number [insert registration number] and whose registered office is at [insert registered office address], (hereinafter referred to as **“Client”**) and;
2. **[MANAGED SERVICE PROVIDER NAME]**, a company incorporated in England and Wales under company registration number [insert registration number] and whose registered office is at [insert registered office address], (hereinafter referred to as **“MSP”**)

(each of the Client and MSP being a party and together the Client and the MSP are the parties).

**WHEREAS**

1. The Client conducts the business of [insert description].
2. The MSP is an experienced provider of contingent workforce managed services.
3. The Client wishes to outsource the [sourcing, administration, engagement, and management of its contingent workforce] to the MSP to act in the capacity of Master Vendor.
4. The Client’s requirements are currently provided [internally OR by an associated company] or [by insert name of existing supplier].
5. The Client has selected the MSP to provide services to the Client and the MSP has agreed to be responsible for the provision and management of the relevant part of the Client’s functions as described below, subject to the terms and conditions set out in this Agreement.

**THE PARTIES THEREFORE AGREE AS FOLLOWS:**

# DEFINITIONS

 **“Affiliate”** means in relation to the Client or the MSP, any company, partnership or other entity which from time to time controls, is controlled by or is under the common control of the Client or the MSP or any of them, and “control” means the beneficial ownership of more than 50% of the issued share capital or the legal power to direct or cause the direction of the general management of the company, partnership or other entity in question;

 **“Agency Workers Regulations”** means the Agency Workers Regulations 2010;

**“Agreement”** means these terms and conditions, the Schedules and attachments (if any) hereto as amended by agreement of both parties from time to time in writing;

**“Applicable Law”** means the laws of England and Wales, any other laws, and any policies, guidelines or industry codes made by any regulatory body having jurisdiction over a party or any of that party’s assets which apply to the provision of recruitment services, the performance of the Services, Second Tier Supplier Services and/or Contingent Worker Services;

**“Assignment”** means the Contingent Worker Services required by the Client from time to time;

**“Assignment Schedule”** means the details of an Assignment as set out in the format described in Schedule 12, or other format as agreed between the parties;

**“Authorised Representative”** means any person whom a party designates to enter into agreements or to give or receive instructions on behalf of the party;

**“Bribery Laws”** means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;

**“Business Day”** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

**“Change”** means any change to this Agreement including to any of the Services;

**“Change Control Procedure”** means the process by which a Change is agreed as outlined in Clause 27;

**“Change Request”** means the written request or recommendation by either party in the form prescribed in Schedule 8;

**“Client Responsibilities”** means the Client obligations and dependencies as described in Clause 5 and Schedule 11;

**“Client Group”** means the Client, its Affiliates and any other entity which are part of the corporate group of the Client;

**“Client Intellectual Property”** means all Intellectual Property either proprietary to the Client or its Affiliates which the Client or its Affiliates is licensed to use by third parties and which is required for use in connection with the Services or Contingent Worker Services;

**“Client Site”** means any premises of the Client Group and of any third party to which it is necessary or desirable for the MSP, Second Tier Suppliers and/or Contingent Workers to have access to for the performance of the Services and/or the Contingent Worker Services, including at the commencement of the Services the premises of the Client Group;

**“Conduct Regulations”** means the Conduct of Employment Agencies and Employment Businesses Regulations 2003;

**“Confidential Information”** means any commercial, financial or technical information, information relating to the Services or Contingent Worker Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Agreement;

**“Contingent Worker”** means a Temporary Worker or Contractor who is Introduced and/or engaged by or via the MSP from time to time to perform Contingent Worker Services;

**“Contingent Worker Fee”** means the Fee payable by the Client to the MSP for the Contingent Worker Services that are calculated in accordance with Schedule 5 plus any expenses as agreed from time to time with the Client;

**“Contingent Worker Services”** means the services set out in an Assignment Schedule to be performed by the Contingent Worker for the Client;

**“Contractor”** means an intermediary that meets the conditions of liability under the Off Payroll Working Rules and their representatives or substitutes who will perform Contingent Worker Services;

**“Contract Year”** means a period of twelve (12) months commencing on the Effective Date and/or each anniversary of the Effective Date;

**“Data Protection Laws”** means, as binding on either party or the Services:

1. the UK General Data Protection Regulation (EU 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018 (**“**UK GDPR**”**);
2. the Data Protection Act 2018;
3. any laws which implement or supplement any such laws; and
4. any laws which replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of this Agreement);

**“Deliverables”** means the agreed items including, without limitation, documents, reports, project milestones as stated within Schedule 1 or Schedule 2, that are required to be delivered to the Client as part of the Services;

**"Direct Contingent Worker”** means a Contingent Worker engaged by the MSP to perform the Contingent Worker Services and not (for the avoidance of doubt) via a Second Tier Supplier;

**“Disaster”** means a disruption to the performance of the Services (whether caused by a natural or man-made phenomenon or occurrence);

**“Disaster Recovery Plan”** means a written document detailing the procedures to be followed and actions to be taken in order to recover from a Disaster and, as far as possible, restore the Services in a timely manner such that they are performed in accordance with this Agreement;

**“Dispute Resolution Procedure”** means the process set out in Clause 26;

**“Early Termination Fee”** means the Fee payable by the Client as set out in Schedule 5 if notice is given in accordance with Clause 15.1;

**“Effective Date”** means [insert date];

**“Equipment”** means all components, materials, plant, tools, test equipment, hardware, firmware, computing and data communications equipment and any related documentation used in the provision of the Services;

**“Fees”** means the charges payable to the MSP as described in Schedule 5, or other charges as agreed between the parties from time to time;

**“Force Majeure Event”** means an event beyond the reasonable control of the relevant party including but not limited to: any act of God, flood, earthquake, windstorm, other natural disaster or extreme adverse weather conditions, war, threat of or preparation for war, armed conflict, terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination or sonic boom, epidemic and/or pandemic, fire, explosion, malicious or accidental damage, interruption or failure of utility service (including but not limited to electric power, gas or water), collapse of building structures, failure of plant, machinery, computers, vehicles or critical suppliers, any law or any action taken by a government or public authority (including without limitation imposing an export or import restriction, quota or prohibition), or any other event that is beyond the reasonable control of the party in question;

**"Gifted Contingent Worker”** means any Contingent Worker who was introduced to the MSP by the Client (and for the avoidance of doubt, not sourced or Introduced by the MSP or any Second Tier Supplier), and such Gifted Contingent Worker shall be engaged by the MSP;

**“Good Industry Practice”** means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances;

**“Implementation Services”** means the services identified as such in Schedule 1;

**“Implementation Services Date”** means the date identified in Schedule 1;

**“Implementation Services Fee”** means the MSP’s Fee for providing the Implementation Services which is payable by the Client to the MSP and calculated as set out in Schedule 5;

**“Insolvency Event”** meanscircumstances when either:

1. a receiver is appointed for either party or its property;
2. either party makes a general assignment for the benefit of its creditors;
3. either party commences or has commenced against it, bankruptcy proceedings and such proceedings are not dismissed within 90 days; or
4. either party is liquidating, dissolving or ceasing to conduct business;

**“Intellectual Property”** means all intellectual property and other rights of any kind now or hereafter existing including without limitation: service marks, registered designs, applications, trademarks, patent, trade secrets, copyrights, design and invention rights;

**“Introduced”** means the passing by the MSP to the Client of a curriculum vitae or information about the Contingent Worker or the Client’s interview of a Contingent Worker in person or by telephone or by video conference or via an internet service, whichever is earlier, and “**Introduces**”, “**Introducing**” and “**Introduction**” shall be construed accordingly;

**“Key Personnel”** means those Personnel essential to the delivery of the Services as identified in Schedule 2;

**“Know-How”** means such experience or technique which are not Intellectual Property or Software and which are used or acquired either in the performance of this Agreement or acquired prior to or outside this Agreement;

**"Loss”** means any loss, damage, liability, demand, claim, proceedings, judgement, settlement, fine, interest, penalty, award, order, cost and/or expense (including reasonable management time, legal disbursements and costs of investigation, litigation, settlement, judgement, and other professional costs and expenses), and “**Losses**” shall be construed accordingly;

**"Mark-up”** means the percentage multiplier to be added to the Rate plus Statutory Costs applicable for each Contingent Worker when performing the Contingent Worker Services in order to calculate the Contingent Worker Fee, as further described in Schedule 5.

**“Master Vendor”** means the Introduction and/or supply of Direct Contingent Workers and the management of Second Tier Suppliers who supply Contingent Workers that the MSP does not source itself within the timeframes included in this Agreement;

**“Monthly Management Fee”** means the MSP’s monthly management fee, if applicable, for the provision of its Services which is payable by the Client to the MSP and calculated as set out in Schedule 5;

**“MSP Intellectual Property”** means all Intellectual Property, Software and Know-How, either proprietary to the MSP or any of its Affiliates or which the MSP or any of its Affiliates is licensed to use by third parties, and which is used by the MSP in connection with the provision of the Services;

**“Off Payroll Working Rules”** means Chapter 10 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003 and The Social Security Contributions (Intermediaries) Regulations 2000;

**“Personal Data”** means as defined in applicable Data Protection Laws;

**“Personnel”** means the person(s), employee(s) or Sub-contractor(s) assigned by the MSP to perform the Services from time to time, including Key Personnel, but excluding any Contingent Workers;

**“Processing”** means as defined in applicable Data Protection Laws;

**“Protected Data”** means Personal Data received from or on behalf of the Client, or otherwise obtained by the MSP (or anyone acting on its behalf) in connection with the performance of the MSP’s obligations under this Agreement;

**“Purchase Order”** means a purchase order issued by the Client setting out the Services or Contingent Worker Services required by the Client;

**“Rate”** means the fee payable to a Contingent Worker for the Contingent Worker Services;

**"Relevant Period”** means the period(s) defined under regulation 10(5) of the Conduct Regulations;

**"Relevant Terms and Conditions”** means as defined within Regulation 5(2) and Regulation 6 of the Agency Workers Regulations;

**“Remuneration”** means:

(a) the aggregate gross annual taxable emoluments payable to or receivable by the Contingent Worker pursuant to their engagement by the Client or any third party other than via the MSP, including salary, bonuses, commission and allowances (including car, accommodation and/or relocation) which may be payable during the first year of the engagement; or

(b) the annualised gross fee of the Contingent Worker (where engaged by the Client or any third party other than via the MSP on a self-employed basis or in any other capacity); or

(c) where either (a) or (b) are not known, the MSP shall make a reasonable determination based on publicly available market rates and remuneration packages for the same or similar role;

**“Replacement MSP”** means any third party supplier of replacement Master Vendor services appointed by the Client from time to time;

**“Requirement”** means details of a specific vacancy for which the Client requires a Contingent Worker as set out in a format as agreed between the parties;

**“Reporting Requirements”** means the information the MSP is required to provide to HMRC under section 716B ITEPA and set out in the Income Tax (Pay as you Earn) (Amendment no. 2) Regulations 2015;

**“Role”** means a position, job, project or function to be performed by a Contingent Worker as set out in an Assignment Schedule;

**“Second Tier Supplier”** means a company engaged by the MSP to perform Second Tier Supplier Services via the MSP for the Client from time to time [OR those suppliers as listed in Schedule 6];

**“Second Tier Supplier Services”** means services provided by a Second Tier Supplier as further defined within Schedule 2;

**“Services”** means the services, functions and responsibilities outlined in this Agreement including those services, functions and responsibilities and all Termination Assistance to be performed by or on behalf of the MSP, including those set out in Schedule 2 and Services means any of such services (or part of them), but excludes the Contingent Worker Services;

**“Services Go-Live Date**” means the date on which the Services are scheduled to go live, as set out in Schedule 2;

**“Service Hours”** means the hours the Services will be provided by the MSP as set out in Schedule 2;

**“Service Levels”** means the standards to which the Services are to be performed, as specified in Schedule 4;

**“Software”** means computer programs, user manuals, specifications and other associated documentation used or issued by the MSP in relation to the Services, including the VMS;

**“Statutory Costs”** means any and all statutory costs (where applicable) at the prevailing rate(s) from time to time to engage a Contingent Worker including holiday pay (including any uplifted or increased holiday pay under the Agency Workers Regulations), sick pay, pension contributions, employer’s national insurance contributions, apprenticeship levy, any contractual entitlements due to the Contingent Worker under their contract of engagement by the MSP or any Sub-contractor, and any and all other costs and deductions that may be determined due in respect of the Contingent Worker for any Assignment;

**“Sub-contract”** means any contract between the MSP and a third party (other than an employee) pursuant to which the MSP agrees to source the performance of the Services or Second Tier Supplier Services from that third party;

**“Sub-contractor”** means those persons, agents, and sub-contractors (including a limited liability company or other body corporate) engaged by the MSP to perform the Services (or any part of them). For the avoidance of doubt, Sub-contractor(s) includes Second Tier Suppliers and Umbrella Companies but specifically excludes Contingent Workers;

**“Temporary Worker”** means a worker subject to PAYE supplied by the MSP or a Second Tier Supplier, either directly or through an Umbrella Company, to provide Contingent Worker Services to the Client;

**“Term”** means the duration of this Agreement, including the Initial Term and the Extended Term, if any;

**“Termination Assistance”** means the assistance provided to the Client or a Replacement MSP as further described in Clause 15.8;

**“Termination Assistance Period”** means the period of time during which the MSP provides Termination Assistance to the Client or Replacement MSP as set out in Clause 15.8.

**“Termination Assistance Fee”** means those Fees identified as such in Schedule 5;

**“Termination Costs”** means those Fees identified as such in Schedule 5;

**“Transfer Fee”** means a fee payable by the Client to the MSP as described in Schedule 5;

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or where applicable other equivalent local regulations;

**"Umbrella Company”** means a payroll company or employment bureau which engages or employs Temporary Workers on a PAYE basis, and who may be engaged by the MSP or by a Second Tier Supplier;

**“Vendor Management System”** or **“VMS”** means the internet-enabled, web-based application provided by the MSP that acts as a mechanism for the MSP to manage and procure Contingent Worker Services; and

**“Working Time Regulations”** means the Working Time Regulations 1998.

1.1 In this Agreement:

1. a person includes a reference to a body corporate or partnership;
2. the words “includes” or “including” will be construed without limitation to the generality of the proceeding words;
3. a reference to a gender includes each other gender;
4. words in the singular include the plural and vice versa;
5. references to statutory provisions shall be construed as references to those provisions as respectively replaced, amended, or re-enacted from time to time (whether before or after the date of the Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification), consequential amendments and any subordinate legislation made under such provisions;
6. any indemnities given under this Agreement are subject to the indemnified party using such reasonable endeavours as are appropriate to mitigate any Losses which are the subject matter of any such indemnities; and
7. either party will not unreasonably withhold or delay any consent or approval requested by the other party under this Agreement.

1.2 The headings in the Agreement do not affect its interpretation.

1.3 If there is a conflict between or among the Agreement and documents attached to and incorporated by reference, and unless the parties otherwise agree that a provision in a subordinate document shall prevail, the conflict shall be resolved as follows, solely to the extent of that inconsistency:

 1.3.1 A conflict between the terms of the Agreement and those set forth in an exhibit or hyperlink will be resolved in favour of the Agreement;

 1.3.2 A conflict between the terms of the Agreement and those set forth in a Schedule will be resolved in favour of the Schedule; and

 1.3.3 Any terms contained in a Purchase Order acknowledgement or invoice will be of no effect, even if such acknowledgement or invoice provides the MSP’s acceptance of the Purchase Order is conditioned upon Client’s agreement to the proposed terms contained in such acknowledgment or invoice.

# TERM

2.1 Unless terminated under the provisions of Clause 15, the term of this Agreement is [ X months/years] (**“the Initial Term”**) from the Effective Date.

2.2 This Agreement shall be automatically renewed for an additional [one (1) year] term (**“the Extended Term”**) unless [ninety (90) days] prior to the end of the Initial Term or then-current Extended Term one party gives notice to the other party of its election not to renew the Agreement.

2.3 The MSP shall be the exclusive MSP to the Client of the Services [OR list category or description of the Services]. During the Initial Term, the Client shall not purchase, directly or indirectly, any services which are the same as or similar to the Services [OR any Services of the type described in this Clause 2.3] from any other person or company during the Initial Term.

2.4 Nothing in this Agreement shall restrict the MSP from supplying any services which are the same as or similar to the Services to other clients or customers.

2.5 Each Assignment shall commence on the start date specified in the Assignment Schedule, or upon the date that the Contingent Worker commences the Contingent Worker Services, whichever is earlier. Such Assignments shall continue until expiry or termination in accordance with Clause 15.

# PROVISION OF SERVICES

3.1 The Client has appointed the MSP to provide the Services and the MSP undertakes to perform the Services in a timely and efficient manner in accordance with the provisions of this Agreement, Good Industry Practice and all Applicable Laws.

3.2 The MSP shall perform as part of the Services any other services, functions and responsibilities (including incidental services, functions or responsibilities) not expressly stated in this Agreement as being within the scope of the MSP’s responsibilities (or otherwise as set out in Schedule 2) but are strictly necessary to ensure the due performance of the Services agreed to be provided to the Client by the MSP under this Agreement in accordance with Good Industry Practice.

3.3 The MSP shall perform additional services (being, for the avoidance of doubt, services other than those referred to in Clauses 3.1 to 3.2 (inclusive) or in this Agreement) at the written request of the Client [such as for example but without limitation [insert details]]. The performance by the MSP of all additional services requested by the Client pursuant to this Clause 3.3 are subject to the provision by the Client to the MSP of, and agreement of the parties to, a Change Request. Once agreed in a Change Request, such additional services shall form part of the Services.

3.4 The MSP shall use reasonable endeavours to provide the Services from the relevant Implementation Services Date and the Services Go-Live Date in accordance with the terms of this Agreement, the Service Levels set out in Schedule 4 where applicable, and Good Industry Practice.

3.5 The MSP shall act as Master Vendor and shall manage the Second Tier Suppliers described in Schedule 6. The MSP [shall/shall not] have the right to engage with new Second Tier Suppliers [with/without] the Client’s prior knowledge or written consent.

3.6 Each party shall provide the other party with all information reasonably requested by the other so that the other party can perform its obligations under this Agreement.

3.7 The MSP agrees to co-operate with any third parties engaged by the Client in connection with the Services.

3.8 In delivering the Services, the MSP acts as an employment business pursuant to the Conduct Regulations.

# OBLIGATIONS OF MSP

4.1 The MSP shall, during the Term of this Agreement:

4.1.1 allocate sufficient resources to perform the Implementation Services and the Services in accordance with any dates specified for performance, as amended from time to time by agreement between the parties via the Change Control Procedure or otherwise, if no dates are specified, as soon as possible but in any event within a reasonable time and in accordance with the provisions of this Agreement;

4.1.2 comply with its obligations relating to Personnel as described in Clause 7;

4.1.3 comply with its obligations relating to the engagement of Direct Contingent Workers as described in Clause 4.5;

 4.1.4 carry out appropriate due diligence on any Umbrella Company it engages;

4.1.5 deal with a complaint from any source in a prompt, efficient and courteous manner;

4.1.6 be responsible for providing the facilities, (except where the Services are to be performed on the Client Site), Personnel, and other resources as necessary to perform the Services at no additional charge beyond the Fees;

4.1.7 comply with Client’s policies and procedures described in Schedule 13, subject to the Client advising the MSP of any amendments from time to time;

4.1.8 comply with its Reporting Requirements;

4.1.9 ensure that the Services are performed where reasonably possible in compliance with the Service Levels as set out in Schedule 4; and

4.1.10 notify the Client of any issue or event likely to cause a material delay in the delivery of the Services or that is likely to adversely affect the MSP’s ability to meet any obligations under this Agreement.

4.2 When engaging a Second Tier Supplier to perform the Second Tier Supplier Services, the MSP shall:

4.2.1 assume all responsibility for the due diligence, engagement, management, performance and payment of Second Tier Suppliers;

4.2.2 ensure that any Sub-contract entered into with a Second Tier Supplier shall impose obligations on the Second Tier Suppliers in terms substantially similar to those imposed on the MSP as set out in this Agreement;

4.2.3 procure that:

4.2.3.1 the Second Tier Supplier Services are provided in accordance with Good Industry Practice and Applicable Laws;

4.2.3.2. the Second Tier Supplier complies with the Second Tier Supplier Service Levels as described in Schedule 6 and the MSP shall monitor such performance; and

4.2.3.3 the Second Tier Supplier engages a Contingent Worker on terms that are substantially similar to the MSP’s terms of engagement with Direct Contingent Workers (as set out in Clause 4.5);

4.2.4 ensure that Second Tier Supplier Services provided via Second Tier Suppliers will be managed through the MSP’s Vendor Management System as set out in Schedule 9; and

4.2.5 consult with the Client if the performance of any Second Tier Supplier does not comply with the Second Tier Supplier Service Levels or in the reasonable opinion of either party the Second Tier Supplier has failed to perform the whole or any part of the Second Tier Supplier Services in accordance with Good Industry Practice or Applicable Laws, and if appropriate as reasonably decided between the parties, the MSP shall terminate the agreement with such Second Tier Supplier subject to the provision of notice where required.

4.3 When Introducing a Contingent Worker to the Client, the MSP shall:

4.3.1 inform the Client of the identity of the Contingent Worker and, in the case of a Contractor, the representative to be supplied to do the work;

4.3.2 confirm that the Contingent Worker is willing to work in the position that the Client seeks to fill and has the necessary or required experience, training, qualifications and any authorisations required by law or a professional body to carry out the Assignment;

4.3.3 ensure that the Client and the Contingent Worker are aware of any requirements imposed by law or by any professional body;

4.3.4 use reasonable endeavours to procure that the Contingent Worker will comply with the Client’s regulations, policies and protocols as relevant to Contingent Workers and as notified by the Client to the MSP from time to time, including (without limitation) health and safety, security (including IT security when accessing or using the Client’s systems), anti-bribery and corruption; and

4.3.5 ensure that the Contingent Worker has the right to work in the United Kingdom.

4.4 Where the MSP and the Client have agreed that the MSP shall supply a Contingent Worker to Client, the MSP shall:

4.4.1 provide the Client with an Assignment Schedule confirming the name of Contingent Worker, the Contingent Worker Fee, term of Assignment, description of the Contingent Worker Services, notice periods and any other relevant details communicated and agreed between the parties;

4.4.2 comply with, as far as it is able to depending on the Client’s compliance with its own obligations and responsibilities, its obligations under the Off Payroll Working Rules, Agency Workers Regulations and the Working Time Regulations;

4.4.3 conduct the vetting and/or compliance checks as set out in Schedule 2 for all Gifted Contingent Workers and Direct Contingent Workers and procure that the Second Tier Suppliers conduct such vetting and/or compliance checks for any Contingent Workers supplied by them; and

4.4.4 take reasonable steps to ensure that no Contingent Worker is engaged via an intermediary incorporated or registered overseas (i.e. outside of the United Kingdom).

4.5 When engaging a Gifted Contingent Worker or Direct Contingent Worker, the MSP shall contractually require that Contingent Worker to:

4.5.1 perform the Contingent Worker Services with due care and skill in a professional manner;

4.5.2 take reasonable steps to safeguard their own safety and the safety of any other person who may be present or affected by the Contingent Worker’s actions on the Assignment and comply with the health and safety policies of the Client when attending the Client Site;

4.5.3 co-operate with the Client and comply with all the Client's reasonable and lawful instructions and policies as applicable to the Contingent Workers, including any IT, communications and/or security requirements that may apply at any Client Site, provided such requirements have been prior communicated to the Contingent Worker or the MSP by the Client;

4.5.4 not import any software onto the systems of the Client nor use any email or internet access made available through the Client, nor use any facilities provided by the Client for any purpose, except to the extent authorised by the Client;

4.5.5 ensure that where the Contingent Worker uses their own computer equipment and/or associated software when undertaking the Contingent Worker Services that such equipment contains anti-virus protection with the latest released upgrade from time to time;

4.5.6 provide any progress reports relevant to the Assignment, including completing (and procuring authorisation from the Client) timesheets on a weekly basis;

4.5.7 vest in, transfer or assign to the Client the ownership of all Intellectual Property of whatever nature and, if capable of registration, whether registered or not, in all documents or other material and data or other information and devices or processes provided or created by the Contingent Worker (as is applicable) in the provision of the Contingent Worker Services;

4.5.8 comply with the Bribery Laws and the requirements of Clause 29;

4.5.9 comply with the Data Protection Laws and the Client’s instructions in relation to the Processing of any Protected Data during the Assignment, only process Protected Data to the extent necessary to perform the Contingent Worker Services, and to treat all Protected Data as Confidential Information;

4.5.10 keep confidential all Confidential Information obtained during Assignment or thereafter; and

4.5.11 (only applicable to Contractors who have opted-out of the Conduct Regulations) take reasonable steps to re-perform, rectify, or replace any Contingent Worker Services which the Client has identified as unsatisfactory pursuant to Clause 5.12.

# OBLIGATIONS OF CLIENT

5.1 The Client shall, during the Term of this Agreement:

5.1.1 perform its obligations in accordance with the terms of this Agreement, and in particular the Client Responsibilities;

5.1.2 pay the Fees in accordance with the provisions of Clause 6 and Schedule 5;

5.1.3 provide the MSP and Personnel reasonable access to the facilities and Client Site where the Services are to be performed, including but not limited to, access to Equipment, computers, hardware, data and information;

5.1.4 provide assistance to the MSP and Personnel as reasonably necessary to provide the Services;

5.1.5 remain responsible for all data, hardware, Equipment and applications provided to the MSP and inform the MSP in a timely manner of any matters (including health and safety or security requirements) which may affect the provision of the Services;

5.1.6 ensure that all tools, Equipment or materials provided to the MSP or Personnel are suitable and in good working order;

5.1.7 provide the Contingent Worker reasonable access to the facilities and Client Site where the Contingent Worker Services are to be performed, including but not limited to, access to Equipment, computers, hardware, data and information;

5.1.8 provide assistance to the Contingent Worker as reasonably necessary for the Contingent Worker to provide the Contingent Worker Services;

5.1.9 remain responsible for all data, hardware, Equipment and applications provided to the Contingent Worker and inform the MSP or the Contingent Worker in a timely manner of any matters (including health and safety or security requirements) which may affect the provision of the Contingent Worker Services;

5.1.10 ensure that all tools, Equipment or materials provided to the Contingent Worker are suitable and in good working order; and

5.1.11 be responsible for obtaining all licences, approvals and permits necessary for the MSP to perform the Services whilst on the Client Site.

5.2 When requesting the MSP to provide details of a Contingent Worker for an Assignment, the Client shall provide the MSP with a Requirement which includes details of:

5.2.1 the commencement date and likely duration of the Assignment;

5.2.2 the Contingent Worker Services to be provided (including the location and the hours to be worked, the potential health and safety risks and the steps taken to prevent or control such risks);

5.2.3 the training, qualifications and authorisations it considers necessary to perform the Contingent Worker Services;

5.2.4 any expenses payable;

5.2.5 the Rate payable;

5.2.6 the length of notice required; and

5.2.7 any other information reasonably required by the MSP.

5.3 When introducing a Gifted Contingent Worker to the MSP, the Client shall provide the contact details of the Gifted Contingent Worker as well as those requirements set out in Clause 5.2.

5.4 The Client agrees to the MSP and the Second Tier Supplier advertising each Requirement which the Client issues to the MSP unless the Client specifies otherwise in writing.

5.5 The Client agrees that the MSP shall refer Requirements to Second Tier Suppliers after [ten (10)] Business Days of receiving the Requirement from the Client, should the MSP be unable to fill such Requirement OR [The MSP has a right to fill up to and including [90]% of Requirements received from the Client, the balance being available to all appointed Second Tier Suppliers.]

5.6 The Client agrees to channel all communications relating to a Contingent Worker through the MSP and not engage directly with Second Tier Suppliers.

5.7 The Client is not obliged to accept any Contingent Worker put forward by the MSP and it is the sole responsibility of the Client to ascertain the suitability of any Contingent Worker the MSP has put forward (including interviewing the Contingent Worker if necessary).

5.8 The Client warrants that it knows of no reason why it would be detrimental to the interests of the Contingent Worker or the Client for any Contingent Worker to undertake any Assignment and that it will notify the MSP immediately if it becomes aware of any such reason.

5.9 If the Client’s staff or personnel require access to the VMS, the Client and/or each employee requiring access shall enter into the VMS end user licence agreement to authorise access to the VMS.

5.10 The MSP is committed to equal opportunities and the Client agrees to comply with all anti-discrimination legislation as regards the selection and treatment of Contingent Workers.

5.11 The Client shall notify the MSP immediately and without delay and in any event within twenty-four (24) hours if the Contingent Worker fails to attend work or notifies the Client that they are unable to attend work for any reason.

5.12 The Client shall inform the MSP immediately if it is dissatisfied (acting reasonably) with the performance and/or conduct of any Contingent Worker and shall co-operate with the MSP in any further enquiries which the MSP may conduct, including providing the MSP with reasonably requested documentation or evidence.

5.13 The Client shall comply fully with its health and safety obligations to the Contingent Worker and shall supply to the MSP copies of any relevant documentation as required by law or otherwise upon request, including copies of any risk assessments carried out, copies of documentation relating to health and safety training carried out, records of health and safety incidents including accidents and copies of the Client’s health and safety policies.

5.14 The Client will approve timesheets submitted by Contingent Workers (whether or not via the VMS) within [x Business Days] verifying the number of hours/days worked by the Contingent Worker during the applicable week of Assignment. Signature by the Client of timesheets will constitute confirmation of the amount of time worked by the Contingent Worker. Failure to sign the timesheet does not absolve the Client of its obligation to pay the Contingent Worker Fee for the Contingent Worker Services as set out in the relevant Assignment Schedule. If Client disputes the amount of time claimed by Contingent Worker or is unable to sign a timesheet, the Client will notify the MSP within [x Business Days] and the parties will cooperate with each other to investigate the hours claimed by the Contingent Worker.

5.15 The Client will assist the MSP in complying with the MSP’s obligations under the Working Time Regulations by supplying any relevant information about the Assignment requested by the MSP and the Client will not do anything to cause the MSP to be in breach of its obligations under the Working Time Regulations.

5.16 The Client will comply in full with its own obligations under the Agency Workers Regulations (where applicable), including:

5.16.1 its obligations under Regulation 12 (Rights of agency workers in relation to access to collective facilities and amenities) and 13 (Rights of agency workers in relation to access to employment); and

5.16.2 the provision of accurate information pertaining to Relevant Terms and Conditions to the MSP and any other information reasonably requested by the MSP to enable it to comply with the Agency Workers Regulations, and the Client shall ensure that any changes during the Term to the Relevant Terms and Conditions are immediately notified to the MSP.

5.17 The Client shall inform the MSP in writing of any oral or written complaint any Contingent Worker makes to the Client which is or may be a complaint connected with rights under the Agency Workers Regulations or written request for information relating to the Relevant Terms and Conditions that the Client receives from the Contingent Worker as soon as possible but no later than seven (7) calendar days from the day on which any such oral complaint is made to or written complaint or request is received by the Client.

5.18 Where the Client is required to comply with the Off Payroll Working Rules and the Contingent Worker Services are provided by a Contractor, the Client agrees to:

5.18.1 assess the working practices of the Contingent Worker Services to be provided during the Assignment and to provide the MSP and the Contractor with its status determination statement prior to the commencement of an Assignment[OR provide information required by the MSP to enable the MSP to issue a status determination statement, using reasonable care, on behalf of the Client provided that the Client shall remain responsible for reviewing and confirming the MSP’s assessment];

5.18.2 notify the MSP of any changes relating to an Assignment over time which might affect the status determination statement;

5.18.3 provide any information reasonably requested by the MSP to enable it and any Second Tier Supplier to comply with their own statutory obligations under the Off Payroll Working Rules;

5.18.4 provide a Client-led status disagreement process unless agreed otherwise as described in Schedule 2 and deal with any disputes promptly and equitably within the timescales set by the Off Payroll Working Rules; and

5.18.5 in the event of a status change during an Assignment, pay such increased Contingent Worker Fee in order to account for Statutory Costs relating to the Assignment, such increase to be set out in an Assignment Schedule issued by the MSP.

5.19 The Client shall indemnify and keep indemnified the MSP against all Losses incurred or suffered by the MSP:

5.19.1 where the Client has failed to comply in full with its obligations under the Agency Workers Regulations and/or the requirements of Clause 5.16;

5.19.2 where the Client has failed to comply in full with its obligations under the Off Payroll Working Rules;

5.19.3 where the Client has failed to comply in full with its obligations under anti-discrimination legislation including without limitation the Equality Act 2010;

5.19.4 where the Client has failed to monitor changes to an Assignment that may affect a Contractor’s status, or for any reason has failed to re-evaluate its status determination over time; and/or

5.19.5 in the event that HMRC or any court or tribunal, determines that the Client has for any reason reached an incorrect status determination in relation to any Contractors engaged on an Assignment.

# FEES and PAYMENT

6.1 Fees

6.1.1 The Client shall pay the Fees at Schedule 5 to the MSP in respect of the Services. All Fees payable are net Fees and exclusive of value added tax (if any) or any other locally applicable equivalent sales taxes, which is payable by the Client at the rate and in the manner from time to time prescribed by law. Unless otherwise agreed between the parties, the MSP shall be responsible for all other taxes which are incurred as a result of this Agreement and the Services being provided.

6.1.2 The MSP may vary the Contingent Worker Fee(s) by giving written notice to the Client in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including in relation to Statutory Costs, the Agency Workers Regulations, Working Time Regulations, and/or the Off Payroll Working Rules.

6.2 Invoicing

6.2.1 The MSP shall invoice the Client on a [weekly/monthly] basis for all Contingent Worker Fees. For all other Fees, the invoicing frequency is set out in Schedule 5.

6.2.2 Each invoice issued by the MSP shall include those details as are reasonably specified by the Client as necessary to satisfy the Client’s internal accounting and charge-back requirements.

6.2.3 If the Client acting in good faith considers any invoice to be incorrect or not due the Client shall notify the MSP within [seven (7) Business Days] of receipt of the relevant invoice and state the reasons therefore (provided that the Client will not withhold or delay payment of any part of an invoice which is undisputed). If the MSP accepts that the invoice is incorrect or not due, the MSP shall issue a revised invoice and the Client shall settle such invoice immediately or in accordance with the payment terms set out below in Clause 6.3.

6.2.4 If an invoice remains disputed after [thirty (30) Business Days] of receipt of the relevant invoice both parties will follow the Dispute Resolution Procedure in accordance with the provisions of Clause 26**.**

6.3 Payment

6.3.1 In consideration of the performance of this Agreement by the MSP, the MSP shall be entitled to invoice the Client for the Fees due and the Client shall pay the MSP’s Fees within [thirty (30) days] of receipt of invoice (the **“Due Date”**).

6.3.2 The Client’s failure to pay any undisputed invoice for a period of more than [thirty (30) days] past the Due Date shall be considered a material breach by the Client and entitle the MSP to terminate the Agreement in accordance with Clause 15.

6.4 Retail Prices Index

6.4.1 All Fees are fixed for the first Contract Year. Thereafter, subject to a Change agreed by the parties pursuant to the Change Control Procedure, the MSP may increase the Fees on an annual basis upon written notice, in writing to the Client in line with the percentage change in the Retail Prices Index All Items during the preceding Contract Year or, if lower, by [insert]%.

6.5 Set Off

6.5.1 Each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

6.6 Late Payment

6.6.1 Should any payment not be made by the Due Date, the MSP shall be entitled to charge the Client interest at [4%] above the Bank of England base rate on any balance outstanding from time to time until payment is made in full (including interest) except no interest shall be charged on payments reasonably disputed and withheld unless it is subsequently determined that the amount withheld is validly due. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount.

6.7 Transfer Fees

6.7.1 The parties agree that where the Conduct Regulations do not apply, and where the Client engages a Contingent Worker directly or indirectly (other than via the MSP), either during an Assignment or during the [six (6) months] following the end of an Assignment, the Client will notify the MSP of that engagement and will pay the MSP the Transfer Fee irrespective of the planned duration of the engagement.

6.7.2 Where there has been an Introduction of a Contingent Worker to the Client which does not immediately result in the supply of the services of that Contingent Worker by the MSP or by a Second Tier Supplier via the MSP to the Client, but which later leads to an engagement of a Contingent Worker by the Client directly or indirectly (other than via the MSP) within [twelve (12) months] from the date of Introduction, the Client agrees to notify the MSP of that engagement and agrees to pay a Transfer Fee.

6.7.3 Where the Conduct Regulations apply, the Client agrees to pay a Transfer Fee for any direct or indirect engagement (other than via the MSP) of a Contingent Worker Introduced and/or supplied by or via the MSP during the Relevant Period. As an alternative to the Transfer Fee, the Client may provide the MSP with [five (5) days] written notice to require the MSP or Second Tier Supplier (as appropriate) to supply the services of the Contingent Worker to perform the Contingent Worker Services for the Client for a further [twenty six (26) weeks] on terms similar to those set out in the latest Assignment Schedule and no less favourable to the parties than those that applied prior to the giving of such notice by the Client.

6.7.4 The Transfer Fee shall be calculated as a percentage of the Remuneration due or payable to the Contingent Worker during the first year of their engagement with the Client or any third party (other than via the MSP) as set out in Schedule 5.

6.7.5 Clauses 6.7.1, 6.7.2 and 6.7.3 shall apply in all circumstances in relation to the expiry or termination of any Assignment, including the engagement of any Contingent Workers directly by the Client, by any Replacement MSP or via any third party after termination or expiry of this Agreement, except where the Client terminates the Agreement under Clause 15.3.

6.7.6 No refunds or rebates of the Transfer Fee are due or payable by the MSP to the Client in any circumstances.

# PERSONNEL

7.1 The MSP shall ensure that all Personnel comply with:

7.1.1 any protocols, codes of conduct or procedures agreed between the parties to be applicable which may include, without limitation, any occupational health and health and safety requirements, building access and physical security policies, employee conduct requirements and environmental policies which are notified to the MSP by the Client from time to time in writing; and

7.1.2 the MSP’s obligations under this Agreement in respect of data protection, confidentiality and security.

7.2 The MSP shall ensure that Personnel are suitably qualified, adequately trained and capable of performing the applicable Services in respect of which they are engaged.

7.3 The MSP shall ensure that any of the Personnel who are engaged in the performance of any Services shall, if required by the Client, attend such meetings at the Client Site or elsewhere as may be reasonably required by the Client.

7.4 To the extent legally permissible, the MSP shall not employ as Personnel individuals whose previous background would reflect adversely upon the Client (including those individuals convicted of serious criminal offences)[ and the MSP shall carry out such checks as are legally permissible to guard against this].

7.5 The MSP shall use commercially reasonable efforts to minimise the turnover rate of Personnel and shall use commercially reasonable efforts to minimise all disruption occasioned by Personnel turnover.

7.6 The MSP shall comply with all laws applicable to the employment or retention of the Personnel, including without limitation, work permits, immigration, customs, foreign payment or similar requirements and shall indemnify the Client against any Losses arising out of the MSP’s failure to comply with this Clause 7.6. The indemnity in this Clause 7.6 shall not apply to the extent that such Losses arise as a result of the Client’s acts, omissions or negligence.

7.7 Should the Client, acting reasonably, consider that any member of the Personnel should be removed from the provision of the Services the MSP shall have [one (1) month] from the date on which the Client notifies the MSP of that fact to provide a suitable replacement member of Personnel.

7.8 [The MSP agrees that it shall not, without the prior written consent of the Client, remove any person identified as Key Personnel from the provision of the Services unless:

 7.8.1 they leave the MSP’s employment, or

 7.8.2 they are incapacitated, or

 7.8.3 subject always to at least [three (3) months’] notice in writing, or

 7.8.4 they commit a material breach of their terms of engagement with the MSP, or

 7.8.5 are the subject of a bona fide promotion.]

7.9 [If the Client approves of or requires a change to the Key Personnel in accordance with this Agreement, the MSP shall submit to the Client the names and full curricula vitae of any proposed, properly qualified replacement and shall permit the Client to interview them. The Client may, where it has reasonable grounds to do so, refuse to accept any proposed replacement, in which case the MSP shall as soon as reasonably possible submit to the Client further names and full curricula vitae of proposed replacements, until a replacement is accepted. The Client shall not be charged for any training or other costs incurred due to the change.]

7.10 Key Personnel are identified in Schedule 2. The MSP shall provide within [three (3) Business Days] written notice of the name of the person designated by the MSP to replace or supplement any Key Personnel.

# TRANSFER REGULATIONS

8.1 [The parties intend that the outsourcing of the Services to the MSP shall constitute a service provision change as defined in regulation 3(1)(b) of the Transfer Regulations.]

8.2 If the Transfer Regulations are applicable in relation to the commencement of the Services on the [Services Go Live Date], the provisions of Schedule 3 Part 1 shall apply.

8.3 If the Transfer Regulations are applicable in relation to the cessation of the Services on expiry, termination or partial termination of this Agreement, the provisions of Schedule 3, Part 2 shall apply on expiry, termination or partial termination of this Agreement .

# INTELLECTUAL PROPERTY

9.1 The parties agree that any Intellectual Property rights belonging to a party prior to entering into this Agreement or any Assignment (**“Pre-Existing IPR”**) remains vested in the party who owns it. The parties hereby grant a license to the other party to use the Pre-Existing IPR free of charge to the extent reasonably required solely for the purpose of this Agreement and the provision and receipt of the Services.

9.2 All Intellectual Property produced or developed by the MSP in delivering the Services or by the Contingent Workers in their performance of the Contingent Worker Services including the work product, methodologies, tools, documents and other materials (**“New Intellectual Property”**) will be vested in and remain the property of the Client, (to the extent it is not already the property of the Client) and is hereby assigned by way of present and future assignment to the Client, with full title guarantee.

9.3 The Client hereby grants the MSP and Personnel the non-exclusive right to use, and to permit its Affiliates, Sub-contractors and any Contingent Workers to use, Client Pre-Existing IPR and New Intellectual Property free of charge to the extent reasonably required for the purpose of this Agreement and the provision of the Services or Contingent Worker Services as appropriate.

9.4 All MSP Intellectual Property, whether or not used in connection with this Agreement, will remain the property of the MSP or its Affiliates.

9.5 The MSP hereby grants the Client and its Affiliates a licence to use the MSP Intellectual Property free of charge to the extent reasonably required for the purpose of this Agreement and the provision and receipt of the Services.

9.6 The Client hereby indemnifies the MSP against all Losses incurred by the MSP as a result of any action, demand or claim by a third party of infringement of any Intellectual Property made as a result of or in connection with the use by the MSP, Personnel or any Contingent Worker in accordance with the licence granted under this Agreement of any Client Intellectual Property licensed by the Client in connection with this Agreement (“**IPR Claim**”), provided that the Client shall have no such liability if the MSP:

9.6.1 does not notify the Client in writing setting out full details of any IPR Claim of which it has received notice promptly;

9.6.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the MSP;

9.6.3 does not let the Client at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

9.6.4 does not take all reasonable steps to minimise the Losses that may be incurred by it or by any third party as a result of the IPR Claim (provided any costs associated with the same are paid in advance by the Client); and

9.6.5 does not, at the Client’s request, provide the Client with all reasonable assistance in relation to the IPR Claim (at the MSP’s expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the MSP.

9.7 The MSP hereby indemnifies the Client from and against any Losses incurred by it as a result of any action, demand or claim that the MSP Intellectual Property infringes the Intellectual Property rights of any third party provided that the MSP shall have no such liability if the Client:

9.7.1 does not notify the MSP in writing setting out full details of any IPR Claim of which it has received notice as soon as is reasonably possible;

9.7.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the MSP;

9.7.3 does not let the MSP at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;

9.7.4 does not take all reasonable steps to minimise the Losses that may be incurred by it or by any third party as a result of the IPR Claim (provided any costs associated with the same are paid for in advance by the MSP); and

9.7.5 does not, at the MSP’s request, provide the MSP with all reasonable assistance in relation to the IPR Claim (at the Client’s expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Client.

9.8 If any IPR Claim is made or is reasonably likely to be made in accordance with Clause 9.7, the MSP may at its option:

9.8.1 procure for the Client the right to continue receiving the benefit of the relevant Services; or

9.8.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their specification.

9.9 The indemnities provided in Clauses 9.6 and 9.7 shall not apply to the extent that they arise as a result of breach of this Agreement by the party which would otherwise have been entitled to the indemnity or modification of the relevant Intellectual Property by or on behalf of such party except with the prior written consent of the other party.

# CONFIDENTIALITY AND PUBLICITY

10.1 The receiving party shall only disclose Confidential Information to its employees, contractors and Personnel who have a need to access such Confidential Information solely for the purpose of fulfilling their obligations under this Agreement and have been advised of the obligations of confidentiality and are under obligations substantially similar to those set out in this Clause 10.

10.2 The receiving party shall not disclose to any other person, firm or entity, other than those described in Clause 10.1, any Confidential Information without the disclosing party’s express written consent.

10.3 Each party shall exercise at least the same level of care to protect the other’s Confidential Information as it exercises to protect its own Confidential Information but in no event less than reasonable care except to the extent of Applicable Law or where professional standards require a higher requirement.

10.4 The receiving party shall deliver to the disclosing party all Confidential Information of the disclosing party and all copies thereof when the disclosing party requests the same.

10.5 The obligations of the receiving party concerning confidentiality hereunder shall terminate [three (3) years] following receipt of the Confidential Information except to the extent a longer period is required either by law or under this Agreement.

10.6 Neither party shall make any public announcement or disclose any information regarding the Agreement, except to the extent required by law or regulatory authority, without the written consent of the other party. The Client agrees that the MSP may use the Client’s logo and a brief description of the Services on the MSP’s website and/or marketing materials.

10.7 The terms and conditions and existence of this Agreement and the Schedules shall be considered Confidential Information for the purposes of this Clause 10 and shall only be disclosed in accordance with the provisions of Clause 10.1.

10.8 The provisions of this Clause 10 shall not apply to the extent that such information is:

* + 1. already known to or in possession of the receiving party prior to its disclosure without an obligation of confidentiality upon the receiving party, or such information is not acquired by the receiving party as a result of a breach of an obligation of confidentiality by the receiving party;

10.8.2 publicly available at the time of its disclosure or becomes publicly available through no wrongful act of the receiving party;

* + 1. rightfully received from a third party without obligation of confidentiality;

10.8.4 independently developed by the receiving party without breach of this Agreement or access to the applicable Confidential Information of the other party; or

* + 1. required to be disclosed by Applicable Law (provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any such disclosure).

# WARRANTIES AND REPRESENTATIONS

11.1 Each party warrants and represents:

11.1.1 it has the full capacity and authority to enter into this Agreement and to carry out its obligations under this Agreement;

11.1.2 this Agreement is executed by a duly Authorised Representative of that party;

11.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party’s knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and

11.1.4 it will perform and procure the performance of its obligations under this Agreement in compliance with all Applicable Laws.

# ASSIGNMENT AND SUB-CONTRACTING

12.1 Neither party may assign any of its rights or obligations under this Agreement without the other party’s express written consent.

12.2 The MSP may Sub-contract any part of the Services provided that the MSP shall remain liable for the performance of all the Sub-contracted obligations and shall make all payments to its Sub-contractors and Direct Contingent Workers (providing always that the Client has first made payment to the MSP of all Fees that relate to the services provided by any Sub-contractors and/or Direct Contingent Workers).

# INDEMNIFICATION AND LIMIT OF LIABILITY

13.1 No liability is accepted by the MSP arising from (a) the failure to supply a Contingent Worker for all or part of an Assignment or (b) from the negligence, dishonesty, fraud, misconduct, lack of skill or other act or omission of a Contingent Worker and/or (c) the termination of an Assignment by the Contingent Worker for any reason.

13.2 The Client shall be responsible for the accuracy, completeness and propriety of information concerning its products, services and organisation that the Client provides to the MSP in connection with the Services or the Contingent Worker Services. Accordingly, the Client shall indemnify the MSP against Losses incurred, arising out of or in connection with:

13.2.1 use by the MSP, its Sub-contractors or any Contingent Worker of the Client’s services or products;

13.2.2 use by the MSP, its Sub-contractors or any Contingent Worker of information or materials provided by the Client; and

13.2.3 compliance by the MSP, its Sub-contractors or any Contingent Worker with the Client policies and/or regulations which conflict with the MSP’s own policies.

13.3 Neither party shall be liable whether in contract, tort (including negligence) or otherwise for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising or any loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings or wasted management or staff time, even if that party has been advised of the possibility.

13.4 Neither party limits or excludes liability to the other for death or personal injury caused by its negligent acts or omission or any breach of the obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any claims relating to corrupt gifts or fraudulent misrepresentation or deceit, or any other liability that may not be limited or excluded by law.

13.5 Subject to Clauses 6.1, 13.3, 13.4 and 13.6, the total liability of each party to the other howsoever arising, including all indemnities, arising under or in connection with the Agreement and/or any Assignment, and whether arising in contract, tort, negligence, breach of statutory duty or otherwise, shall be limited in the aggregate on a per annum basis to the higher of (a) [£1,000,000 (one million pounds sterling)] or (b) [150%] of the Fees paid or due and payable by the Client to the MSP in the last full Contract Year of this Agreement prior to the cause of action giving rise to the relevant claim or series of connected claims.

13.6 For the avoidance of doubt, the limit of liability set out in Clause 13.5 shall not apply to the Client’s obligation to pay the Fees due for Services performed under the Agreement.

# INSURANCE

14.1 The MSP shall at all times during the Term of this Agreement, procure and maintain in effect those insurance policies and minimum levels of coverage as designated in Clause 14.2 below, and any other insurance required by law in any country or territory where the MSP provides Services under this Agreement.

14.2 The MSP shall maintain Employer’s Liability insurance as required by Applicable Law, and in no event, less than the amount required by Applicable Law. The MSP shall maintain Public Liability insurance for a limit of not less than [£ million] and Professional Indemnity insurance for a limit of not less than [£ million] in the aggregate.

14.3 When requested by the Client, the MSP shall provide evidence of insurance as specified in Clause 14.2 above.

14.4 The MSP shall ensure that Second Tier Suppliers shall provide and maintain appropriate insurances and the MSP shall obtain evidence of same.

14.5 The Client shall ensure that its own insurance extends to and includes any Temporary Workers who attend any Client Site to perform the Contingent Worker Services.

# TERMINATION

15.1 During the Term, either party may terminate this Agreement (or the Services, or any part of them) for convenience on giving not less than [six (6)] months prior written notice to the other party.

15.2 Either party may terminate this Agreement for cause immediately upon the occurrence of an Insolvency Event.

15.3 Either party may terminate this Agreement upon written notice to the other for any material breach not remedied within [thirty (30) days] of receipt of notice of the breach. The MSP shall not have further service delivery obligation to the Client if the MSP terminates the Agreement under the provisions of this Clause 15.3.

15.4 [The Client may terminate this Agreement if the MSP fails to meet the Service Levels as set out in Schedule 4 for three (3) consecutive months or four months in any six-month period.]

15.5 Howsoever termination of this Agreement (or any Assignment) may arise, the Client shall in all circumstances be liable to pay for:

15.5.1 the Services that have been undertaken by the MSP up to the date of termination of this Agreement; and

15.5.2 the Contingent Worker Services performed up to the date of termination of this Agreement.

15.6 The criteria setting out the circumstances when an Early Termination Fee is payable is described in Schedule 5.

15.7 Termination of this Agreement for any reason shall automatically terminate all Assignments currently in force at the date of termination.

15.8 During the Termination Assistance Period of [three (3)] months following the effective date of expiry or termination of this Agreement or following the date of any notice of termination, at the Client’s election and request, the MSP shall provide reasonable Termination Assistance to the Client, including transition of the Services to a Replacement MSP where applicable. The Termination Costs payable by the Client to the MSP for the Termination Assistance shall be, in respect of the performance of Services as part of the Termination Assistance,[ at the rates as set out in Schedule 5 [or at such lower rates as are equitable in the circumstances]] and, in respect of any other Termination Assistance, at such rates as shall be equitable in the circumstances and agreed by the parties in advance.

15.9 Nothing in this Clause shall prevent the MSP from charging the Client a Transfer Fee for any Contingent Workers engaged by the Client or Replacement MSP, or any other third party, after expiry or termination of this Agreement for any reason, other than as provided for under Clause 6.7.5.

15.10 Either party may terminate an Assignment upon giving the other party the specified amount of notice as set out in an Assignment Schedule.

15.11 The Client may request the MSP, in writing, to terminate an Assignment immediately in the event of substantial non-performance or serious misconduct by the Contingent Worker provided that the Client provides detailed, written confirmation of the non-performance and/or misconduct.

15.12 The MSP may terminate any and/or all Assignments immediately by giving the Client a notice in writing if the Client is in material breach of this Agreement.

15.13 Upon expiration or termination of this Agreement the parties will, upon request of the other party, destroy or promptly return all material containing Confidential Information or proprietary information pertaining to the other party.

15.14 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry. Any provisions that either are expressed to, or from their nature or context it is contemplated that will, shall survive expiry or termination of the Agreement.

# AUDIT

16.1 The MSP shall maintain accurate and complete documents relating to the Services and the performance of the MSP’s obligations under this Agreement, during the Term and for a period of [one (1) year] after termination of this Agreement. Upon the provision of at least [ten (10)] Business Days’ notice, the MSP shall permit reasonable access during normal business hours to the Client for the purpose of inspection, auditing and copying records relating to this Agreement and the Services. The MSP shall provide the Client and the Client’s duly authorised Personnel with all reasonable co-operation, and assistance in respect of the above.

# DATA PROTECTION

17.1 The parties agree that the provisions of Schedule 7 shall apply with respect to the data protection obligations of the parties under this Agreement.

17.2 Subject to Clause 13.3, 13.4 and 13.5, each party will indemnify the other in respect of all Losses which the other may incur arising out of any breach of the parties’ obligations as set out in Schedule 7.

# NON-SOLICITATION

18.1 Except in relation to a relevant transfer to a Replacement MSP under the Transfer Regulations, neither the Client nor the MSP will, during the period of this Agreement or for a period of [twelve (12)] months following expiry or termination of this Agreement, howsoever caused, directly or indirectly solicit or attempt to solicit from the employment of the other party or its Affiliates any person employed or engaged by the other who during the period of [twelve (12)] months prior to the expiry or termination of this Agreement was involved in the provision of the Services or the Contingent Worker Services.

18.2 Either party may employ or engage an employee, person or sub-contractor of the other party who has replied to an unsolicited general advertisement.

18.3 Where a party is in breach of Clause 18.1, it shall pay the other party liquidated damages equivalent to [30%] of the Remuneration applicable to that Personnel, employee, person or sub-contractor. The parties agree that such liquidated damages represent a genuine pre estimate of loss.

# SEVERABILITY

19.1 If any provision of the Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Agreement shall not be affected.

19.2 If any provision of the Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

# NOTICES

20.1 Any notice given by a party under this Agreement shall:

20.1.1 be in writing and in English;

20.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and

be sent to the Authorised Representatives as set out below:

MSP Authorised Representative: [Name] [Address] [email]

Client Authorised Representative: [Name] [Address] [email]

20.2 Notices may be given, and are deemed received:

20.2.1 by hand: on receipt of a signature at the time of delivery;

20.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting; or

20.2.3 [by email provided confirmation is sent by first class post: on receipt of a delivery OR read receipt email from the correct address OR [A notice given under this Agreement is not validly served if sent by email.]]

20.3 Any change to the contact details of an Authorised Representative as set out in the Agreement shall be notified to the other party in accordance with Clause 20.2 and shall be effective on the date specified in the notice as being the date of such change or if no date is so specified, [five (5) Business Days] after the notice is deemed to be received.

20.4 The provisions of this Clause 20 do not apply to notices given in legal proceedings or arbitration.

# ANTI-BRIBERY

21.1 For the purposes of this Clause 21 the expressions ‘adequate procedures’ and ‘associated with’ shall be construed in accordance with the Bribery Laws and legislation or guidance published under it.

21.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate policies and procedures to prevent bribery and use all reasonable endeavours to ensure that all of that party’s personnel and all of that party’s sub-contractors involved in performing the Agreement so comply.

21.3 Without limitation to Clause 21.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

21.4 Each party shall immediately notify the other as soon as it becomes aware of a breach, or possible breach, of any of the requirements in this Clause 21.

# WAIVER

22.1 If either party, at its option, does not require strict performance of any requirement or obligation under this Agreement, this shall not be construed as a waiver of any future omission or breach, or any other provision of this Agreement.

# FORCE MAJEURE

23.1 Neither party shall be liable to the other for delays or failures in performance resulting from causes beyond the reasonable control of that party, including any Force Majeure Event. In such circumstances, the affected party shall give notice to the other party as soon as reasonably possible after commencement of the Force Majeure Event and shall be entitled to a reasonable extension of time for performing the affected obligations. If the period of delay or non-performance continues for more than [fourteen (14)] days, then either party may terminate this agreement upon notice to the other party. The affected party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement.

# CONTRACT (RIGHTS OF THIRD PARTIES) ACT

24.1 No provision of these Terms will be enforceable by any person who is not a party to it pursuant to the Contract (Rights of Third Parties) Act 1999 (**“the Act”**). This does not, however, affect any right or remedy of a third party that exists or is available independently of the Act.

# NO EMPLOYEE RELATIONSHIP OR PARTNERSHIP

25.1 No Employee Relationship

 The MSP is solely responsible for all payments to Personnel, Direct Contingent Workers, Second Tier Suppliers, Sub-contractors and other similar obligations with respect to the performance of all the Services and receipt of Fees under this Agreement. The MSP and the Personnel will not be entitled to any of the benefits the Client may make available to its employees and the MSP is solely responsible for all taxes and withholdings, severance and redundancy pay, benefits and other similar obligations whether statutory or otherwise, with respect to the performance of all its work and receipt of Fees under this Agreement.

25.2 Independent Parties

 The parties are independent persons and are not partners, principal and agent or employer and employee and the Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party’s behalf.

25.3 Employment Status of Contingent Workers

25.3.1 The parties acknowledge and agree that Contingent Workers are not the employees of the MSP, Second Tier Suppliers or the Client and are engaged by the MSP or Second Tier Supplier under a contract for services.

25.3.2 The Client acknowledges that any Temporary Workers are under the supervision, direction and control of the Client while undertaking the Contingent Worker Services.

25.3.3 The Client acknowledges that any Contractor engaged under an Assignment shall not be under the supervision, direction or control of either the Client, the MSP or Second Tier Supplier and shall be entitled to work autonomously with respect to the method and delivery of the Contingent Worker Services to the Client. The Client further acknowledges that any Contractor shall be entitled to supply a substitute to perform Contingent Worker Services, subject to such substitute having the required skills and experience to competently perform the Contingent Worker Services.

# DISPUTE RESOLUTION PROCEDURE

26.1 If any dispute arises between the parties out of or in connection with this Agreement, the matter shall be referred to Authorised Representatives of each party who shall use their reasonable endeavours to resolve it.

26.2 If the dispute is not resolved within [ten (10) Business Days] of the referral being made under Clause 26.1, the parties [shall OR may] resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.

26.3 [Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in Clauses 26.1 and 26.2 have been completed. OR Until the parties have completed the steps referred to in Clauses 26.1 and 26.2, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief.]

# CHANGE CONTROL PROCEDURE

27.1 Where the Client or the MSP wish to change this Agreement (or any of the provisions therein, including the Services Schedule), whether in order to include an additional service, function or responsibility to be performed by the MSP or Client under this Agreement, to amend the Services or the Service Levels as set out in the Services Schedule or otherwise, the Client may at any time request, and the MSP may at any time recommend, such Change and a Change Request shall be submitted by the party requesting/requiring (as applicable) the Change to the other party. Such Change shall be agreed by the parties only once the Change Request is signed by both parties.

27.2 Each Change Request shall conform to the requirements and format as described in Schedule 8.

27.3 Until such Change is made in accordance with Clause 27.1, the Client and the MSP shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.

27.4 Any discussions which may take place between the Client and the MSP in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

# MODERN SLAVERY

28.1 Both parties shall comply with the provisions of the Modern Slavery Act 2015.

# CRIMINAL FINANCES ACT

29.1 Each party shall not, and shall procure that its employees, agents and contractors (including any Contingent Workers) shall not, engage in any activity, practice or conduct which would constitute an offence and/or contravention of the Criminal Finances Act 2017.

# GOVERNING LAW AND JURISDICTION

30.1 The Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement, its subject matter or formation (including non-contractual disputes or claims).

# ENTIRE AGREEMENT

31.1 This Agreement is the entire agreement between the parties relating to the subject matter hereof and this Agreement supersedes all prior or contemporaneous oral or written prior agreements regarding such subject matter. There are no agreements, representations, warranties expressed or implied or conditions that are not specified herein.

**IN WITNESS OF WHICH** the duly Authorised Representatives of the parties have signed this Agreement on the date indicated below.

**SIGNED BY MSP**

**NAME:**

**TITLE:**

**DATE:**

**SIGNED BY CLIENT**

**NAME:**

**TITLE:**

**DATE:**

## **SCHEDULE** 1 - IMPLEMENTATION SERVICES

Implementation Services description:

Location:

Duration:

Implementation Timetable and Milestones (see Project Schedule attached)

Implementation Services Team:

* Executive Sponsor:
* Client Project Manager:
* MSP Project Manager:
* Members of Steering Committee:
* Stakeholders: IT, Legal, Finance, HR, Procurement etc
* Contingent Worker Migration Team

Implementation Services Phases:

* Planning
* Discovery
* Design
* Installation and Transition
* Operational Handover

Readiness Testing Criteria:

Client Equipment to be transferred to MSP:

Implementation Services Date: [x]

Deliverables:

Project Schedule [attach spreadsheet]

*[Example Timetable*

1. *Communication (2 weeks)- develop and agree a communication plan, produce internal communications for all stakeholders*
2. *Business Engagement (3 weeks)- schedule visits for the MSP to meet hiring managers, explain processes and establish interim processes*
3. *Second Tier Supplier Engagement – onboarding of any current recruitment agency suppliers used by the Client and sourcing of additional / new Second Tier Suppliers*
4. *Contingent Worker transition management (8 weeks)- Arrange drop-in sessions for Contingent Workers to meet the MSP and produce FAQs. Issue new contracts.*
5. *Back Office Integration- 8 weeks- develop invoicing formats, migrate all Second Tier Suppliers to MSP invoicing system*
6. *Technology Integration- 12 weeks configure VMS, upload all data, complete testing]*

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## SCHEDULE 2 - SERVICES

 This Schedule describes the services to be performed by the MSP on the terms and conditions of this Agreement. Defined terms used in this Schedule shall have the meanings set out in Clause 1 of the Agreement unless the context requires otherwise.

S2.1 The Services Go-Live Date: [x]

S2.2 The MSP shall provide the Services from the following locations:

|  |  |
| --- | --- |
| **Location** | **Service**  |
| [MSP *premises address*] | [*Specify service to be provided from this location*] |
| [Client Site- *specify address]*  | [*Specify service to be provided from this location]* |

S2.3 The Service Hours shall be as follows:

|  |  |  |
| --- | --- | --- |
| **Hours** | **Days** | **Out of Hours** |
|  |  |  |

S2.4 The Services shall include the Introduction and/or supply of Contingent Workers in the following Roles:

 [Insert Role]

 [Insert Role]

 [Insert Role]

 [Insert Role]

S2.5 The MSP shall perform the following Services for the Client [*describe which of the Client’s business divisions will be benefitting*].

|  |  |  |
| --- | --- | --- |
| **Description of Service** | **Resource required** | **Deliverable (if any)** |
| Hiring manager relationships |  |  |
| Process Requirements |  |  |
| Draft job specs |  |  |
| Source Contingent Workers |  |  |
| Referencing |  |  |
| Vetting / compliance checks to be undertaken on Contingent Workers |  |  |
| Medical checks |  |  |
| DBS checks |  |  |
| Role-based Status Determination Statements for Contractors (“Indicative SDS”) |  |  |
| Status Determination Statements (“SDS”) |  |  |
| SDS Appeals Process and appeals investigation and management |  |  |
| Interview Contingent Workers |  |  |
| Manage testing/assessment |  |  |
| Feedback Contingent Worker /Client |  |  |
| Shortlisting |  |  |
| Offer management |  |  |
| Issue contracts |  |  |
| Onboarding – Contingent Workers |  |  |
| Onboarding – Gifted Contingent Workers |  |  |
| Deal with Contingent Worker issues and regular Contingent Worker care |  |  |
| Inductions |  |  |
| Payment of Contingent Workers |  |  |
| Extension of Assignments |  |  |
| Termination of Assignments |  |  |

S2.6 When engaging Second Tier Suppliers to fill a Requirement, the MSP shall perform the following Services:

|  |  |  |
| --- | --- | --- |
| **Description of Service** | **Resource required** | **Deliverable (if any)** |
| Provision of the VMS system to manage the vacancy, timesheets, invoicing and booking processes |  |  |
| Managing all of the Services set out in S2.5 above performed by Second Tier Suppliers |  |  |
| Managing Second Tier Supplier mark-up/margins |  |  |
| Managing Second Tier Supplier SLAs |  |  |
| Auditing Second Tier Suppliers |  |  |
| Reporting to Client on Second Tier Supplier performance |  |  |
| Managing, onboarding and offboarding of Second Tier Suppliers |  |  |

S2.7 The MSP shall provide the following management information (in addition to the SLA reporting as set out in Schedule 4) for the MSP Service Meeting(s).

|  |  |
| --- | --- |
| **Management Information** | **Report requirements** |
| e.g Second Tier Suppliers | 1. Details of any Second Tier Suppliers removed from the Services during the previous month
2. Addition of any new Second Tier Suppliers during the previous month
 |
| e.g Diversity and Inclusion | e.g Breakdown of ethnicity & gender of Contingent Workers shortlisted / interviewed / engaged during the previous month |

S2.8 The MSP shall provide additional Services for the Client [*describe which of the Client’s business divisions will be benefitting*].

|  |  |  |
| --- | --- | --- |
| **Description** | **Resource Required** | **Deliverable (if any)** |
| Talent mapping- skills shortages, geographical/demographics/competitor insights |  |  |
| Market insights/analytics |  |  |
| Design campaigns and routes to talent |  |  |
| Interface with the Client’s systems |  |  |
| Diversity & Inclusion reporting |  |  |
| Sharing knowledge with the Client by regular reporting |  |  |
| Brand Consultation |  |  |
| Hiring Technologies |  |  |
| Cost Savings Initiatives (volume, tenure, payrolling, furloughs, etc.) |  |  |

S2.9 Services out of scope:

 [*insert as appropriate*]

S2.10 Key Personnel are designated as follows:

|  |  |  |
| --- | --- | --- |
| **Name** | **Position** | **Responsibilities** |
|  |  |  |
|  |  |  |

S2.11 Key Client personnel are designated as follows:

|  |  |  |
| --- | --- | --- |
| **Name** | **Position** | **Responsibilities** |
|  |  |  |
|  |  |  |
|  |  |  |

S2.12 Client Equipment provided to the MSP for the provision of the Services is listed as follows:

|  |  |  |
| --- | --- | --- |
| **Equipment**  | **Serial Number** | **Description/Notes** |
|  |  |  |
|  |  |  |
|  |  |  |

S2.13 Process for the issue by the Client to the MSP of a Requirement is as follows: [*insert any procedure to be followed to provide MSP with the Requirements*]

## SCHEDULE 3 – TRANSFER REGULATIONS

**PART 1**

S3.1 Where the Services are transferred from the Client and/or Incumbent MSP and the Transfer Regulations apply, the following terms and conditions apply.

S3.1.1 In this Schedule 3 Part 1 the following definitions apply in addition to the definitions within the Agreement:

**“Employees”** mean those employees whose contract of employment transfer to the MSP from the Client or Incumbent MSP as at the Transfer Date;

**“Employee Liability Information”** means in respect of each of the Employees:

1. the identity and age of the Employee;
2. those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;
3. information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;
4. information about any court or tribunal case, claim or action either brought by the Employee against the Client within the previous two years or where the Client has reasonable grounds to believe that such action may be brought against the MSP arising out of the Employee's employment with the Client; and
5. information about any collective agreement which will have effect after the [Transfer Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations;

**“Incumbent MSP”** means any supplier providing services to the Client before the Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of such sub-contractor);

**“Transfer Date”** means the date on which the Employees transfer to the MSP; and

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

S3.1.2 The Client and the MSP believe that, pursuant to the Transfer Regulations, as at the Transfer Date the MSP will become the employer of the Employees.

S3.1.3 The Client represents, warrants and undertakes on its behalf [and on behalf of any Incumbent MSP] to the MSP that:

(a) no persons are employed or engaged in the provision of the Services other than the Employees;

(b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Schedule 3;

(c) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable) are set out in Schedule 3;

(d) there is not in existence any contract of employment with any Employee (or any contract for services with any individual who would be considered an Employee for the purposes of this Schedule 3) which cannot be terminated by three (3) months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);

(e) in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Client has:

(i) complied with all obligations imposed on it by Articles of the Treaty on the Functioning of the European Union, European Commission Regulations and Directives (where such regulations or directives continue to have legal force and effect in the United Kingdom and/or have been incorporated into national law within the United Kingdom) and all statutes, regulations and codes of conduct relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;

(ii) maintained adequate and suitable records regarding the service of each of its employees;

(iii) calculated and paid all holiday pay for periods of holiday taken under Regulation 13 of the Working Time Regulations 1998 (SI 1998/1833) in accordance with the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time;

(iv) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and

(v) complied with all relevant orders and awards made under any statute affecting their conditions of service;

(f) the Client has not been involved in any industrial or trade disputes in the last [three (3)] years and to the best of the Client's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of the MSP is likely to lead to any industrial dispute;

(g) there is not outstanding any agreement or arrangement to which the Client is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;

(h) the Client has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;

(i) the Client has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;

(j) [there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;]

(k) no amounts due to or in respect of any of the Employees (including PAYE and National Insurance [and pension contributions]) are in arrears or unpaid;

(l) no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Client or the MSP arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise;

(m) the Client has provided the Employee Liability Information to the MSP regarding each of the Employees;

(n) the Employee Liability Information contains information as at a specified date not more than fourteen (14) days before the date on which the information was provided to the MSP;

(o) the Client has notified the MSP in writing of any change in the Employee Liability Information since the date on which it was provided;[ and]

(p) the Employee Liability Information was provided not less than 28 days before the Transfer Date [OR ; and]

(q) [the Client has agreed to, and co-operated with, pre-transfer consultation by the transferee in accordance with Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992, if required.]

S3.1.4 The Client shall on its behalf and/or on behalf of any Incumbent MSP indemnify the MSP in full and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred by the MSP in relation to the Client’s acts and omissions relating to the Employees occurring on or after the Transfer Date and/or for any claims in respect of emoluments and outgoings (including wages, bonus, tax, pension contributions and otherwise) accrued and payable after the Transfer Date.

S3.1.5 The Client shall indemnify the MSP in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the MSP including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

(a) the termination by the Client of the employment of any of the Employees;

(b) anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by the MSP by virtue of the Transfer Regulations (or in the event that it is found that the Transfer Regulations do not apply, would have been deemed to have been done by the MSP had the Transfer Regulations actually applied); and

(c) any claim made at any time by any employee of the Client other than the Employees who claim to have become an employee of or have rights against the MSP by virtue of the Transfer Regulations (“**Claims**”) provided that such costs, claims, expenses and liabilities are not incurred as a result of any act or omission of the MSP.

S3.1.6 The Client shall procure on its behalf and on behalf of any Incumbent MSP that their employees, sub-contractors, agents and successors in title shall promptly:

(a) take such action in connection with the Claims as the MSP shall from time to time reasonably request;

(b) provide free of charge all such assistance and information as the MSP may reasonably request relating to the Claims to enable the Claims to be pursued;

(c) subject to any restriction imposed by law, provide the MSP, its legal and other advisers with access to all documents, records or other information held by the Client relating to the Claims;

(d) provide the MSP and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the MSP with the preparation of its cases in relation to the Claims;

(e) permit and require such employees as the MSP and/or its professional advisers may reasonably request to meet with the Client and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with Counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the MSP and/or its legal or other professional advisers may reasonably require;

(f) provide such other assistance as the MSP may reasonably request in order to ensure the due and timely prosecution of the Claims;

(g) resist in connection with the Claims any request for documents, information, access to relevant premises or to employees of the business by any third party without first informing the MSP and obtaining its agreement to any approval of the request; and

(h) preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the MSP’s consent to such waiver, such consent not to be unreasonably withheld.

S3.1.7 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Client up to and including the Transfer Date and by the MSP with effect from the Transfer Date.

S3.1.8 The MSP shall indemnify the Client in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Client including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

(a) any failure by the MSP to comply with its obligations pursuant to the Transfer Regulations; and

(b) anything done or omitted to be done by the MSP in respect of any of the Employees whether before or after the Transfer Date, provided that such acts and omissions by the MSP do not occur as result of any act or omission of the Client in relation to its own obligations under the Transfer Regulations.

S3.1.9 During the term of this Agreement, the MSP shall provide to the Client any information the Client may reasonably require relating to any individual employed, assigned or engaged in providing the Services under this Agreement (subject to applicable Data Protection Laws).

S3.1.10 If the Transfer Regulations applies to transfer the employment of any person employed by the Client or any Incumbent MSP to the MSP, then if the MSP shall serve a notice terminating the employment of such person within [six (6) months] after the date of such transfer, the Client shall indemnify the MSP (for itself and any Incumbent MSP) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the MSP is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

**SCHEDULE 3 – TRANSFER REGULATIONS**

**PART 2**

S3.2 Where some or all the Services are transferred to the Client and/or Replacement MSP on cessation of the Services and the Transfer Regulations apply, the following terms and conditions apply.

S3.2.1 In this Schedule 3 Part 2 the following definitions apply in addition to the definitions within the Agreement:

“**Replacement MSP”** means another party chosen by the Client to take over the provision of all or part of the Services;

**“Returning Employees”** means those persons listed in a schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the MSP wholly and/or mainly in the Services immediately before the Subsequent Transfer Date;

**“Subsequent Transfer Date”** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the MSP and the Client and/or a Replacement MSP (as the case may be); and

**“Transfer Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

S3.2.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the MSP for any reason and where all or part of the Services are subsequently provided by the Client and/or a Replacement MSP, there may be a relevant transfer of the Returning Employees to the Client and/or the Replacement MSP for the purposes of the Transfer Regulations. If there is such a transfer, the employment of the Returning Employees shall transfer to the Client and/or the Replacement MSP in accordance with the Transfer Regulations with effect from the Subsequent Transfer Date.

S3.2.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of the Transfer Regulations, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the Replacement MSP.

S3.2.4 The MSP shall not later than [six (6) months] prior to the cessation of all or part of the Services, or termination or expiry of theAgreement to the extent lawfully permitted provide the Client with the following details:

(a) a list of those personnel engaged in the Services (“**Potential Returning Employees**”);

(b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;

(c) terms and conditions of employment of the Potential Returning Employees, including any particulars that the MSP is obliged to give under section 1 of the Employment Rights Act 1996;

(d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;

(e) any claims, current or which the MSP has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;

(f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and

(g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to the Transfer Regulations.

The MSP shall provide updates of the details listed above at regular intervals to be specified by the Client.

S3.2.5 The MSP shall indemnify the Client (both for itself and a Replacement MSP) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and/or a Replacement MSP in connection with or as a result of:

(a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee, whether in contract, tort, under statute, pursuant to European law (to the extent that such law has continuing legal effect in the United Kingdom) or otherwise, arising from any act, fault or omission of the MSP on or before the Subsequent Transfer Date;

(b) any failure by the MSP to comply with its obligations under regulations 13 and 14 of the Transfer Regulations, or any award of compensation under regulation 15 of the Transfer Regulations, save where such failure arises from the failure of the Client and/or Replacement MSP to comply with its or their duties under regulation 13 of the Transfer Regulations; and

(c) any claim by any person who transfers or alleges that they have transferred to the Client or the Replacement MSP but whose name is not included in the list of Returning Employees.

S3.2.6 If the Transfer Regulations applies to transfer the employment of any person employed by the MSP to the Client or any Replacement MSP then if the Client or such Replacement MSP shall serve a notice terminating the employment of such person within [six (6) months] after the date of such transfer, the MSP shall indemnify the Client (for itself and any Replacement MSP) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Client is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

## SCHEDULE 4 – SERVICE LEVELS (SLAs)

MSP Service Levels applicable to Direct Contingent Workers and Gifted Contingent Workers

| **SLAs** | **Monitoring** | **Targets** | **How Measured / Deliverable** | **Reporting Frequency** |
| --- | --- | --- | --- | --- |
| Time to Source | xx | [95%] | [Deliverable] | [Monthly] |
| Time to hire |  |  |  |  |
| Applicants per hire |  |  |  |  |
| Offer/Acceptance Rate |  |  |  |  |
| Requirement Fill Rate (as a % of total Requirements released) |  |  |  |  |
| Second Tier Supplier Utilisation Rate |  |  |  |  |
| Cost per hire |  |  |  |  |
| Contingent Worker Experience |  |  |  |  |
| Contingent Worker Retention |  |  |  |  |
| Quality of hire |  |  |  |  |

**Service Levels**

S4.1 The MSP shall provide the Services so as to meet or exceed the Service Levels set out above. Meeting or exceeding a Service Level indicates that the Supplier is meeting some (but not necessarily all) of its contractual commitments to the Client with respect to levels of performance.

S4.2 Service Levels may be added, deleted, or modified by the parties at any time during the Term, in accordance with the Change Control Procedure as described in Clause 27.

S4.3 The MSP shall use appropriate tools in order to measure and report the levels of performance of the Services that are subject to the Service Levels. Such measurement shall permit reporting which is detailed enough to verify compliance with the Service Levels.

**Reporting and escalation**

S4.4 The MSP shall, on a monthly basis, provide the Client with a set of reports to verify the MSP’s performance and compliance with the Service Levels.

S4.5 The monthly performance reports shall describe:

1. the applicable Services;
2. any Service Level failure [insert, eg any failure to meet any minimum Service Level]; and
3. the efforts made by the MSP to ensure compliance with the Service Level in the future, and to ensure continuous improvement of the Services and Service Levels.

S4.6 In the event of any Service Level failure the MSP shall, in addition to providing the reports required by this paragraph S4.6, advise the Client immediately and;

1. investigate, assemble and preserve pertinent information with respect to and report on the causes of the problem;
2. advise the Client as and to the extent requested by the Client of the status of remedial efforts being undertaken with respect to such problem;
3. minimise the impact of and correct the problem and begin meeting the affected Service Levels as soon as reasonably practicable; and
4. take appropriate preventative measures so that the problem does not reoccur.

**Exclusions**

S4.7 The MSP shall be relieved of its liability in respect of any failure to provide the Services to the Service Levels if, and to the extent, such failure is directly attributable to a failure by the Client to observe any of its obligations set out in Clause 5 and Schedule 11 which have a direct impact upon the MSP’s provision of the Services or a Force Majeure Event for which the MSP is relieved of its liability to provide the Services to the Service Levels above.

**Co-operation**

S4.8 The achievement of the Service Levels by the MSP may require the co-ordinated, collaborative effort of Second Tier Suppliers and other third parties contracted with the MSP. The MSP shall provide a single point of contact for the prompt resolution of all Service Level failures regardless of whether the reason for such Service Level failure, or failures to provide the Services to the Service Levels was caused by the MSP or Second Tier Suppliers.

***[Example SLAs***

* *CV to placement ratio and effective monitoring of time to fill and hire [CV to placement ratio of 3:1- 10 days from job release to offer acceptance]*
* *Attrition levels of Contingent Workers [Less than 10% of contingent workers terminated for poor performance within first three months]*
* *Contingent Worker and Client satisfaction surveys on a [quarterly] basis. [20% completion rate.] Survey to have a score of [x] or above. Take steps to address negative feedback.*
* *Hiring Manager feedback on interviews within agreed timescale [obtain feedback within 2 Business Days]*
* *Hiring Manager feedback on Contingent Workers within agreed timescale [ obtain feedback within 3 Business Days of start date]*

***VMS efficiency:***

* *[Fully manned support available during business hours*
* *Helpdesk available 08:00 – 18:00 Mon - Fri*
* *System maintenance planned and effectively communicated*
* *All email queries to support desk responded to in agreed timescale*]

## SCHEDULE 5 - FEES

S5.1 Fees relating to the Services:

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of Fee** | **Amount** | **Calculation** | **Invoice Date or Frequency** |
| Implementation Services Fee |  |  | Invoiced on the Implementation Services Date |
| Monthly Management Fee |  |  | Monthly in advance OR in arrears |
| VMS Fee (if applicable) |  |  |  |
| Equipment Fee (if applicable) |  |  |  |
| Fee for providing facilities / additional resources (if applicable) |  |  |  |

* Consider FTE costs when calculating Monthly Management Fee

S5.2 Fees relating to Contingent Worker Services - Direct Contingent Workers:

|  |  |  |
| --- | --- | --- |
| **Role** | **MSP Mark-up** | **Tenure Discount / Volume discount (if any)** |
| List the various Roles in scope of the MSP arrangement in here if the MSP mark-up varies by Role | Confirm the mark-up percentage applicable for that role type |  |
| e.g Design Engineer | e.g 10% | e.g Mark-up reduces to 7.5% after 12 continuous months in the same Assignment |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

The Contingent Worker Fee for Direct Contingent Workers shall be calculated as follows: (Rate + Statutory Costs if applicable) \* MSP Mark-up

S5.3 Fees relating to Contingent Worker Services – Contingent Workers engaged via Second Tier Suppliers:

|  |  |  |
| --- | --- | --- |
| **Role** | **Second Tier Supplier Mark-up** | **MSP Mark-up** |
| List the various Roles in scope of the MSP arrangement in here if the mark-up varies by Role | Confirm the mark-up percentage payable to the 2nd tier agency for that role type | Confirm the mark-up percentage applicable for the MSP’s services |
| e.g Design Engineer | 10% | 3% |
|  |  |  |
|  |  |  |
|  |  |  |

The Contingent Worker Fee for Contingent Workers supplied via Second Tier Suppliers shall be calculated as follows: ((Rate + Statutory Costs if applicable) \* Second Tier Supplier Mark-up) + ((Rate + Statutory Costs if applicable) \* MSP Mark-up)

S5.4 Fees relating to Gifted Contingent Workers

|  |  |
| --- | --- |
| **Role** | **MSP Mark-up** |
| List the likely Roles for Gifted Contingent Workers | Confirm the mark-up percentage payable to the 2nd tier agency for that role type |
| e.g All Roles | 4% |
|  |  |
|  |  |

S5.5 Fees relating to termination of the Agreement or an individual Assignment (as applicable):

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of Fee** | **Amount** | **Calculation (if applicable)** | **Invoice Date or Frequency** |
| Early Termination Fee |  |  |  |
| Termination Assistance Fee |  |  |  |
| Transfer Fee  | e.g 10% of the Remuneration payable to the Contingent Worker |  | Upon the Client’s direct or indirect engagement of the Contingent Worker other than via MSP |

*Other considerations*

* *Fees based on minimum volume of hires [x]*
* *Volume discounts*
* *Minimum revenue guarantees*
* *Variable Contingent Worker Fees for different Roles/job bands*

## SCHEDULE 6 – SECOND TIER SUPPLIERS

|  |  |  |
| --- | --- | --- |
| **Name** | **Address** | **Type of Roles** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Second Tier Transitional Arrangements (if any):

Second Tier Supplier SLAs

| **SLAs** | **Targets** | **How Measured/Deliverable** | **Reporting Frequency** |
| --- | --- | --- | --- |
| [xx]  | [x%] | [Deliverable] | [Monthly] |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

## SCHEDULE 7 – DATA PROTECTION

 PART A

Data Processing Obligations

S7.1. Definitions

S7.1.1 In addition to terms defined in the Agreement, in this Schedule the terms **“Controller”,** **“Data Subject”, “International Organisation”, “Personal Data Breach”, “Processor”,** and **“Processing”** shall have the meaning given in applicable Data Protection Laws from time to time, (and related expressions, including “**process**”, “**processed**” and “**processes**” shall be construed accordingly);

**“Sub-Processor”** means any party engaged by the Processor (or by any other Sub-Processor) for carrying out any Processing activities in respect of the Protected Data on behalf of the Controller; and

**“Data Protection Supervisory Authority”** means the UK’s Information Commissioner’s Office or applicable statutory body in any other jurisdiction in which the Services are performed.

S7.1.2 [For the purposes of Processing Protected Data pursuant to this Agreement, the parties agree that the Client is the Controller and that the MSP is the Processor.]

S7.2. Controller’s obligations

S7.2.1 The Controller warrants, represents and undertakes that at all times:

S7.2.1.1 the Processing of all Protected Data (if processed in accordance with this Agreement) shall comply in all respects with Data Protection Laws, including in terms of its collection, use and storage;

S7.2.1.2 fair Processing and all other appropriate notices have been provided to the Data Subjects of the Protected Data (and all necessary consents from such Data Subjects obtained and at all times maintained) to the extent required by Data Protection Laws in connection with all Processing activities in respect of the Protected Data which may be undertaken by the Processor and its Sub-Processors in accordance with this Agreement;

S7.2.1.3 the Protected Data is complete, accurate and up to date;

S7.2.1.4 except to the extent resulting from transfers to international recipients made by the Processor or any Sub-Processor, the Protected Data is not subject to the laws of any jurisdiction outside of the United Kingdom;

S7.2.1.5 it shall establish and maintain adequate security measures to safeguard the Protected Data in its possession or control (including from unauthorised or unlawful destruction, corruption, processing or disclosure);

S7.2.1.6 it shall maintain complete and accurate backups of all Protected Data provided to the Processor (or anyone acting on its behalf) so as to be able to immediately recover and reconstitute such Protected Data in the event of loss, damage or corruption of such Protected Data by the Processor or any other person;

S7.2.1.7 all instructions given by it to the Processor in respect of Personal Data shall at all times be in accordance with Data Protection Laws;

S7.2.1.8 it will ensure that it has all necessary appropriate consents and/or notices in place to enable lawful transfer of Protected Data to the Processor (and its Sub-Processors) for the duration of this Agreement, and that it has a valid legal basis for the Processing of Protected Data in order that the Processor may lawfully process the Protected Data in accordance with this Agreement on the Processor’s behalf;

S7.2.1.9 the Processing (including transfer to the Processor) of Protected Data for the purposes of this Agreement does not violate any laws or rights of any third party, including without limitation any Intellectual Property rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies; and

S7.2.1.10 it shall not unreasonably withhold, delay or condition its agreement to any Change requested by the Processor in order to ensure the Services and the Processor (and each Sub-Processor) can comply with Data Protection Laws.

**S7.3. Processor’s obligations**

S7.3.1 Insofar as the Processor processes Protected Data on behalf of the Controller, the Processor shall:

S7.3.1.1 Process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement;

S7.3.1.2 unless required to do otherwise by Applicable Law, Process in accordance with Part B of this Schedule (and shall ensure Processor Personnel only Process) the Protected Data except to the extent that alternative Processing instructions are agreed between the parties in writing or otherwise required by Applicable Law;

S7.3.1.3 taking into account the nature of the Processing, provide reasonable assistance to the Controller to enable the Controller to respond to requests from a Data Subjects seeking to exercise their rights under Data Protection Laws. In the event that such request is made directly to the Processor, the Processor shall promptly inform the Controller of the same;

S7.3.1.4 to the extent required by Data Protection Laws, taking into account the nature of the Processing and the information available to the Processor, provide the Controller with commercially reasonable assistance with data protection impact assessments (as such term is defined in Data Protection Laws) or prior consultations with any Data Protection Supervisory Authority that the Controller is required to carry out under Data Protection Laws;

S7.3.1.5 record and promptly (and in any event within [five (5) Business Days] of receipt) refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Controller which relate (or which may relate) to any Protected Data. The Processor will not respond to any requests or communications without the Controller’s express written approval and strictly in accordance with the Controller’s instructions unless and to the extent required by law;

S7.3.1.6 promptly (and in any event within [forty eight (48) hours]) notify the Controller if it (or any of its Sub-Processors or the Processor Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach (howsoever caused) in respect of any Protected Data; and

S7.3.1.7 provide, at the Controller’s cost, all reasonable assistance and information as the Controller requires to report the circumstances referred to in paragraph S7.3.1.6 to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.

S7.4. Security

S7.4.1 The Processor shall implement and maintain the technical and organisational measures set out in Part C of this Schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

S7.5. Sub-processing and personnel

S7.5.1 The Processor shall:

S7.5.1.1 not permit any Processing of Protected Data by any Sub-Processor without the prior specific written authorisation of the Controller;

S7.5.1.2 prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Protected Data, ensure each Sub-Processor is appointed under a binding written contract containing materially the same obligations as under this Schedule (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) and ensure each such Sub-Processor complies with all such obligations;

S7.5.1.3 remain liable to the Controller under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and

S7.5.1.4 ensure that all persons authorised by the Processor or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

S7.6. List of authorised Sub-Processors

S7.6.1 The Controller authorises the appointment of the Sub-Processors listed below:

|  |  |
| --- | --- |
| **Sub-Processor** | **Processing this Sub-Processor is authorised to undertake** |
| [Insert legal name of Sub-Processor 1], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address]. | [insert] |
| [Insert legal name of Sub-Processor 2], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address]. | [insert] |
| [Insert legal name of Sub-Processor 3], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address]. | [insert] |

S7.7. Further Sub-Processors

S7.7.1 The Controller shall reply to any communication from the Processor requesting any further prior specific authorisation of a Sub-Processor pursuant to paragraph S7.5.1.1 of this Part A promptly and in any event within [ten (10) Business Days] of request from time to time. The Controller shall not unreasonably withhold, delay or condition any such authorisation.

S7.8. International transfers

S7.8.1 The Processor shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Controller except where required by Applicable Law.

S7.9. Audits

S7.9.1 The Processor shall, in accordance with Data Protection Laws, make available to the Controller on request such information that is in its possession or control as is necessary to demonstrate the Processor’s compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of UK GDPR, and allow for and contribute to audits, including inspections, by the Controller for this purpose (subject to a maximum of [one (1)] audit request in any 12 month period under this paragraph S7.9.1). [To the extent consistent with the forgoing, the Processor shall, however, be entitled to withhold [insert, eg information where it is commercially sensitive or confidential to it or its other Controllers]].

S7.10. Return of Protected Data

S7.10.1 At the Controller’s cost, expense and option, upon the termination of the Services relating to the Processing of Protected Data (the **“Processing End Date”**), the Processor shall either return all of the Protected Data to the Controller or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any Applicable Law requires the Processor to store such Protected Data. To the extent the Controller has not notified the Processor within [*insert period*] of the Processing End Date that it requires the return of any Protected Data the Processor is irrevocably authorised to securely dispose of the Protected Data at the Controller’s cost and expense.

S7.10.2 [On request from the Controller the Processor shall confirm in writing whether or not it has complied with its obligations to dispose of the Protected Data under paragraph S10.1 of this Part A.]

S7.11. Survival

S7.11.1 This Schedule shall survive termination or expiry of this Agreement:

S7.11.1.1 indefinitely in the case of paragraph S7.10 of this Part A; and

S7.11.1.2 in the case of all other paragraphs and provisions of this Schedule, until the later of the termination or expiry of this Agreement or return or secure deletion or disposal of the last of the Protected Data in the Processor’s (or any of its Sub-Processor’s) possession or control in accordance with this Agreement.

**SCHEDULE 7- DATA PROTECTION**

**PART B**

**Data processing details**

S7.12 Processing of the Protected Data by the Processor under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Schedule 7 Part B:

 Subject-matter of Processing:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Duration of the Processing:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Nature and purpose of the Processing:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Type of Personal Data:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Categories of Data Subjects:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

 Specific Processing instructions:

1. [*Insert as appropriate*]
2. [*Insert as appropriate*]
3. [*Insert as appropriate*]

**SCHEDULE 7- DATA PROTECTION**

**PART C**

**Minimum Technical and Organisational Security Measures**

S7.13 Without prejudice to its other obligations, the Processor shall implement and maintain at least the following technical and organisational security measures to protect the Protected Data:

1. [*Insert security measures to protect Protected Data as appropriate*]
2. [*Insert security measures to protect Protected Data as appropriate*]
3. [*Insert security measures to protect Protected Data as appropriate*]

S7.14 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the Processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Processor shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of UK GDPR.

S7.15 Without prejudice to its other obligations, the Processor shall:

1. [*insert relevant specific security measures as appropriate*]
2. [*insert relevant specific security measures as appropriate*]
3. [*insert relevant specific security measures as appropriate*]

## SCHEDULE 8 – CHANGE REQUEST

In respect to the section titled Change Control Request referenced as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_between [Client name] (“**Client**”) and [MSP name] (“**MSP**”), both parties hereby certify by the signature of an Authorised Representative, that this Change Request will amend and be fully incorporated into the Agreement.

Scope of Change Request:

Changes:

Impact (cost, schedule):

**IN WITNESS WHEREOF**, the duly Authorised Representatives of the parties have caused this Change Request to be fully executed.

**SIGNED BY MSP**

**NAME:**

**TITLE:**

**DATE:**

**SIGNED BY CLIENT**

**NAME:**

**TITLE:**

**DATE:**

## SCHEDULE 9 – VENDOR MANAGEMENT SYSTEM

S9.1 The MSP will install and maintain a secure on-line technology system to manage the complete Contingent Worker life cycle, including the following as a minimum:

* Approval and extension of existing Assignments
* Release of Requirements for Contingent Workers
* Electronic approval of Requirements
* Provision of potential Contingent Workers for the Client’s review
* Short-listing of Contingent Workers where appropriate
* Confirming Assignment details (start dates, Fees etc)
* Issuing Assignment Schedule(s)
* Timesheet and invoice submission, management and approval
* Manager/User feedback on CV quality (where relevant)
* Ability for the Client managers to see their current Assignments and be able to produce reports easily for monitoring purposes
* Ability for the Second Tier Suppliers to provide evidence of all vetting checks
* Review of all pre-employment checks by MSP prior to interview

S9.2 The MSP will be responsible for user training throughout the duration of the contract, including training for new users and version update sessions for existing users. Updated user manuals and training documentation will be provided by the MSP. Training and related documents will be provided at no additional cost to the Client.

S9.3 The MSP shall implement a robust Disaster Recovery Plan which, as far as is reasonably possible, will protect the data and ensure continuity of service. As a minimum, VMS data will be backed up off-site on a daily basis and recovery of the VMS data made available within 48 hours.

S9.4 The MSP reserves the right to make changes to the Vendor Management System, or to replace it completely, at its sole discretion, providing the capabilities of the modified and/or amended Vendor Management System continue to provide the functionality as set out in S9.1.

## SCHEDULE 10 - GOVERNANCE

S10.1 The parties agree to the following governance framework:

* + 1. Implementation Steering Committee- Executive level forum to manage overall programme delivery and performance; and
		2. MSP Service Meeting – a formal review of MSP obligations, Client obligations, SLAs, Change Requests, issues and escalations

S10.2 Terms of reference for the governance meetings are as follows:

|  |
| --- |
| **Steering Committee** |
| Frequency | [Quarterly or Bi-annually] |
| Client Attendees |  |
| MSP Attendees |  |
| StandingAgenda |  |
| Meeting Inputs |  |
| Meeting Outputs |  |

|  |
| --- |
| **MSP Service Meeting**  |
| Frequency | [Monthly] |
| Client Attendees |  |
| MSP Attendees |  |
| StandingAgenda |  |
| Meeting Inputs |  |
| Meeting Outputs |  |

## SCHEDULE 11 - CLIENT RESPONSIBILITIES

[insert full list of dependencies]

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

## SCHEDULE 12 – ASSIGNMENT SCHEDULE

|  |
| --- |
| **Client Information** |
| Agreement Number |  |
| Assignment Number |  |
| Purchase Order | [if applicable] |
| Client Site(s) where the Contingent Worker Services are to be delivered |  |
| Client Contact Name  | [for the Contingent Worker to report to] |
| Client Contact Email Address |  |
| Client Contact Telephone Number |  |

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| **Contingent Worker Information** |
| Engagement Type | Limited Company / Umbrella / PAYE  |
| Name of Contingent Worker  |  |
| Name of Contractor / Limited Company (if applicable) | [typically, this would be the name of the Contingent Worker’s intermediary / limited company] |
| Role | [Position, job or function] |
| Description of Contingent Worker Services | [insert description of Contingent Worker Services] |
| Off Payroll Working Rules status  | Inside IR35/Outside IR35/Out of Scope/Not applicable  |
| Expected Start date of Assignment  |  |
| Expected End date of Assignment  |  |
| Hours/days (if applicable)  | [xx hours per week to be agreed between the Contingent Worker and the Client] |
| Experience, training, qualifications, professional body authorisations required |  |
| Notice period for the Contingent Worker to terminate Assignment  | [x weeks] |
| Notice period for the Client to terminate Assignment  | [x weeks] |
| Specific Insurance Requirement | [applicable for Contractors] |
| Conduct Regulations Opt-Out | Yes/No/Not applicable |
| AWR comparator information | Yes/No/Not applicable |

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| **Contingent Worker Fees & Expenses** |
| Call-out / additional fees / expenses agreed with the Client |  |
| Timesheet Frequency | [Weekly/Monthly] |
| Special Terms | [any special terms agreed between the MSP and the Client for this Assignment only] |

## SCHEDULE 13 - CLIENT POLICIES AND PROCEDURES

[*Insert details of Client Policies and Procedures that will apply to the MSP in the performance of its obligations.*]