

Contract 19A – Vendor Terms with a public authority hirer



Contents

1. Definitions and Interpretation
2. Contract Principles
3. Variations
4. Appointment and Contract Duration
5. Vendor's and Hirer's Obligations
6. Observance of Statutory and Other Requirements
7. Quality Assurance
8. Obligations in connection with TUPE
9. Contract Personnel
10. Contract Management
11. [Optional clause: Performance Monitoring]
12. Unsatisfactory Performance
13. Complaints in Respect of Service Provision
14. Invoices and Payments
15. Charges for Temporary Resources
16. Permanent Introduction Fees
17. Refunds of Permanent Introduction Fees
18. Introductions to Third Parties
19. VAT and Late Interest Payments
20. Liabilities, Indemnities and Insurance
21. Access to the Hirer's Premises
22. Retention of Documents
23. Intellectual Property Rights
24. Assignment and Sub-Contracting
25. Termination
26. Consequences of Termination
27. Force Majeure
28. Data Protection
29. Confidentiality
30. Dispute Resolution and Arbitration
31. Agency and Authority
32. Notices
33. Waiver
34. Severance
35. Third Party Rights
36. The Bribery Act and Criminal Finances Act
37. Law and Jurisdiction
38. Freedom of Information Act
39. Best Value [Local Authority contracts only]
- SCHEDULE 1- Rate and Pricing Schedule
- SCHEDULE 2- Service Level Agreement
- SCHEDULE 3- AWR definitions

Contract 19A – Vendor Terms with a public authority hirer



CONTRACT dated day of 20xx

BETWEEN

- (1) [Insert name of vendor agency] Limited (registered company no. [insert registered company no.]) [trading as [insert trading name if different]] of [address – see Note 1] (“the Vendor”). *if the Vendor is a limited liability partnership*; and
- (2) [Insert Hirer’s name] Limited (registered company no. [insert registered company no.]) [trading as [insert trading name if different]] of [address – (“the Hirer”).

WHEREAS

- (A) The Hirer has appointed the Vendor to act as a [master/neutral] vendor for the introduction of candidates for direct engagement by [insert Hirer name] and the provision of temporary staff and as the party through which the services of secondary suppliers are managed.
- (B) The Vendor agrees to provide a recruitment service in respect of temporary staff and candidates to the Hirer in the categories detailed in the SLA annexed hereto as Schedule 2.

IT IS AGREED:

1. Definitions and Interpretation

- 1.1. In this Contract the following words and expressions shall have the following meanings except where the context requires otherwise:

“Agency Worker”	means a Temporary Resource who works temporarily under the supervision and direction of the Hirer;
“AWR”	means the Agency Workers Regulations 2010 [and/or the Agency Workers (Northern Ireland) Regulations 2011];
“Assignment”	means assignment services to be performed by the relevant Temporary Resource for the Hirer for a period of time during which the Temporary Resource is supplied by [the Vendor or] a Supplier to work temporarily for the Hirer;
“AWR Claim”	means any complaint or claim to a tribunal or court made by or on behalf of the Temporary Resource against the Hirer and/or the Vendor and/or the Supplier for any breach of the AWR;

Contract 19A – Vendor Terms with a public authority hirer



“Bribery Act”	means the Bribery Act 2010;
“Calendar Week”	means any period of seven days starting with the same day as the first day of the First Assignment;
“Candidate”	means an individual (whether Introduced via an Intermediary or not) seeking direct engagement with the Hirer whether on a temporary, fixed term or permanent basis;
“Charges”	means any and all charges, fees and rates set out in Schedule 1;
“Commencement Date”	means [insert date the Contract is to start];
“Comparable Employee”	means as defined in Schedule 3 to this Contract;
“Conduct Regulations”	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 [and/or the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005];
“Confidential Information”	means any and all confidential commercial, financial, marketing, technical or other information or data of whatever nature relating to the disclosing party’s business or affairs (including but not limited to this Contract, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information concerning the Assignment) in any form or medium whether disclosed or granted access to whether in writing, orally or by any other means, whether before or after the date of this Contract together with any reproductions of such information in any form or medium or any part(s) of such information;
“Contract”	means this agreement between the Hirer and the Vendor comprising the terms set out in this document, including the attached Schedules;
“Contract Manager”	means a competent and appropriately

Contract 19A – Vendor Terms with a public authority hirer



	qualified and experienced person appointed by each of the Hirer and Vendor to be its representative in relation to the performance of the Contract;
“Contract Period”	means the duration of the Contract as set out at Clause 4.2;
“Control”	means (a) the legal or beneficial ownership, directly or indirectly, of more than 50% of the issued share capital or similar right of ownership; or (b) the power to direct or cause the direction of the affairs and/or general management of the company, partnership, statutory body or other entity in question, whether through the ownership of voting capital, by contract or otherwise, and "Controls" and "Controlled" shall be construed accordingly;
“Criminal Finances Act”	means the Criminal Finances Act 2017;
“Data Protection Legislation”	means all applicable data protection and privacy legislation and regulations in force from time to time including the Data Protection Act 2018 and the General Data Protection Regulation (EU (2016/679));
“Engagement”	means the engagement (including the Candidate’s acceptance of the Hirer’s offer), employment or use of any Candidate, Temporary Resource or Intermediary by the Hirer or by any third party to whom any Candidate, Temporary Resource or Intermediary has been introduced by the Hirer, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, license, franchise or partnership arrangement, or any other engagement; and “Engage”, “Engages” and “Engaged” shall be construed accordingly;
“First Assignment”	means: (a) the relevant Assignment; or (b) if, prior to the relevant Assignment: (i) the Temporary Resource has worked in any assignment in the same role with

Contract 19A – Vendor Terms with a public authority hirer



	<p>the relevant Hirer as the role in which the Temporary Resource works in the relevant Assignment; and</p> <p>(ii) the relevant Qualifying Period commenced in any such assignment,</p> <p>that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Temporary Resource is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer);</p>
“FOIA”	means the Freedom of Information Act 2000 [or the Freedom of Information (Scotland) Act 2002];
“Force Majeure Event”	means any circumstance beyond the reasonable control of a party which renders the continued providing or receiving of all or part of the Services in accordance with the Contract illegal or impossible, including fire, flood, act of God, riot, civil disturbance, industrial dispute (not directly involving either party), war or sabotage;
“Hirer's Group”	means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Hirer, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Hirer, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
“Inside IR35”	means an Assignment which meets the provisions of Section 61M ITEPA;
“Intellectual Property Rights”	means patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for

Contract 19A – Vendor Terms with a public authority hirer



passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Intermediary”	means any firm or corporate body (not including the Vendor or a Supplier) through which a Temporary Resource provides services;
“Intermediaries Legislation”	means sections 48 – 61 ITEPA;
“Introduction”	means (i) the passing to the Hirer of a curriculum vitae or information which identifies any Candidate or Temporary Resource; or (ii) the Hirer’s interview of any Candidate or Temporary Resource (in person or by telephone or by any other means), following receipt of the Hirer’s Recruitment Order; or (iii) the supply of any Temporary Resource; and, in any case, which leads to an Engagement of any Candidate or any Temporary Resource; and “Introduce”, “Introduced” and “Introducing” shall be construed accordingly;
“IR35 Status Decision”	means the Hirer’s decision on the application of the Intermediaries Legislation to the Assignment in accordance with Section 61T ITEPA, to be provided in writing;
“ITEPA”	means the Income Tax (Earnings and Pensions) Act 2003;
“Losses”	means all losses, liabilities, damages, costs, expenses whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including

Contract 19A – Vendor Terms with a public authority hirer



	such items arising out of or resulting from actions, proceedings, claims and demands;
“NICs Legislation”	means the Social Security (Categorisation of Earners) Regulations 1978 [the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978];
“Outside IR35”	means an Assignment which does not meet the provisions of Section 61M ITEPA;
“Pensions Act”	means the Pensions Act 2008;
“Period of Extended Hire”	means any additional period that the Hirer wishes a Temporary Resource to be supplied for beyond the duration of the original Assignment or series of Assignments as an alternative to paying a Transfer Fee;
“Permanent Introduction Fee”	means the fee payable by the Hirer for the Introduction of a Candidate;
“Public Authority”	means a public authority (a) as defined in FOIA and (b) as further defined in Section 61L ITEPA;
“Qualifying Period”	means 12 continuous Calendar Weeks during the whole or part of which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Hirer to work temporarily for and under the supervision and direction of the relevant Hirer in the same role, and as further defined in Schedule 3 to this Contract;
“Recruitment Order”	means the Hirer’s instruction (whether verbal or in writing) to the Vendor requesting the Vendor to source a Temporary Resource or Candidate for the Hirer;
“Relevant Period”	means whichever ends the later of (a) the period of 8 weeks commencing on the day after the last day on which the Temporary Resource worked for the Hirer having been supplied by [the Vendor or] a Supplier ; or (b) the period of 14 weeks commencing on the first day on which the Temporary Resource worked for the Hirer having been supplied by [the Vendor or]

Contract 19A – Vendor Terms with a public authority hirer



a Supplier or 14 weeks from the first day of the most recent Assignment where there has been a break of more than 6 weeks (42 days) since any previous assignment;

“Relevant Supplier”

means the Supplier which has supplied a Temporary Resource or Introduced a Candidate to the Hirer;

“Relevant Terms and Conditions”

means, for the purposes of the AWR, terms and conditions relating to:

- (a) pay;
- (b) the duration of working time;
- (c) night work;
- (d) rest periods;
- (e) rest breaks; and
- (f) annual leave

that are ordinarily included in the contracts of employees or workers (as appropriate) of the Hirer whether by collective agreement or otherwise and including (for the avoidance of doubt and without limitation) such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;

“Remuneration”

includes gross base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Temporary Resource and/or a Candidate for services provided to or on behalf of the Hirer or any third party. Where a company car is provided, a notional amount of [insert amount] will be added to the salary in order to calculate the Introduction fee;

“Replacement Candidate”

means any Candidate Introduced by the Vendor or a Supplier to the Hirer to fill the Engagement following the Introduction of another Candidate whose Engagement either did not commence or was terminated during the first [12] weeks of the Engagement;

Contract 19A – Vendor Terms with a public authority hirer



“Safeguarding Legislation”	means the Safeguarding Vulnerable Groups Act 2006 or the Protecting Vulnerable Groups (Scotland) Act 2007 as applicable;
“Services”	means the services to be provided by the Vendor in accordance with the Contract and as set out in the SLA;
“SLA”	means the Service Level Agreement between the parties and set out in Schedule 2;
“Suppliers”	means those persons who shall[, along with the Vendor,] introduce Candidates for direct engagement by the Hirer and/or supply Temporary Resources;
“Temporary Resource”	means any individual (who may be an officer, employee, worker or representative of an Intermediary) or an Intermediary Introduced by [the Vendor or] a Supplier to provide services to the Hirer and who is not a Candidate;
“Temporary Resource Introduction Fee”	means the fee payable by the Hirer in accordance with Clauses 15.6 and 15.7;
“Temporary Work Agency”	means as defined in Schedule 3 to this Contract;
“Transfer Fee”	means the fee payable by the Hirer in accordance with Clauses 15.1, 15.3 and 15.4;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“Vendor's Group”	means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Vendor, including (but not limited to) as a holding company as defined in section 1159 of the Companies Act 2006; and (b) any company, partnership, statutory body or other entity which from time to time is Controlled by or is under common Control with the Vendor, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;

Contract 19A – Vendor Terms with a public authority hirer



“Vulnerable Person” means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen;

“WTR” means the Working Time Regulations 1998.

- 1.2. Reference to the Vendor’s personnel shall be deemed to include the Vendor’s partners, directors, workers and employees and the Vendor’s agents, sub-contractors and essential visitors unless the context otherwise requires.
- 1.3. Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and vice versa.
- 1.4. The headings contained in this Contract are for convenience only and do not affect their interpretation.
- 1.5. Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Contract) and all subordinate legislation made (before or after this Contract) under it from time to time.
- 1.6. The words “including”, “Include”, “in particular” and words of similar effect shall be construed so that they do not limit the general effect of the words which precede them.
- 1.7. References to “in writing” or “written” include [fax and][email (unless expressly stated to the contrary within the relevant provision).

2. Contract Principles

- 2.1. Subject to any variations made pursuant to Clause 3, this Contract [together with the Recruitment Order] contains the entire agreement between the parties and prevails over any terms of business put forward by the Hirer.
- 2.2. The Hirer is deemed to have satisfied itself as to the nature and extent of the Services to be provided.
- 2.3. [Each of] The [Vendor and the] Relevant Supplier shall act as (a) an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973 (“EAA”)) when Introducing Candidates to the Hirer and (b) as an employment business (as defined in Section 13(3) of the EAA) when Introducing or Supplying Temporary Resources for Assignments with the Hirer.

Contract 19A – Vendor Terms with a public authority hirer



3. Variations

Subject to Clause 14.5, no variation or alteration to this Contract shall be valid unless the details of such variation are agreed between the Hirer and the Vendor and are set out in writing and signed by the Hirer's and Vendor's Contract Managers and a copy of the varied Contract is given to the Hirer stating the date on or after which such varied Contract shall apply.

4. Appointment and Contract Duration

- 4.1. The Hirer appoints the Vendor to provide the Services throughout the Contract Period in consideration of payment by the Hirer of the prices set out in the Rate and Pricing Schedule in accordance with the provisions of the Contract.
- 4.2. This Contract shall commence on the Commencement Date and, subject to the Contract provisions for earlier termination of all or part of the Contract, shall continue in force until [insert date of expiry] (unless extended by the Hirer by written notice given not later than [three (3)] months before the date of expiry for a maximum of [up to][two (2) further periods of 12 months][five (5) years]).

5. Vendor's and Hirer's Obligations

- 5.1. The Vendor shall provide the Services in compliance with this Contract.
- 5.2. The Vendor shall provide the Services with reasonable skill, care and diligence and due propriety and with the utmost good faith in accordance with the Hirer's Contract Manager's reasonable and lawful written instructions.

AWR

- 5.3. The Vendor shall use reasonable endeavours to ensure that each Temporary Resource and Candidate is suitable for the assignment in which they are to be placed, and shall meet [the compliance criteria set out in the SLA or] such [other] reasonable criteria that the Hirer notifies the Vendor of in writing in the Recruitment Order. Where the Hirer considers that it is necessary (or where it is required by law or by any professional body) for a Temporary Resource or Candidate to possess any experience, training, qualifications or authorisations in order to work in the position, the Hirer will notify the Vendor in writing in the Recruitment Order.
- 5.4. In relation to Agency Workers, the Hirer will comply with 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) of the AWR.
- 5.5. To enable [the Vendor and/or] the Relevant Supplier to comply with its[/ their]

Contract 19A – Vendor Terms with a public authority hirer



obligations under the AWR, in relation to each Agency Worker, the Hirer undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time at the Vendor's request:

- 5.5.1. to inform the Vendor of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment which count or may count towards the Qualifying Period;
- 5.5.2. if the Agency Worker has worked in the same or a similar role with the Hirer via any third party prior to the date of commencement of the relevant Assignment and/or works in the same or a similar role with the Hirer via any third party during the relevant Assignment, to provide the Vendor with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Vendor;
- 5.5.3. to inform the Vendor if the Agency Worker has prior to the date of commencement of the relevant Assignment and/or during the relevant Assignment:
 - 5.5.3.1. completed two or more assignments with the Hirer;
 - 5.5.3.2. completed at least one assignment with the Hirer and one or more earlier assignments with any member of the Hirer's Group; and/or
 - 5.5.3.3. worked in more than two roles during an assignment with the Hirer and on at least two occasions worked in a role that was not the same role as the previous role;
- 5.5.4. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - 5.5.4.1. provide the Vendor with written details of the basic working and employment conditions the Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Hirer as an employee or worker at the time the Qualifying Period commenced or with those of a Comparable Employee, such basic working and employment conditions being the Relevant Terms and Conditions;
 - 5.5.4.2. inform the Vendor in writing whether the Relevant Terms and Conditions provided are those of a hypothetical directly recruited employee or worker or those of a Comparable Employee;

Contract 19A – Vendor Terms with a public authority hirer



- 5.5.4.3. if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Vendor with a written explanation of the basis on which the Hirer considers that the relevant individual is a Comparable Employee; and
 - 5.5.4.4. inform the Vendor in writing of any variations in the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 5.5.5. save where the Agency Worker will not complete the Qualifying Period during the term of the Assignment, to provide the Vendor with written details of its pay and benefits structures and appraisal processes and any variations of the same.
- 5.6. In addition, for the purpose of awarding any bonus to which any Agency Worker may be entitled under the AWR, the Hirer will:
 - 5.6.1. integrate the Agency Worker into its relevant performance appraisal system;
 - 5.6.2. assess the Agency Worker's performance;
 - 5.6.3. provide the Vendor with copies of all documentation relating to any appraisal of the Agency Worker, including without limitation written details of the outcome of any appraisal and the amount of any bonus awarded; and
 - 5.6.4. provide the Vendor with all other assistance the Vendor may request in connection with the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 5.7. The Hirer will comply with all the Vendor's requests for information and any other requirements to enable [the Vendor and/or] the Relevant Supplier to comply with the AWR.
- 5.8. Without prejudice to Clauses 20.11 and 20.12, the Hirer shall inform the Vendor in writing of any:
 - 5.8.1. oral or written complaint any Temporary Resource makes to the Hirer which is or may be a complaint connected with rights under the AWR; and
 - 5.8.2. written request for information relating to the Relevant Terms and Conditions that the Hirer receives from any Temporary Resource;

as soon as possible but no later than [7] calendar days from the day on which any such oral or written complaint is made or request for information is received by the Hirer and the Hirer will take such action and give such information and assistance as the Vendor may request, and within any timeframe requested by the Vendor, in order to resolve any such complaint or to provide any such information in a written statement

Contract 19A – Vendor Terms with a public authority hirer



to the Agency Worker within 28 days of the Hirer's receipt of such a request in accordance with Regulation 16 of the AWR and the Hirer will provide the Vendor with a copy of any such written statement.

Working with Vulnerable Persons

- 5.9. The Hirer shall advise the Vendor at the time of issuing any Recruitment Order whether the Temporary Resource or Candidate will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or otherwise be working in a position covered by the Safeguarding Legislation.
- 5.10. The Hirer shall assist the Vendor by providing any information required to allow the Vendor and/or the Supplier to comply with its statutory obligations under the Safeguarding Legislation and to allow the Vendor and/or the Supplier to select a suitable Temporary Resource or Candidate.
- 5.11. In particular in the event that the Hirer removes a Temporary Resource from an Assignment in circumstances which would require the Vendor and/or the Supplier to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Legislation, the Hirer will provide sufficient information to the Vendor to allow it and/or the Supplier to discharge its statutory obligations.

ITEPA

- 5.12. The Hirer confirms that it is a Public Authority.
- 5.13. The Hirer will at the commencement of each Assignment (and whenever reasonably required by the Vendor during each Assignment) notify the Vendor in writing as to whether it has assessed such Assignment as being Inside IR35 or Outside IR35. This is the Hirer's IR35 Status Decision in relation to that particular Assignment. The Hirer will notify the Vendor in writing immediately if any of the circumstances of the Assignment change which mean that the Hirer's IR35 Status Decision also changes.
- 5.14. The Hirer will notify the Vendor in writing if at any time it or any other person exercises supervision, direction or control, or seeks the right to supervise, direct or control any Temporary Resource engaged through an Intermediary.
- 5.15. The Hirer warrants that:
 - 5.15.1. all information and documentation supplied to the Vendor in accordance with this contract is complete, accurate and up-to-date; and
 - 5.15.2. it will, during the term of the relevant Assignment, immediately inform the Vendor in writing of any subsequent change in any information or documentation provided in accordance with this Clause.

Contract 19A – Vendor Terms with a public authority hirer



6. Observance of Statutory and Other Requirements

- 6.1. Both the Hirer and the Vendor will comply with all applicable legislation in so far as it places obligations upon them in the performance of the Contract.
- 6.2. Neither the Hirer nor the Vendor shall knowingly do or omit to do anything which may interfere with compliance by the other party of its obligations under this Contract.
- 6.3. Neither the Hirer nor the Vendor shall unlawfully discriminate within the meaning of the Equality Act 2010 or any other enactment relating to discrimination in recruitment or employment and both the Hirer and the Vendor shall take all reasonable steps to secure the observance of this clause by all their personnel employed and/or engaged in the performance of this Contract.
- 6.4. Both parties shall comply with:
 - 6.4.1. all current relevant health, safety, fire and environmental legislation and official codes of practice and guidance, including, but not limited to, the requirements of the WTR, the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, the Provision and Use of Work Equipment Regulations 1992; and
 - 6.4.2. all requirements of the Contract in relation to health, fire, safety and environmental matters.
- 6.5. The parties shall upon request provide to each other a copy of any relevant risk assessment and their policies in relation to health, safety, fire and environmental issues, their approach to equal opportunities and promoting diversity in relation to the supply of Temporary Resources.
- 6.6. [Optional clause: In the event that the Vendor enters into any subcontract in connection with the Contract, it shall impose obligations on its subcontractors in terms substantially similar to those imposed on it pursuant to this Clause 6.]
- 6.7. [Optional clause: The Vendor will act in respect of any person who receives or requests services under the Contract as if the Vendor were a public authority for the purposes of the Human Rights Act 1998.]

7. Quality Assurance

The Vendor shall operate a self-regulatory system of quality assurance and quality measures relevant to the Contract in addition to any quality requirements in the SLA which ensures that the Services are provided in accordance with the law and the Contract, including the measures set out in the SLA.

Contract 19A – Vendor Terms with a public authority hirer



8. Obligations in connection with TUPE

- 8.1. In circumstances where TUPE applies and where requested to do so the Vendor shall provide such information in relation to its employees and those of any Supplier, as the Hirer may require and as required by law, to the Hirer or to any other person authorised by the Hirer who is to be invited to submit a tender in relation to the provision of services similar to the Services. Such information shall be provided within [14/21 days] of the request and not later than 28 days before any proposed transfer or as soon as is reasonably practicable.
- 8.2. During the [three (3) month] period preceding the expiry of the Contract or within any period of notice of termination, neither the Vendor nor the Relevant Supplier shall without the prior written agreement of the Hirer, which shall not be unreasonably withheld or delayed:
 - 8.2.1. materially amend the terms and conditions of employment of any employee whose work wholly or mainly falls within the scope of this Contract; or
 - 8.2.2. materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract, save where this is necessary for the provision of the Services in accordance with this Contract.
- 8.3. The Hirer shall not knowingly do or omit to do anything, which may adversely affect an orderly transfer of responsibility for provision of the Services. The Hirer agrees to indemnify the Vendor [and the Relevant Supplier] [see Note 6] fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of TUPE related information.

9. Contract Personnel

- 9.1. Both the Hirer and the Vendor shall employ or engage sufficient contract personnel to ensure that the Services are provided in accordance with the Contract. Each party's personnel employed or engaged in connection with the Contract shall be properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties. Each party shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provisions of the Services and in particular:
 - 9.1.1. the task or tasks such person has to perform;
 - 9.1.2. all relevant provisions of the Contract;
 - 9.1.3. all relevant policies, rules, procedures and standards of the Vendor and the Hirer; and
 - 9.1.4. all relevant legislative requirements.

Contract 19A – Vendor Terms with a public authority hirer



- 9.2. For the avoidance of doubt, for the purposes of this clause “contract personnel” refers to the personnel required to deliver/manage the Services on behalf of each party and not any Temporary Resource or Candidate Supplied or Introduced by the Vendor or a Supplier to the Hirer.

10. Contract Management

- 10.1. The Vendor shall at all times properly manage and monitor the Services in accordance with the SLA.
- 10.2. Each of the Hirer and Vendor shall appoint a Contract Manager to act on their behalf for all purposes connected with the Contract. All notices, information, instructions or other communications given to a Contract Manager shall be deemed to have been given to the Hirer or Vendor whichever is applicable.
- 10.3. Each party shall ensure that at all times they supply the other party’s Contract Manager with up-to-date contact details for the other party’s Contract Manager including name, email, work and mobile telephone numbers. Each party shall ensure that its Contract Manager or a duly authorised and competent representative shall be available to meet the other party’s representative at all reasonable times and shall provide such written reports as the other party’s Contract Manager may reasonably require prior to such meetings or generally, including in accordance with the SLA.

11. Performance Monitoring

- 11.1. [see Note 30]Notwithstanding any relevant provisions of the SLA, the Hirer may at any time on not less than [seven (7) days’] notice instigate review meetings at a location convenient to the parties to monitor and assess the Vendor’s performance of the Services. Relevant personnel (being employees and not Temporary Resources) involved in the Contract shall where reasonably practicable attend such review meetings.
- 11.2. Generally, in order to assess whether or not the Vendor is providing the Services to the required standard, the Hirer shall have regard to:
- 11.2.1. the Vendor’s compliance with any relevant oral and written complaints from recipients or users of the Services;
 - 11.2.2. the reliability of the Services provided;
 - 11.2.3. the Vendor’s measurement of achievement against performance indicators, if any, set out in the SLA;
 - 11.2.4. random spot-checks in accordance with the SLA; and
 - 11.2.5. regular formal contract review meetings in accordance with the SLA and, in

Contract 19A – Vendor Terms with a public authority hirer



any event, [not less than three (3) times per annum OR on a quarterly basis] where the Hirer's Representative and the Contract Manager shall discuss the Vendor's performance in accordance with the Contract.]

- 11.3. The Hirer may, upon giving [one (1) month's] written notice to the Vendor, carry out an audit and upon receipt of such notice the Vendor shall permit or procure permission for any auditor or other authorised Contract Manager of the Hirer to have reasonable access for audit purposes to information, premises or equipment used in the provision of the Services. Such access shall include reasonable access and inspection of the arrangements being made by the Vendor to comply with its obligations under this Contract including access to such financial and other records as are kept by the Vendor as part of the provision of the Services and as may be reasonably required from time to time to enable the Hirer to verify the sums due and payable under this Contract.
- 11.4. At all times when carrying out such an audit the Hirer's authorised Contract Managers and/or auditors shall comply with all reasonable requirements of the Supplier for the purpose of complying with the Data Protection Legislation and for the purpose of protecting the confidentiality of the information of the Vendor, any Supplier and any third party and no such information will be divulged to any third party save in pursuance of any statutory obligation.
- 11.5. During access and inspection visits, the Vendor shall provide all reasonable access and facilities free of charge.

12. Unsatisfactory Performance

- 12.1. Where, in the reasonable opinion of the Hirer's Contract Manager, the Vendor has failed to perform the whole or any part of the Services with the standard of skill, care and diligence which a competent and suitably qualified person performing the same services could reasonably be expected to exercise, or in accordance with the Contract, the Hirer's Contract Manager may give the Vendor a notice specifying details of the unsatisfactory performance.
- 12.2. Where the Vendor has been given notice of a failure in accordance with Clause 12.1 the Hirer may require the Vendor, if the failure is capable of remedy, to perform the Services to the Hirer's Contract Manager's reasonable satisfaction within such reasonable period as may be specified, including where necessary, the correction or re-execution of any Services already carried out.
- 12.3. Where the Vendor has been given notice of a failure in accordance with Clause 12.1 and the fault is in the reasonable opinion of both parties incapable of remedy, the Hirer may terminate the Contract in accordance with Clause 25.2.

13. Complaints in Respect of Service Provision

Contract 19A – Vendor Terms with a public authority hirer



- 13.1. Both parties shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner.
- 13.2. Both parties shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the other party's Contract Manager at all reasonable times and upon reasonable request. Each party shall immediately notify the other party's Contract Manager in writing of all complaints received and of all steps taken in response.

14. Invoices and Payments

- 14.1. The Vendor will submit on a [weekly/monthly] basis, [invoices/consolidated bills] with an attached breakdown [by cost centre]. The Vendor shall also provide all information agreed to be reasonably necessary to permit the Hirer's ready validation and approval of these amounts which shall be charged to the Hirer in accordance with the fees and charges in Schedule 1.
- 14.2. The Hirer shall pay all [invoices/consolidated bills] within [fourteen (14) days] of the date of the [invoice/consolidated bill].
- 14.3. The Hirer shall have [fourteen (14) days] from the date of invoice to dispute any amounts charged. The parties agree to use their best endeavours to investigate the matter in dispute and to work together in good faith towards a resolution of the disputed sum as soon as reasonably practicable.
- 14.4. If the Hirer disputes any invoice, in whole or in part, the Hirer will pay any undisputed amount within [fourteen (14) days] of the date of the [invoice/consolidated bill]. Upon resolution of any disputed amount, the Hirer shall pay such amount to the Vendor within 7 days of such resolution.
- 14.5. The Vendor reserves the right to vary the Charges by giving written notice to the Hirer:
 - 14.5.1. in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the AWR, the Pensions Act or ITEPA; and/or
 - 14.5.2. if there is any variation in the Relevant Terms and Conditions in relation to an Agency Worker.
- 14.6. In addition to the relevant Charges, the Hirer will pay the Vendor an amount equal to any bonus that the Hirer awards to any Agency Worker in accordance with Clause 5.6 immediately following any such award and the Vendor will pass that bonus sum without delay to the Supplier and will require that the Relevant Supplier pays any such bonus to the relevant Agency Worker. For the avoidance of doubt, the Hirer will also pay any employer's National Insurance Contributions and the Supplier's commission on the bonus in addition to any bonus payable to the Agency Worker.

Contract 19A – Vendor Terms with a public authority hirer



- 14.7. The Hirer is not entitled to any refunds or in respect of the Charges save as set out in Clause 17 and/or Schedule 1.

15. Charges for Temporary Resources

Transfer Fees

- 15.1. Save where Clause 15.6 applies, the Hirer shall be liable to pay a Transfer Fee if the Hirer Engages a Temporary Resource Introduced by [the Vendor or] the Relevant Supplier other than via the [Vendor [or the Relevant Supplier] [see Note 6] or introduces the Temporary Resource to a third party and such introduction results in an Engagement of the Temporary Resource by the third party other than via [the Vendor or] the Relevant Supplier and:

15.1.1. where the Temporary Resource has been supplied [the Vendor or] the Relevant Supplier, such Engagement takes place during the Assignment or within the Relevant Period; or

15.1.2. where the Temporary Resource has not been supplied, such Engagement takes place within [six (6)] months from the date of the Introduction to the Hirer.

The Transfer Fee will be calculated as set out in the Rate and Pricing Schedule attached as Schedule 1.

- 15.2. Save where Clause 15.6 applies, if the Hirer wishes to Engage the Temporary Resource other than via [the Vendor or] the Relevant Supplier [see Note 6] without liability to pay a Transfer Fee, the Hirer may, on giving [one week's or such notice as you require] written notice to the Vendor [and the Relevant Supplier], engage the Temporary Resource for the Period of Extended Hire specified in Schedule 1 and on the basis set out in Clause 15.3 below.

- 15.3. During such Period of Extended Hire the Vendor shall supply the Temporary Resource on the same terms on which it or s/he has or would have been supplied during the Assignment and in any case on terms no less favourable than those terms which applied immediately before the Vendor [or the Relevant Supplier] [see Note 6] received the notice in Clause 15.2, and the Hirer shall continue to pay the relevant Charges. If [the Vendor or] the Relevant Supplier is unable to supply the Temporary Resource for any reason outside its control for the whole or any part of the Period of Extended Hire, or the Hirer does not wish to hire the Temporary Resource on the same terms as the Assignment for the whole Period of Extended Hire, but the Temporary Resource is Engaged by the Hirer, the Hirer shall pay the Transfer Fee, reduced pro-rata to reflect any Charges paid by the Hirer during any part of the Period of Extended Hire worked by the Temporary Resource before being Engaged by the Hirer. If the Hirer fails to give notice of its intention to Engage the Temporary Resource other than via [the Vendor [or] the Relevant Supplier [see Note 6] before such Engagement

Contract 19A – Vendor Terms with a public authority hirer



commences, the parties agree that the Transfer Fee shall be due in full.

- 15.4. Where prior to the commencement of the Hirer's Engagement of any Temporary Resource other than via [the Vendor or] the Relevant Supplier the Vendor and the Hirer agree that such Engagement will be on the basis of a fixed term of less than 12 months, [the Vendor or] the Relevant Supplier may, in its absolute discretion, reduce the Transfer Fee as calculated in accordance with Schedule 1 pro-rata. Such reduction is subject to the Hirer Engaging the Temporary Resource for the agreed fixed term. Should the Hirer extend the Temporary Resource's Engagement or re-Engage the Temporary Resource within 12 months from the commencement of the initial Engagement the Vendor reserves the right to recover the balance of the Transfer Fee.
- 15.5. The [Vendor or] Relevant Supplier will not refund the Transfer Fee in the event that the Engagement of the Temporary Resource by the Hirer or by a third party to which the Hirer introduces the Temporary Resource other than via [the Vendor or] the Relevant Supplier terminates before the end of the fixed term referred to in Clause 15.4.

Temporary Resource Introduction Fee

- 15.6. If the Temporary Resource is an individual who provides services through an Intermediary and the relevant individual and Intermediary have both given notice in accordance with Regulation 32(9) of the Conduct Regulations that the Conduct Regulations do not apply (and the Vendor has notified the Hirer of that fact), the Hirer shall be liable to pay a Temporary Resource Introduction Fee where [the Vendor or] the Relevant Supplier Introduces the Temporary Resource to the Hirer and:
- 15.6.1. the Hirer Engages the Temporary Resource other than via [the Vendor or] the Relevant Supplier within a period of [six (6)] months from the termination of the Assignment in respect of which the Temporary Resource was supplied, or if there was no supply, within [six (6)] [see Note 36] months of the Introduction of the Temporary Resource by the Vendor to the Hirer; or
- 15.6.2. the Hirer introduces the Temporary Resource to a third party and such introduction results in an Engagement of the Temporary Resource by the third party other than via [the Vendor or] the Relevant Supplier within [six (6)] months from the date of the introduction by the Hirer to the third party.
- 15.7. The Temporary Resource Introduction Fee will be calculated as set out in Schedule 1.
- 15.8. The [Vendor or] Relevant Supplier will refund the Temporary Resource Introduction Fee as set out in Schedule 1] if the Engagement is subsequently terminated.
- 15.9. The provisions of this Clause 15 shall survive the termination of this Contract howsoever arising.

16. Permanent Introduction Fees

Contract 19A – Vendor Terms with a public authority hirer



- 16.1. The Hirer agrees to:
 - 16.1.1. notify the Vendor immediately of the terms of any offer of an Engagement which it makes to any Candidate Introduced by the Vendor or a Supplier;
 - 16.1.2. notify the Vendor immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Vendor of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Vendor; and
 - 16.1.3. pay the Permanent Introduction Fee, to be calculated in accordance with this Clause 16 and Schedule 1, by the due date for payment set out in Clause 16.6.
- 16.2. The Permanent Introduction Fee calculated in accordance with Schedule 1 is payable if the Hirer Engages the Candidate within the period of [X] calendar months from whichever is the later of the date of (a) the Introduction, (b) the Hirer's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of Engagement.
- 16.3. Where the actual Remuneration is not known, the [Vendor or] the Relevant Supplier will charge a Permanent Introduction Fee calculated in accordance with Schedule 1 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Candidate has been Engaged and with regard to any information supplied by the Hirer to [the Vendor or] the Relevant Supplier and/or comparable positions in the market generally.
- 16.4. Where prior to the commencement of the Engagement the Vendor and the Hirer agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Permanent Introduction Fee will apply pro-rata. If the Hirer (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within [X] [calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Hirer shall be liable to pay a further Permanent Introduction Fee based on the additional Remuneration applicable for (a) the extended period of Engagement or (b) the period of the second and any subsequent Engagement, subject to the Hirer not being liable to pay a greater sum in Permanent Introduction Fees than the Hirer would have been liable for under Clause 16.1.3 or 16.3 had the Candidate first been Engaged for 12 months or more.
- 16.5. The Hirer's obligations under this Clause 16 shall be performed without any right of the Hirer to invoke set-off, deductions, withholdings or other similar rights.
- 16.6. The Permanent Introduction Fee shall be payable within [X] days of the date of the Vendor's invoice which shall be rendered once the Candidate commences the Engagement

Contract 19A – Vendor Terms with a public authority hirer



- 16.7. If, after an offer of Engagement has been made to the Candidate, the Hirer decides for any reason to withdraw it, the Hirer shall be liable to pay the Vendor a Cancellation Fee set out in Schedule 1.
- 16.8. The provisions of this Clause 16 shall survive the termination of this Contract howsoever arising.

Sourcing candidates through LinkedIn or other social media

- 16.9. If the Hirer finds a Candidate's or Temporary Resource's details through LinkedIn or any other social media site or receives an application (whether solicited or unsolicited) directly from a Candidate or Temporary Resource (i.e. not via the Vendor or a Supplier) for direct engagement by the Hirer, the Hirer must tell the Vendor within [24 hours]. If the Hirer fails to advise the Vendor within [24 hours] that it has sourced or received such details and/or application, then the Hirer agrees that the Vendor [or the Relevant Supplier] will continue to represent the Candidate of Temporary Resource and the Hirer will be liable to pay either a Permanent Introduction Fee or a Temporary Resource Introduction Fee in the event of an Engagement.
- 16.10. [16.10 TO 16.12 ARE OPTIONAL CLAUSES RE ENAGAGEMENT OF THE VENDOR'S OWN STAFF: see Note 41] In the event that any employee of the Vendor or a Relevant Supplier (not including any Temporary Resource) with whom the Hirer has had personal dealings (a "Restricted Employee") accepts an Engagement with the Hirer while employed by the Vendor or the Relevant Supplier [or within 3 months of leaving the Vendor], the Hirer shall [save where the Restricted Employee responded to a general advertisement]:
- 16.10.1. provide details to the Vendor of the Remuneration agreed with the Restricted Employee together with any documentary evidence as requested by the Vendor; and
- 16.10.2. pay a fee to the Vendor, to be calculated on the basis set out in paragraph 3a of Schedule 1.
- 16.11. Where the actual Remuneration is not known, the Vendor will charge a fee calculated on the basis set out in paragraph 3a of Schedule 1 based on its determination of the Remuneration taking into account the market rate level of remuneration applicable for the position in which the Restricted Employee has been Engaged and with regard to any information supplied by the Hirer to the Vendor and/or comparable positions in the market generally.
- 16.12. For the purposes of Clauses 16.10 and 16.11 only, references to Candidate or Temporary Resource within the definitions of Engagement and Remuneration shall be deemed to be references to Restricted Employee.

17. Refunds of Permanent Introduction Fees

Contract 19A – Vendor Terms with a public authority hirer



17.1. If a Candidate accepts an offer of Engagement made by the Hirer but the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, it is terminated by either the Candidate or the Hirer (except in circumstances where the Candidate is made redundant) before the expiry of [12] weeks from the date of commencement of the Engagement; then subject to the terms of Clause 17.2 the [Vendor or] Relevant Supplier will refund the Permanent Introduction Fee in accordance with the accompanying Scale of Refunds set out in Schedule 1.

17.2. In order to qualify for the refund set out in Clause 17.1

17.2.1. the Hirer must comply with the provisions of Clause 16.1 and must notify the Vendor in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement; and

17.2.2. the Hirer must exclusively give the [Vendor] or Relevant Supplier [4] weeks from the date of the notice of non-commencement or termination in which to find one suitable Replacement Candidate based on the original specification given for the position the Hirer is seeking to fill. If after [4] weeks from the date of the notice no suitable Replacement Candidate can be found, or if the Replacement Candidate's Engagement is terminated before the expiry of [12] weeks from the date of commencement of the Engagement the Hirer will then be eligible for a refund, subject to the rest of Clause 17.

17.3. For the purposes of this Clause 17 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Hirer, but for any period of garden leave or payment in lieu of notice, whichever is the later.

17.4. In circumstances where Clause 16.4 applies, the Hirer shall pay the full Introduction Fee and shall not be entitled to a refund.

17.5. If subsequent to receiving a refund, the Hirer re-engages the Candidate within a period of [x] calendar months from the date of termination of the Engagement in respect of which the refund was paid, then the Hirer will repay the refund to the Vendor, who shall in turn repay it to the Supplier as appropriate. The Hirer shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

18. Introductions to third parties

Introductions of Candidates are confidential. If a Hirer discloses a Candidate's details to a third party, that will be deemed to be a **"Third Party Introduction"**. If that Third Party Introduction results in an Engagement of the Candidate by the third party within [6] months of the [Vendor's or] Relevant Supplier's Introduction of the Candidate to the Hirer, then the Hirer will be liable

Contract 19A – Vendor Terms with a public authority hirer



to the Vendor for payment of a Permanent Introduction Fee in respect of that Candidate in accordance with Clause 16. Neither the Hirer nor the third party shall be entitled to a refund of the Permanent Introduction Fee in any circumstances.

19. VAT and late interest payments

19.1. All Charges, Transfer Fees and Introduction Fees (whether Temporary Resource or Permanent) are exclusive of VAT, which will be applied at the rate applicable at the date of the [invoice/ consolidated bill]. The Hirer shall pay the Vendor such VAT as may be properly chargeable in respect of the supply of the Services upon receipt of a valid VAT invoice.

19.2.

The Vendor reserves the right to charge interest on invoiced amounts unpaid by the due date at the rate of [specify a rate]% per annum above the base rate from time to time of [specify your bank] (but at X% a year for any period when that base rate is below 0%) on the overdue sum from the due date until the date of payment of the overdue sum, whether before or after judgment.

20. Liabilities, Indemnities and Insurance

20.1. For the avoidance of doubt, nothing in this Clause 20 shall exclude either party's liability for death or personal injury arising from its own negligence or for fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded by law.

20.2. The Hirer shall be liable for and shall indemnify and keep indemnified the Vendor, against all liabilities, demands, proceedings, damages, costs, losses, claims, charges and expenses suffered or incurred by the Vendor arising out of or in connection with:

20.2.1. the breach by the Hirer of any requirement of the Contract;

20.2.2. the injury to, or death of, any person howsoever arising whether in contract, tort or otherwise;

except and to the extent that it may arise out of the act default or negligence of the Vendor, its employees or agents.

20.3. Subject to clause 20.1, the Hirer's liability to the Vendor in respect of clause 20.2 shall be limited to and not exceed the levels of insurance required to be obtained pursuant to clause 20.4.

20.4. During the Contract Period (and for a period of [6][12] years thereafter), the Hirer shall maintain in force, with a reputable insurance company provided that such insurance

Contract 19A – Vendor Terms with a public authority hirer



is available at commercially reasonable rates:

- 20.4.1. professional indemnity insurance in an amount of not less than [one million pounds (£1,000,000)] for any one occurrence or a series of occurrences arising out of any one event;
 - 20.4.2. in respect of public liability [ten million pounds sterling (£10,000,000)] in respect of any one incident; and
 - 20.4.3. in respect of employers liability [ten million pounds sterling (£10,000,000)] in respect of any one incident. [see note 49]
- 20.5. The Hirer shall immediately inform the Vendor if such insurance ceases to be available at commercially reasonable rates.
- 20.6. For the avoidance of doubt, the liability set out in Clause 20.2 shall include liability for third parties employed in connection with the Services so far as the supervision, management of, or instructions issued to, such third parties is the responsibility of the Hirer.
- 20.7. Without in any way limiting its responsibilities under this Clause 20, the Vendor shall [and shall procure that all Suppliers will] insure with a reputable insurance company against its liabilities under Clause 20.2. The Vendor shall supply to the Hirer upon request certified copies of the insurance policies together with documentary evidence necessary to demonstrate compliance with this Clause 20.
- 20.8. The Hirer will confirm to the Vendor in writing for every Temporary Resource whether it, or any other person does or does not supervise, direct or control the Temporary Resource and the Hirer will immediately update the Vendor in writing if that position changes. If the Hirer has previously advised the Vendor that no person exercises (or has the right to exercise) supervision, direction or control over the Temporary Resource and subsequently advises to the contrary the Vendor and/or the Supplier may terminate the relevant Assignment in accordance with Clause 25.3.
- 20.9. The Hirer shall indemnify and keep indemnified the Vendor against all liabilities, claims, demands, proceedings, damages, costs, losses, claims, charges and expenses whatsoever incurred or suffered by the Vendor (including specifically, but without limitation, those raised or charged by HMRC and/or any successor, equivalent or related body pursuant to any of the provisions of ITEPA and/or the NICs legislation (and/or any supporting or consequential secondary legislation relating thereto)) arising out of any Assignment or arising out of any non-compliance with and/or as a result of any negligence or breach of this Contract by the Hirer, its employees or agents other than the Vendor or its personnel.
- 20.10. The Hirer accepts and will discharge all health and safety obligations towards the Temporary Resources whilst they are on Assignment including any training or

Contract 19A – Vendor Terms with a public authority hirer



induction on the Hirer's health and safety policies.

- 20.11. It is the Hirer's responsibility to ensure that the Temporary Resources are protected against all forms of discrimination in the course of his/her Assignment with the Hirer.
- 20.12. The Hirer shall notify the Vendor's Contract Manager of any accident, damage or breach of any statutory provision relating in any way to the Services or this Contract immediately upon becoming aware of it. Such notification shall include all relevant information to enable the Vendor's Contract Manager to investigate the matter fully.
- 20.13. Either party shall, upon request, provide the other party's Contract Manager with any relevant information arising out of any Assignment and/or the provision of the Services, in connection with any legal inquiry, hearing, arbitration or Court proceedings ("Proceedings") in which the other party may become involved and shall give evidence in such Proceedings.
- 20.14. The Hirer shall inform the Vendor in writing of any AWR Claim which comes to the notice of the Hirer as soon as possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Hirer.
- 20.15. If a Temporary Resource brings, or threatens to bring, any action, the Hirer undertakes to take such action and give such information and assistance as the Vendor may request, and within any timeframe requested by the Vendor and at the Hirer's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such action and to appeal against any judgment given in respect thereof.

21. Access to the Hirer's Premises

- 21.1. The Hirer shall by prior arrangement provide such access to the Hirer's premises as the Vendor may reasonably require to fulfil its obligations under the Contract and/or to comply with its legal obligations in respect of the provision of the Services.
- 21.2. The Vendor shall comply with all security requirements of the Hirer while at the Hirer's premises including providing identity details and submitting to security checks on request and complying with the Hirer's requirements relating to security passes, including returning them on exiting the Hirer's premises.
- 21.3. The Hirer reserves the right to refuse admission to or require the removal of any person from the Hirer's premises who the Vendor and/or Hirer, in their reasonable opinion believes is in breach of the Hirer's requirements or is not suitable to provide the Services.

22. Retention of Documents

The Vendor shall retain all accounts, documents and records in connection with the Contract for at least **[six (6)]** years after the expiry or termination of the Contract or for any longer period required

Contract 19A – Vendor Terms with a public authority hirer



by law or agreed between the parties.

23. Intellectual Property Rights

- 23.1. Except where otherwise expressly agreed in writing, any drawings, specifications, software, designs or other data (including working documents, maps and photographs) completed or provided by the Hirer in connection with the Contract shall become or, as the case may be, remain the property of the Hirer, in whom shall be, or shall remain, vested all Intellectual Property Rights and be delivered up to the Hirer on completion or termination of the Contract.
- 23.2. Neither party shall in connection with the Contract, use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any Intellectual Property Rights of any third party [and each party shall indemnify the other party against all liabilities, claims, demands, proceedings, damages, costs, losses, charges and expenses which the other party may suffer or incur, whether directly or indirectly, arising out of any breach of this provision]. [see Note 48 re indemnities]
- 23.3. Insofar as the Hirer wishes to ensure that any and all Intellectual Property Rights developed under the Contract or arising from the provision of the Services by the Vendor and any Supplier shall belong to the Hirer (except insofar as they reproduce any existing Intellectual Property Right in the work or a substantial part of any work) the Hirer must execute or cause to be executed all deeds and documents and undertake all acts required to vest such Intellectual Property Rights in the Hirer. The Vendor cannot and does not make any representations or warranties that any and all Intellectual Property Rights developed under the Contract or arising from the provision of the Services by the Vendor and/or any Supplier shall belong to anyone other than the author of any work so developed or arising from the Services.

24. Assignment and Sub-Contracting

- 24.1. The Vendor shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Hirer and the Vendor shall ensure that any assignee assumes all the rights and obligations of this Contract.
- 24.2. The Hirer shall neither assign the Contract or any part of it or the benefit or advantage of the Contract or any part of it without the prior written consent of the Vendor (which consent shall not be unreasonably withheld or delayed [but may be given subject to such reasonable conditions, if any, as the Vendor may think fit to impose]).
- 24.3. The Vendor may sub-contract the performance of its obligations under the Contract provided that the sub-contractor shall be prohibited by the Vendor from further sub-contracting the relevant obligations.
- 24.4. The Vendor shall ensure that any sub-contractor complies with all applicable provisions of the Contract. Any sub-contract shall not relieve the Vendor [or the

Contract 19A – Vendor Terms with a public authority hirer



Relevant Supplier] [see Note 6] of its [their respective] rights and obligations under the Contract.

25. Termination

- 25.1. Either party may terminate the Contract at any time by giving the other party [three (3) months'] written notice.
- 25.2. Either party may terminate this Contract with immediate effect by giving written notice to the other party if any one of the following events occurs:
 - 25.2.1. if the other party commits a material or fundamental breach of any of the terms of this Contract and such material or fundamental breach is in the reasonable opinion of both parties incapable of remedy;
 - 25.2.2. if the other party commits a breach of this Contract which in the case of a breach capable of remedy shall not have been remedied within 14 days of the receipt by the other of a notice from the innocent party identifying the breach and requiring its remedy;
 - 25.2.3. if the other party persistently breaches any of its obligations under the Contract;
 - 25.2.4. the other party breaches or is suspected of breaching the Bribery Act, the Criminal Finances Act, or commits or is suspected of committing a Prohibited Act (as defined in Clause 36);
 - 25.2.5. the other party is dissolved, ceases or threatens to cease to conduct all (or substantially all) of its business, is or becomes unable to pay its debts as they fall due, is or becomes insolvent or is declared insolvent, or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - 25.2.6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
 - 25.2.7. an order is made for the winding up of the other party, or where the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation or amalgamation where the resulting entity will assume all the obligations of the other party under this Contract).
- 25.3. The Vendor may terminate this Contract with immediate effect by giving notice of termination in writing to the Hirer if the Hirer or, where applicable, any of its directors or partners:
 - 25.3.1. ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets, is subject to a merger, change

Contract 19A – Vendor Terms with a public authority hirer



of control, or take-over or changes its composition or reduces its staffing levels in a way which, in the reasonable opinion of the Vendor, would adversely affect the delivery of the Services;

- 25.3.2. has any of its directors or partners convicted of dishonesty; or
- 25.3.3. experiences, in the reasonable opinion of the Vendor's Contract Manager, whose reasonable opinion shall be final and binding, an irreconcilable conflict of interest with the Vendor or any other hirer of the Vendor; or
- 25.3.4. provides to the Vendor a document which falsely states that the Temporary Resource (when working through an Intermediary) does not work under (or is not subject to) supervision, direction or control of any person or if the Hirer seeks to supervise, direct or control the Temporary Resource where it has previously advised the Vendor that it does not and will not supervise, direct or control the Temporary Resource;
- 25.3.5. the Hirer fails to provide written reasons for its IR35 Status Decision within [7] days of the date of a request for those reasons from the Vendor; [or]
- 25.3.6. [the circumstances of any Assignment change such that the Assignment ceases to be Inside IR35 and it becomes Outside IR35 or vice versa].

26. Consequences of Termination

- 26.1. If this Contract expires or is terminated for any reason then the Vendor shall:
 - 26.1.1. be entitled to payment for the Services rendered by it and any Supplier (including payment in respect of any work carried out by any Temporary Resource) up to the date of termination, excluding any sums already paid in respect of such Services. In the event that the Hirer or any third party to whom the Hirer Introduced a Temporary Resource wishes to Engage any Temporary Resource supplied by [the Vendor and/or] [any Supplier] up to and immediately prior to the date of termination or within the Relevant Period or the Period of Extended Hire (whichever ends the later) or within the restricted periods set out in Clause 15.6 either directly or through an employment business (as defined under the Conduct Regulations) other than [the Vendor and/or] [the Relevant Supplier], the Hirer shall be liable to pay a Transfer Fee or a Temporary Resource Introduction Fee in accordance with Clause 15 and Schedule 1;
 - 26.1.2. have the right to claim from the Hirer reimbursement of all reasonable costs necessarily and properly incurred in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Vendor by reason of the termination of the Contract.

Contract 19A – Vendor Terms with a public authority hirer



- 26.2. The Hirer will indemnify the Vendor against any awards made against it or any Losses it incurs as a result of the termination of this Contract.
- 26.3. Where the Contract is terminated under Clauses 25, 27 or 36 the Hirer may, during any notice period:
 - 26.3.1. direct the Vendor, where the Services or part of them have not commenced, to refrain from commencing such Services or part of them or where the Services have commenced, to cease work immediately; or
 - 26.3.2. direct the Vendor to complete in accordance with the Contract all or any part of the Services, which shall be paid at the rates set out in Schedule 1.
- 26.4. Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.
- 26.5. Termination or expiry of this Contract 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 this Contract which existed at or before the date of termination or expiry.
- 26.6. The rights of each party under this Clause 26 are in addition to and without prejudice to any other rights or remedies of that party against the other directly or pursuant to any guarantee, indemnity or bond.

27. Force Majeure

- 27.1. If either party is prevented, hindered or delayed from performing its obligations under this Contract by a Force Majeure Event then:
 - 27.1.1. that party's obligations under this Contract shall be suspended for so long as the Force Majeure Event continues and to the extent that the party is so prevented hindered or delayed;
 - 27.1.2. as soon as reasonably possible after commencement of the Force Majeure Event that party shall notify the other party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under this Contract;
 - 27.1.3. if that party fails to give the notice referred to in Clause 27.1.2 it shall forfeit its rights under Clause 27.1.1;
 - 27.1.4. that party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Contract;

Contract 19A – Vendor Terms with a public authority hirer



and

27.1.5. as soon as reasonably possible after the cessation of the Force Majeure Event that party shall notify the other party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Contract.

27.2. If the Force Majeure Event continues for more than [fourteen (14)] days after the commencement of the Force Majeure Event either party may terminate the Contract.

28. Data Protection

28.1. Defined terms used in this clause shall so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.

28.2. Each of the parties agrees that for the purposes of the Data Protection Legislation they are a data controller and that they are subject to and shall comply with the provisions of the Data Protection Legislation so far as applicable to this Contract and the Services. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

28.3. Each of the parties agree that all information relating to a Candidate or Temporary Resource is confidential and is provided solely for the purpose of providing the Services to the Hirer. Such information must not be used for any other purpose nor divulged to any third party or outside the European Economic Area.

28.4. Each party shall (and shall procure that its directors, officers, employees and any permitted agents, shall) comply with (i) all applicable obligations and requirements under the Data Protection Legislation; (ii) any reasonable request from the other party in relation to personal data and the Data Protection Legislation, including in relation to any complaint, request, breach, or audit and shall maintain a record of any processing of personal data and retain and make available all information required to demonstrate compliance with the Data Protection Legislation.

28.5. Each party shall ensure that it has in place appropriate administrative, organisational, technical, training and contractual measures to ensure compliance with the requirements of the Data Protection Legislation and in particular the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data).

28.6. The Hirer shall not knowingly or negligently do or omit to do anything which places the Vendor in breach of its obligations under the Data Protection Legislation.

28.7. The Hirer shall notify the Vendor immediately if it becomes aware of or reasonably

Contract 19A – Vendor Terms with a public authority hirer



suspects a breach of this Clause 28.

- 28.8. The Hirer shall indemnify and keep indemnified the Vendor against all Losses suffered or incurred by the Vendor arising out of or in connection with any breach of the Data Protection Legislation to the extent caused by any act or omission of the Hirer, its directors, officers, employees or agents.

29. Confidentiality

- 29.1. The terms of this Contract are confidential between the parties and neither shall without the prior written consent of the other, disclose the contents to any third party, save for the purposes of taking legal advice or where it is strictly necessary for the performance of the Contract.
- 29.2. Each of the parties acknowledges that in the course of the provision and receipt of the Services, they may receive or have access to Confidential Information relating to the other party. Accordingly, each of the parties undertakes to hold any Confidential Information in the strictest confidence and not to disclose it to any third party, including any of its officers or employees, except as is strictly necessary for the performance of the Services. Each of the parties further undertakes to use the other party's Confidential Information solely and exclusively for the purposes of the Contract and to afford the Confidential Information the same level of protection against unauthorised disclosure or use as it uses to protect its own Confidential Information.
- 29.3. This Clause 29 shall not apply to Confidential Information which is or comes into the public domain other than through a violation of the terms of the Contract by the other party; which is required to be disclosed by law, or a competent authority; was in the other party's lawful possession prior to the disclosure with no duty to respect any right of confidence in the information; or is lawfully disclosed to the other party without restriction on disclosure.
- 29.4. Each of the parties shall notify the other party promptly of any unauthorised use or disclosure of the Confidential Information and will provide such assistance and co-operation as is reasonably required or requested by the other party to prevent or minimise further unauthorised uses or disclosures.
- 29.5. Each of the parties shall, on termination or expiry of the Contract, or otherwise at the request of the other party, immediately return all documents (including copies), in whatever medium stored, held by it, or under its control, which contain any Confidential Information of the other party.
- 29.6. The Hirer accepts that all introductions of potential Temporary Resources and Candidates along with all information relating to such personnel provided by the Vendor and/or a Supplier are strictly confidential. The Engagement by the Hirer, otherwise than by using the services of the Vendor and/or Supplier, of any Temporary Resource and Candidate whether for a definite or indefinite period, or the introduction of such Temporary Resource to any member of the Hirer's Group, or to any third party, with a resulting Engagement, constitutes an improper use of the

Contract 19A – Vendor Terms with a public authority hirer



Confidential Information and represents a breach of this Contract.

- 29.7. The Hirer undertakes to ensure that all of the Confidential Information supplied by the Vendor and/or Suppliers and relating to particular Temporary Resources or Candidates Introduced by the Vendor and/or Suppliers in the course of the Services shall be deleted from their database at the end of the relevant Assignment or, where no Assignment takes place, within 1 week of the rejection of the potential Temporary Resources or Candidate.
- 29.8. The Vendor undertakes to keep confidential, and to procure that the Suppliers undertake to keep confidential, all Relevant Terms and Conditions that the Hirer discloses to the Vendor and that neither the Vendor nor the Suppliers will use such information except for the purposes of compliance with the AWR (including, for the avoidance of doubt and without limitation, when dealing with any request for information or complaint made by any Temporary Resource or any AWR Claim).

30. Dispute Resolution and Arbitration

- 30.1. If any dispute or difference of any kind whatsoever shall arise between the Hirer and the Vendor in connection with or arising out of the Contract or the carrying out of the Services, including any dispute as to any decision, opinion, instruction, direction, certificate or valuation given by the Hirer's Contract Manager (whether during the progress of the Contract or after its completion, and whether before or after termination, abandonment or breach of the Contract), it shall be referred to the Hirer's Contract Manager and the Vendor's Contract Manager who shall endeavour to resolve the dispute or difference.
- 30.2. If the parties' Contract Managers fail to resolve a matter pursuant to Clause 30.1 within [fourteen (14) days] the matter shall be referred to a [Director] of the Hirer and to a [Director] of the Vendor. If the matter is still unresolved for a further [fourteen (14) days], either party may require that the matter be referred to arbitration [under the Arbitration Rules of the Chartered Institute of Arbitrators] or as otherwise may be agreed between the parties. The [arbitrator's] award shall be final and binding upon the Hirer and the Vendor.
- 30.3. If, upon the referral to an arbitrator of any dispute between the Hirer and the Vendor, the arbitrator shall find that in the exercise of its powers, duties and discretions under the Contract either party has acted unreasonably in all the circumstances in the issue of any notice, instruction or certificate or in the giving or withholding of any consent, the arbitrator shall have the power to make an award which has the effect of amending such notice, instruction, certificate or decision to give or withhold consent in such manner as the arbitrator may think fit.

31. Agency and Authority

- 31.1. Except as expressly provided otherwise in this Contract or as instructed in writing by the Hirer neither the Vendor nor its contract personnel shall in any circumstances hold

Contract 19A – Vendor Terms with a public authority hirer



itself or themselves out as being the employee, worker or agent of the Hirer.

- 31.2. The Vendor shall ensure that neither it nor its contract personnel is held out as having the power to enter into any contract on behalf of the Hirer or in any other way to bind the Hirer to the performance, variation, release or discharge or any legal obligations with third parties; or to perform or discharge duties or functions which by statute must be performed or discharged by the Hirer.

32. Notices

Any demand, notice, or other communication required to be given or served under this Contract shall be in writing and shall be sufficiently served if served personally on the other party's Contract Manager as appropriate, or if sent by first class post or electronic mail to the registered office or last known address of the party to be served or to the Contract Manager's email address. Any notice will be deemed served: if delivered personally, at the time of delivery; if posted, on the second day after posting; and if sent by electronic mail [or facsimile transmission], at the time of transmission subject to proof to the contrary.

33. Waiver

Any delay or failure by either party at any time to enforce the provisions of the Contract or to require performance by the other party of any of the provisions of the Contract shall not limit or restrict the exercise or enforceability of those rights and shall not affect the validity of the Contract or any part thereof or the right of the parties to enforce any of the provisions in accordance with its terms.

34. Severance

If any provision (or part of any provision) of the Contract is or shall become or be declared by a Court or other competent jurisdiction to be invalid, illegal or unenforceable in any way, such invalidity, illegality or unenforceability shall in no way impair or affect the validity, legality, or enforceability of any other provision of this Contract all of which shall remain in full force and effect and the parties will negotiate in good faith to amend such provision (or part provision) to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

35. Third Party Rights

The Contract shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights under the Contracts (Rights of Third Parties) Act 1999. Except where expressly stated, no party who is not a party to this Contract shall have any right to enforce or rely on any provision of the Contract.

36. The Bribery Act and Criminal Finances Act

- 36.1. Neither party shall:

Contract 19A – Vendor Terms with a public authority hirer



- 36.1.1. offer or give, or agree to offer or give to any employee, agent, servant or the Contract Manager of the other party or any Supplier, or any other person, any gift or other consideration of any kind which could act as either an inducement or a reward for any act or failure to act in relation to this Contract;
 - 36.1.2. engage in or commit and shall procure that its employees, agents, servants or sub-contractors or any other person acting on its behalf shall not engage in or commit, in relation to this Contract, an act prohibited under the Bribery Act any other relevant legislation or codes in relation to bribery and anti-corruption or an act prohibited under the Criminal Finances Act (each “a Prohibited Act”).
- 36.2. Each party shall:
- 36.2.1. in relation to this Contract, act in accordance with guidance issued by either the Ministry of Justice under section 9 of the Bribery Act or HM Revenue and Customs in relation to the Criminal Finances Act;
 - 36.2.2. have and enforce an anti-bribery policy (which shall be made available to the other party on request) and adequate procedures to prohibit it and any of its employees, agents, servants or sub-contractors from committing a Prohibited Act;
 - 36.2.3. immediately notify the other party if it suspects or becomes aware of any breach of this Clause 36;
 - 36.2.4. respond promptly to any enquiries made by the other party regarding any breach, potential breach or suspected breach of this Clause 36 [and shall cooperate with any investigation and shall allow the other party to audit its books, records and any other relevant documentation in connection with such breach].
- 36.3. The Hirer shall indemnify the Vendor against any loss sustained by the Vendor as a result of any breach of this Clause 36.
- 36.4. In addition to the termination rights set out in Clause 25, the Vendor shall be entitled to terminate the Contract by written notice with immediate effect if it suspects any breach of the Bribery Act, the Criminal Finances Act or the commission of any Prohibited Act.

37. Law and Jurisdiction

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the laws of [England and Wales/Scotland/ Northern Ireland], and shall be subject to the jurisdiction of the Courts of [England and Wales/Scotland/ Northern Ireland].

38. Freedom of Information Act

Contract 19A – Vendor Terms with a public authority hirer



- 38.1. Notwithstanding any other clause in this Contract, if the Hirer receives a request for information pursuant to the FOIA, such request relating to the Services or any other part of this Contract, and the Hirer has reason to believe that such information is held by the Vendor, the following shall apply:
- 38.1.1. the Hirer shall serve in writing a request upon the Vendor requiring such information pursuant to the FOIA ("**the FOI Request**");
 - 38.1.2. the Vendor shall at its own expense respond in full and in writing to all particulars described in the FOI Request (including, if requested, providing electronic copies of such information) within 3 days from the date of receipt of the FOI Request;
 - 38.1.3. if the Hirer serves any request for information that is supplemental to the FOI Request, the Vendor shall respond in full and in writing within 2 working days from the date of receipt of the request for supplemental information; and
 - 38.1.4. the Vendor shall ensure that all Suppliers, sub-contractors, consultants and agents comply with the provisions of this Clause 38.
- 38.2. The Hirer shall not be liable in any way to a third party in respect of any information requested pursuant to a FOI Request.
- 38.3. The Vendor warrants that any response to a FOI Request shall be complete and accurate to the best of the Vendor's knowledge.

Clause 39 is optional: it only relevant where contracting with a local authority. If these are used similar clauses will need to be inserted in any secondary supplier agreement. (would I need this with the NHS)

39. [OPTIONAL CLAUSE: Best Value [Local Authority contracts only]]

- 39.1. [see Note 62] The Vendor acknowledges that the Hirer is subject to a statutory duty pursuant to the Local Government Act 1999 to make arrangements to secure continuous improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness ("**the Best Value duty**").
- 39.2. The Vendor shall co-operate fully and assist the Hirer, so far as reasonably required, in relation to all requests for assistance by the Hirer in connection with the performance of the Hirer's Best Value duty as it relates to the Contract at no extra charge including, but not limited to:
- 39.2.1. complying with all requests for information, including providing access to premises, staff, documents, data and processes;

Contract 19A – Vendor Terms with a public authority hirer



39.2.2. providing assistance to enable the Hirer to undertake best value consultation exercises including undertaking customer or user satisfaction surveys, if required and providing a written report to the Hirer setting out the results;

39.2.3. providing all assistance and information necessary to include an objective comparison of the quality and standard, performance and delivery of the Service, with other organisations;

39.2.4. maintaining and monitoring performance of all contractual performance measurements and targets and providing a detailed performance management report in writing at contract review meetings;

39.2.5. on each anniversary of the Commencement Date providing proposals for service improvements, including an annual review of performance indicators and targets and implementing such proposals as agreed by the Hirer;

39.2.6. throughout the Contract Period, and not less than annually pro-actively suggest efficiency savings.

39.3. The Vendor shall be subject to a duty to demonstrate continuous improvement in its performance of the Services throughout the Contract Period.

39.4. The requirements of this Clause 39 shall be at no additional cost to the Hirer.

The Contract has been entered into on the date stated at the beginning of it.

Executed as an agreement by:

Signature:		
Print name:		
Print job title:		
Date:		
	I confirm I am authorised to sign this Contract on behalf of the Hirer	I confirm I am authorised to sign this Contract on behalf of the Vendor

Contract 19A – Vendor Terms with a public authority hirer



SCHEDULE 1 - Rate and Pricing Schedule

[Note: in this Schedule you need to set out all of the charges for the services provided. Below we set out the key points you need to cover but you may wish to have more detail e.g. according to the grade, experience or location of staff supplied. You may also wish to add detail about e-billing or similar processes]

1. Vendor Management charge

[insert details of any charge made by the Vendor to manage the Services]

2. Temporary Resource rates

(2a) Assignment rates:

- Temporary Resource pay rate. **For the avoidance of doubt, time worked includes time spent on induction or in security queues to enter or leave the Hirer's premises.**
- Expenses
- Shift allowance
- Overtime *[also set out when it applies]*
- Working Time Regulations (i.e. holiday pay)
- Employers' National Insurance

(2b) Transfer Fees (clauses 15.1 to 15.5)

(a) The Transfer Fee referred to in Clause 15 shall be calculated as follows: 20% of the Remuneration payable to the Temporary Resource during the first 12 months of the Engagement (even if the Engagement is for a lesser period or terminates sooner than 12 months) or, if the actual amount of the Remuneration is not known, [...] % of the Remuneration as determined by the [Vendor or] the Relevant Supplier taking into account the market rate level of remuneration applicable for the position in which the Temporary Resource has been Engaged and with regard to any information supplied by the Hirer to [the Vendor or] the Relevant Supplier and/or comparable positions in the market generally, less any rebate applicable calculated according to the scale of rebate to the Transfer Fee shown below.

(b) The Period of Extended Hire, referred to in Clause 15, before the Hirer Engages a Temporary Resource shall be calculated in proportion to the number of weeks the Temporary resource has been supplied to the Hirer prior to the start of the Period of Extended Hire as set out in the table shown below.

Contract 19A – Vendor Terms with a public authority hirer



SCALE OF TRANSFER FEE REBATES													
Number of complete weeks the Temporary Resource has been supplied prior to the Hirer serving notice under Clause 15.2 above.	0	1	2	3	4	5	6	7	8	9	10	11	12
Transfer Fee Rebate (as a % of the Fee set out in Clause 15.1 and above)	0	5	7	10	20	30	40	50	60	70	80	90	100

PERIOD OF EXTENDED HIRE													
Number of weeks the Temporary Resource has been supplied to the Hirer prior to the start of the Period of Extended Hire	0	1	2	3	4	5	6	7	8	9	10	11	12
Period of Extended Hire (in weeks)	12	11	10	9	8	7	6	5	4	3	2	1	0

(2c) Temporary Resource Introduction Fees (see Clause 15.6)

The Temporary Resource Introduction Fee will be calculated in accordance with the following bands, based on the Remuneration applicable during the first 12 months of the Engagement (even if the Engagement is for a lesser period or terminates sooner than 12 months).

[NOTE: The bands below are purely for illustration and you should set your own bands.]

Remuneration

£0-£20,000
 £20,001-£30,000
 £30,001-£40,000
 £40,001-£50,000
 £50,001+

Fee

£ OR % of Remuneration

10
 12
 14
 16
 18

- **Refunds:**

[see clause 15.8 – if you agree to give refunds on Temporary Resource Introduction Fees then set out below the circumstances in which the refunds will be given]

(3a) Permanent Introduction Fees (see Clause 16.2)

Xander Recruitment Group LTD – Unit 10, Brewery Yard Deva Centre, Manchester M3 7BB
 0161 6768822 – www.xandergroup.co.uk

Contract 19A – Vendor Terms with a public authority hirer



The Permanent Introduction Fee is calculated in accordance with the following bands, based on the Remuneration applicable during the first 12 months of the Engagement (even if the Engagement is for a lesser period or terminates sooner than 12 months).

Remuneration	Fee £ OR % of Remuneration
£0-£20,000	10
£20,001-£30,000	12
£30,001-£40,000	14
£40,001-£50,000	16
£50,001+	18

(3b) Permanent Introduction Fee - Cancellation Fee (see Clause 16.7)

The Cancellation Fee due in Clause 16.7 is calculated as follows:

Remuneration	Cancellation Fee
£0-£20,000	10
£20,001-£30,000	12
£30,001-£40,000	14
£40,001-£50,000	16
£50,001+	18

(3c) Permanent Introduction Fees – Scale of Refund (see Clause 17.1)

the Vendor will refund the Introduction Fee in accordance with the table below. For the avoidance of doubt, the following conditions apply.

1. The following scale of refund only applies in the event that the Hirer complies with the provisions of Clauses 16.1, 17.1 and 17.2 of this Contract.
2. Where the Candidate ceases working for the Hirer during the first 12 weeks of the Engagement (except where the Candidate is made redundant) or fails to commence an

Contract 19A – Vendor Terms with a public authority hirer



Engagement, [except in the circumstances set out in Clause 16.10,] a refund of the Introduction Fee shall be paid to the Hirer in accordance with the scale set out below, subject to the conditions in Clause 17.1 and 17.2.

Week in which the Engagement terminates in accordance with clause 17.2	% of introduction fee refunded
Non-commencement	100%
1 - 2	100%
3 - 4	80%
5 - 6	60%
7 - 8	40%
9 - 10	20X%

3. There will be no refund where the Candidate's Engagement is terminated (or the Engagement would have terminated but for any period of garden leave or payment in lieu of notice) during or after the 13th week of the Engagement.

Contract 19A – Vendor Terms with a public authority hirer



SCHEDULE 2 - Service Level Agreement

1. Introduction

This SLA outlines the services, processes and standards in relation to the Services to be provided pursuant to the Contract. The Vendor will manage the provision of Candidates and Temporary Resources supplied by the Suppliers on behalf of the Hirer on a neutral vendor basis.

The terms of this SLA will be used along with any key performance indicators as the basis against which the Services are monitored and reviewed. This SLA will remain in place for the duration of the Contract and will be changed or modified by agreement by both parties in writing after regular reviews. Such changes will become part of this SLA.

2. The Service

The Vendor will install and manage a suitable vendor management system to manage the vacancy, booking, timesheet and invoicing processes on behalf of the Hirer.

The Vendor will put in place an account management team that will be responsible for the implementation and service of this SLA. The team will also be responsible for developing and maintaining the relationship with the Hirer and with the Suppliers.

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

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

Xander Recruitment Group will be expected to manage the following activities:

- filling temporary bookings and direct engagement (permanent or fixed term) placements;
- adhering to the agreed selection criteria for all Temporary Resources and Candidates. The selection criteria will be based upon the needs of each role along with the quality checking criteria as outlined in 5(d) in this SLA. The Vendor will undertake regular audits to monitor the Suppliers' quality checking of Temporary Resources and Candidates;

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Contract 19A – Vendor Terms with a public authority hirer



- managing sickness and holiday cover for the Temporary Resources and Candidates;
- managing the timesheet process;
- dealing with, and supporting the Hirer's Contract manager, in dealing with any performance issues of Temporary Resources. The Vendor's Contract Manager will liaise with the Suppliers and the Temporary Resource to help resolve any issues;
- attending the Contract and service reviews with the Hirer;
- provide management information and reports;
- **Xander Recruitment Group** will maintain its neutrality by treating all Suppliers equally depending on their tiering. The Vendor will not offer any unfair advantage to the Xander Recruitment Groups own recruitment divisions or those members of Xander Recruitment Group through the information the Vendor holds.]
- Xander Recruitment Group will review rates and charges and will negotiate with the Supplier(s) to ensure a competitive pricing structure is achieved and the majority of registered vacancies filled;
- Xander Recruitment Group will hold regular (not more than quarterly) margin reviews with the Hirer to determine that margins are set at a realistic level within the market;
- Xander Recruitment Group will ensure that all suppliers use an E-invoicing and E-purchasing system in line with the Hirers stipulations
- hold regular Suppliers forums to promote the Hirer as an employer of choice. These will be conducted with the assistance of the Hirer's managers;
- the Vendor will ensure all Suppliers have appropriate equal opportunities policies in place and together they will have due regard to the need to eliminate unlawful discrimination, promote equality and good relations between people of different groups, as well as conform to other diversity legislation.

3. The Hirer's commitments

In addition to the Hirer's Obligations elsewhere in the Contract, the Hirer will be expected to:

- give access to appropriate information as requested by the Vendor;
- give feedback on CVs within 2 – 3 working days;
- give feedback on interviews within 24 hours;
- attend 6 monthly Hirer's managers' forums with the aim of promoting the contract, answering any queries that have come up and making the Hirer's managers aware of any new functions of the vendor management system e.g. new types of reports that can be produced;
- notify the Vendor as soon as possible of any requirement to cancel a Recruitment Order in respect of a Candidate or Temporary Resource and in any event 4 hours before the booking is due to start. [If the Hirer fails to notify Xander Recruitment Group of any cancellation of a Recruitment Order then the Hirer shall pay [%] of the first booked shift if the Temporary Resource cannot be placed in an alternative assignment, unless otherwise agreed.]
- reject invoices for temporary staff or candidates from suppliers providing the categories of staff covered by this SLA other than via Xander Recruitment Group or from other contracted Suppliers. The Hirer will report initially on a weekly basis, then monthly, on any agencies acting outside this SLA.

Contract 19A – Vendor Terms with a public authority hirer



4. Formal Review Meetings

Meeting frequency	Attendees
Annual Contract Review	Contract Managers
Six Monthly Review	Contract Managers
Quarterly Reviews	Contract Managers

5. Temporary Resources and Candidates

a. Bookings

Xander Recruitment group will ensure that new Recruitment Orders are entered appropriately on to the correct management system and will procure that the Suppliers use the system to enter the required information and to upload the details of suitable Temporary Resources. Xander Recruitment Group will ensure quality by visiting the Suppliers' premises on a quarterly basis to conduct audits by sighting copies of references, eligibility to work in the UK etc.

b. Management of Temporary Resources and Candidates

Xander Recruitment Group will procure that regular progress checks are undertaken by the Suppliers with each Temporary Resource and Candidate to ensure that the Temporary Resource and Candidate meet the Hirer's Contract Manager's expectations as part of the audit process. However, no Suppliers will be deselected without the approval of the Hirer's Contract Manager. The Hirer's Contract Manager will have the final decision as to which Suppliers they would prefer to use.

c. Response times

Xander Recruitment Group will contract with the Suppliers to work towards the following key performance indicators.

Service	Performance standard
Xander Recruitment Group will confirm with the Hirer's manager the timescales for recruitment when taking the vacancy.	During the course of a contract year the Vendor shall fail to meet these timescales on no more than [10] occasions.
Filling a new vacancy for the agreed start date.	During the course of a contract year, no more than [10] Temporary Resources shall be placed outside the agreed start date.

Contract 19A – Vendor Terms with a public authority hirer



Service	Performance standard
Unplanned turnover of Temporary Resources	During the course of a calendar month unplanned turnover of Temporary Resources shall be no more than [5%].
Completion of first working week of appointment to the Hirer.	During the course of a contract year no more than [5%] of Temporary Resources shall fail to complete the first full week of their appointment.
Sickness.	During the period of their appointment Temporary Resources shall be expected to achieve at least [90%] attendance.
Completion of Assignments to contractually agreed end dates.	More than [90%] of assigned Temporary Resources must complete to agreed end dates.
Access to information as requested from time to time by the Hirer's Representative. This will include, but not be limited to, equal opportunities reporting on Temporary Resources, cost savings and spend reports.	For standard reports – immediately, non-standard reports – [72] hours.
Induction.	The Contract Manager will meet all new starters to conduct a meet and greet, show the facilities etc. Health and safety will remain the Hirer's responsibility.

d. Selection process for Temporary Resources and Candidates

The Vendor will procure that the Relevant Suppliers are contractually obliged to comply with the following recruitment selection processes set out in this paragraph 5d:

- i. **Checking identity:** Potential Temporary Resources and Candidates must be interviewed face-to-face where possible, [(this can include video interviewing via Skype for Candidates or Temporary Resources based more than 25 miles from the Relevant Supplier's office)]. If not possible, a telephone interview must take place. Interviews must be conducted by suitably trained and experienced interviewers. This is to ensure that potential Temporary Resources and Candidates are suitable for the position applied for and that they meet the requirements of the relevant role specification. All interview feedback will be made available to the Hirer.
- ii. **Approval to represent:** All Suppliers must obtain approval to have the "right to represent" the Candidate or Temporary Resource for each vacancy the Relevant Supplier wishes to put the

Contract 19A – Vendor Terms with a public authority hirer



Candidate or Temporary Resource forward for. In the event that the same Candidate or Temporary Resource is submitted by two Suppliers, and both have confirmed they have the right to represent the Candidate or Temporary Resource, then the Vendor reserves the right to contact the Candidate or Temporary Resource to confirm which Supplier has the right to represent them.

iii. **Suitability of the Candidate or Temporary Resource:**

- Where the Candidate or Temporary Resource is required by law or by any professional body to have any experience, training, qualifications or authorisations (or where the Hirer considers that any experience, training, qualifications or authorisations are necessary, as notified to the Vendor) to work on the Assignment, the Relevant Supplier will take all reasonably practicable steps to obtain and offer to provide to the Hirer details and/or copies, as appropriate, of any such experience, training, qualifications or authorisations of the Temporary Resource.
- Where the Assignment involves working with, caring for or attending one or more Vulnerable Persons, the Relevant Supplier will take all reasonably practicable steps to obtain and offer to provide copies to the Hirer two references from persons who are not relatives of the Candidate or Temporary Resource and who have agreed that the references they provide may be disclosed to the Hirer.
- If no previous employer is able to provide references, the Relevant Supplier must try to obtain two references from educational establishments, professional individuals and/or from organisations where the Candidate or Temporary Resource has been employed in a voluntary capacity.
- In addition, the Relevant Supplier will take such other reasonably practicable steps as are required to confirm that the Candidate or the Temporary Resource is suitable for the Assignment.
- If the Vendor or Relevant Supplier has taken all reasonably practicable steps to obtain the information above and has been unable to do so fully, the Vendor shall inform the Hirer of the steps taken to obtain this information in any event.

iv. **Right to work checks:**

All Candidates and Temporary Resources must be eligible to work in the United Kingdom (UK). Though the Hirer will employ successful Candidates (and therefore will be legally responsible for ensuring that successful Candidates have the right to work in the UK) the Relevant Supplier is expected to take reasonable steps not to introduce to the Hirer any Candidate or Temporary Resource who does not have the right to work in the UK. If the Vendor or Relevant Supplier sources a Candidate who does not at the time of introduction have the right to work in the UK but may be of interest to the Hirer, the Vendor will confirm with the Hirer (and then the Relevant Supplier) whether the Hirer is prepared to consider that Candidate's application. For the avoidance of doubt, the Hirer will be responsible for obtaining any necessary right to work permissions for any Candidate it wishes to engage.

Contract 19A – Vendor Terms with a public authority hirer



The Relevant Supplier must confirm the eligibility to work in the UK of a Candidate or Temporary Resource by (i) checking and (ii) taking photocopies of the original appropriate documentation before Introducing the Candidate or Temporary Resource to the Hirer. “Appropriate documentation” means the documents listed in the current Home Office guidance and/or legislation as being acceptable for the purposes of claiming a defence against any breach of the current immigration rules.

- v. **Health declaration:** [The Health Declaration for Temporary Resources questionnaire will be completed and returned for every candidate at an appropriate time during the recruitment process].

[NOTE: The Supplier will carry out all relevant Candidate checks it is the suppliers responsibility to carry out all right to work checks and all other checks deemed appropriate by the hirer on all employees or direct contractors.

(On behalf of the Hirer)	(On behalf of the Vendor)
Signed _____	Signed _____
Name _____	Name _____
Job Title _____	Job Title _____
Date _____	Date _____

Contract 19A – Vendor Terms with a public authority hirer



SCHEDULE 3 – AWR definitions

Definitions of "Comparable Employee", "Qualifying Period" and "Temporary Work Agency"

"Comparable Employee" means as defined in Regulation 5(4) of the AWR being an employee of the Hirer who:

- (a) works for and under the supervision of the Hirer and is engaged in the same or broadly similar work as the Agency Worker having regard, where relevant, to whether the employee and the Agency Worker have a similar level of qualification and skill; and
- (b) works or is based at the same establishment as the Agency Worker or, where there is no comparable employee working or based at that establishment who satisfies the requirements of (a) above, works or is based at a different establishment and satisfies those requirements.

[see Note 69] For the purpose of the definition of "Qualifying Period" in Clause 1.1 of this Contract, when calculating whether any weeks completed with the Hirer count as continuous towards the Qualifying Period, where:

- (a) the Agency Worker has started working during an assignment and there is a break, either between assignments or during an assignment, when the Agency Worker is not working; and
- (b) the break is:
 - (i) for any reason and not more than six Calendar Weeks; or
 - (ii) wholly due to the fact that the Agency Worker is incapable of working in consequence of sickness or injury (provided that the break is 28 Calendar Weeks or less, paragraph (iii) below does not apply and, if required to do so by the Vendor and/or the Supplier, the Agency Worker has provided such written medical evidence as may reasonably be required); or
 - (iii) related to pregnancy, childbirth or maternity and is at a time in a protected period, being a period beginning at the start of the pregnancy and ending at the end of the 26 weeks beginning with childbirth (being the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy) or, if earlier, when the Agency Worker returns to work; or
 - (iv) wholly for the purpose of taking time off or leave, whether statutory or contractual, to which the Agency Worker is otherwise entitled which is:
 - i. ordinary, compulsory or additional maternity leave;
 - ii. ordinary or additional adoption leave;
 - iii. ordinary or additional paternity leave;
 - iv. time off or other leave not listed in paragraphs (iv)i, ii, or iii above; or
 - v. for more than one of the reasons listed in paragraphs (iv)i, ii, iii to iv above;or
 - (v) wholly due to the fact that the Agency Worker is required to attend at any place in pursuance to being summoned for service as a juror and the break is 28 Calendar Weeks or less; or
 - (vi) wholly due to a temporary cessation in the Hirer's requirement for any worker to be present at the establishment and work in a particular role for a pre-determined period of time according to the established custom and practices of the Hirer; or

Contract 19A – Vendor Terms with a public authority hirer



- (vii) wholly due to a strike, lock-out or other industrial action at the Hirer's establishment;
or
 - (viii) wholly due to more than one of the reasons listed in paragraphs (ii), (iii), (iv), (v), (vi) or (vii); and
- (c) the Agency Worker returns to work in the same role with the Hirer, any weeks during which the Agency Worker worked for the Hirer before the break shall be carried forward and treated as counting towards the Qualifying Period with any weeks during which the Agency Worker works for the Hirer after the break. In addition, when calculating the number of weeks during which the Agency Worker has worked, where the Agency Worker has started working in a role during an Assignment and is unable to continue working for a reason described in paragraph (b)(iii) or (b)(v)i., ii, or iii., for the period that is covered by one or more such reasons, the Agency Worker shall be deemed to be working in that role with the Hirer for the original intended duration or likely duration of the relevant Assignment, whichever is the longer. For the avoidance of doubt, time spent by the Agency Worker working during an assignment before 1 October 2011 does not count for the purposes of the definition of "Qualifying Period".

"Temporary Work Agency" means as defined in Regulation 4 of the AWR being a person engaged in the economic activity, public or private, whether or not operating for profit, and whether or not carrying on such activity in conjunction with others, of:

- (a) supplying individuals to work temporarily for and under the supervision and direction of hirers; or
- (b) paying for, or receiving or forwarding payment for, the services of individuals who are supplied to work temporarily for and under the supervision and direction of hirers.

Notwithstanding paragraph (b) of this definition a person is not a Temporary Work Agency if the person is engaged in the economic activity of paying for, or receiving or forwarding payments for, the services of individuals regardless of whether the individuals are supplied to work for hirers. For the purpose of this definition, a "hirer" means a person engaged in economic activity, public or private, whether or not operating for profit, to whom individuals are supplied, to work temporarily for and under the supervision and direction of that person.