



MASTER SERVICES AGREEMENT

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THE PARTIES

This Master Services Agreement (this "**Agreement**"), dated as of [DATE] (the "**Effective Date**"), is by and between:

- (1) Stellar Omada Ltd, a company incorporated and registered in England with company number 11577529 whose registered office is at Birchin Court, 20 Birchin Lane, London, England, EC3V 9DU ("**the Service Provider**").
- (2) [CLIENT NAME], a company incorporated and registered in [JURISDICTION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Client**" and together with the Service Provider, the "**Parties**", and each a "**Party**").

PART ONE: GENERAL TERMS

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. In these Terms the following definitions apply:
 - 1.1.1. Definitions relating to the entire Agreement:

"Client's Group"	means (a) any individual, company, partnership, statutory body or other entity which from time to time Controls the Client, 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 Client, including (but not limited to) as a subsidiary or holding company as defined in section 1159 of the Companies Act 2006;
"Commencement Date or Effective Date"	means and all the provisions of this Agreement shall become effective at this date
"Conditions of Liability"	means meets the requirements of section 50(1)(b) ITEPA and one of the conditions of liability set out in Sections 51 to 53 and 61N, 61O and 61P ITEPA;
"Conduct Regulations"	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003
"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;
"Data Protection Laws"	means the Data Protection Act 2018, the General Data Protection Regulation (EU 2016/679) and any applicable statutory or regulatory provisions in force from time to time relating to the protection and transfer of personal data;
"Engagement"	means the engagement (including a Contingent Resource's or Candidate's acceptance of the Client's offer), the employment or use of a Contingent Resource or the Candidate, by the Client or by any third party to whom the Contingent Resource or Candidate has been introduced by the Client, directly or indirectly, on a permanent or temporary basis, whether under a contract of service or for services, an agency, licence, franchise or partnership arrangement, or any other engagement; or through a limited company of which the Contingent Resource or Candidate is an officer, employee or other representative; and "Engage", "Engages" and "Engaged" shall be construed accordingly;
"Introduction"	means i) the passing to the Client of a curriculum vitae or information which identifies a Contingent Resource or Candidate or ii) the Client's interview of or meeting with a Contingent Resource or Candidate (in person, by telephone or by any other means), following the Client's instruction to the Employment Business to supply a Contingent worker or search for a Candidate; or iii) the supply of a Contingent Resource; which leads to an Engagement of that Contingent Resource or Candidate; and "Introduces" and "Introduced" shall be construed accordingly;
"Losses"	means all losses, liabilities, damages, costs, expenses, fines, penalties or interest, 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 items arising out of or resulting from actions, proceedings, claims and demands;
"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 (taxable and non-taxable) payable to or receivable by a Contingent Resource or Candidate for services rendered to or on behalf of the Client. Where a company car is provided, a notional amount will be added to the sums paid/salary to the relevant Contingent Resource or Candidate in order to calculate the Transfer Fee/Placement Fee;
"Safeguarding Legislation"	means the Safeguarding Vulnerable Groups Act 2006
"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.

1.1.1 Definitions specifically relating to the supply of permanent staff:

"Cancellation Fee"	means the fee payable by the Client to the Service Provider when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with clause 39;
"Candidate"	means the person Introduced by the Service Provider to the Client for an Engagement including any officer, employee or other representative of the Candidate if the Candidate is a corporate body, and members of the Service Provider's own staff;

"Introduction Fee"	means the fee payable by the Client to the Service Provider for an Introduction resulting in an Engagement
"Replacement Candidate"	means any Candidate Introduced by the Service Provider to the Client 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;

1.1.2 Definitions specifically relating to the supply of contingent workers:

"Agency worker"	means (for the purposes of AWR) a Contingent Resource who meets the definition of Agency Worker as set out in Regulation 3 of the AWR;
"Apprenticeship Levy"	means the apprenticeship levy due in accordance with the Finance Act 2017 and the Income Tax (Pay as you Earn) (Amendment) Regulations 2017;
"Assignment"	means the period of time during which a Contingent Resource is supplied by the Service Provider to the Client;
"Assignment Services"	means the services to be provided or the Specified Deliverables to be delivered by the Contingent Resource;
"AWR"	means the Agency Workers Regulations 2010
"AWR claim"	means any complaint or claim to a tribunal or court made by or on behalf of a Agency worker against the Client and/or the Service Provider for any breach of the AWR;
"Calendar Week"	means (for the purposes of the AWR) any period of seven days starting with the same day as the first day of the First Assignment;
"Charges"	means the charges as notified to the Client before an Assignment starts and which may be varied by the Service Provider from time to time during the Assignment.
"Comparable Employee"	means as defined in the AWR;
"Contingent Worker"	means a Worker supplied by the Service Provider to provide the Assignment services to the Client as an independent contractor and not as an employee of the Client.
"Exempt Organisation"	means an organisation which is exempt from the Off-Payroll Rules;
"First Assignment"	means: a) the relevant Assignment; or b) if, prior to the relevant Assignment: i) an Agency Worker has worked in any assignment in the same role with the relevant Client as the role in which an Agency Worker works in the relevant Assignment; and ii) the relevant Qualifying Period commenced in any such assignment, that assignment (an assignment being (for the purpose of this defined term) a period of time during which the Agency Worker is supplied by one or more Temporary Work Agencies to the relevant Client to work temporarily for and under the supervision and direction of the relevant Client);
"Inside IR35"	means an Assignment which meets the conditions of Section 61M ITEPA;
"Intermediary"	means any entity (other than the Service Provider) through which a Contingent Resource provides their services including (and, except where otherwise indicated, includes Intermediary Staff and any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with clause 9.1);
"Intermediary Fees"	means the fees payable to an Intermediary for the provision of the Assignment Services;
"Intermediary Staff"	means any officer, employee, worker or representative of an Intermediary supplied to provide the Assignment Services (and, except where otherwise indicated, includes any officer, employee, worker or representative of any third party to whom the provision of the Assignment Services is assigned or sub-contracted in accordance with clause 9.1);

"ITEPA"	means the Income Tax (Earnings and Pensions) Act 2003;
"NICs Legislation"	means the Social Security (Categorisation of Earners) Regulations 1978
"Off-Payroll Rules"	means Part 2, Chapter 10 ITEPA;
"Outside IR35"	means an Assignment which does not meet the conditions of Section 61M ITEPA;
"Period of Extended Hire"	means (for the purposes of the Conduct Regulations) any additional period that the Client wishes a Contingent Resource to be supplied beyond the duration of the original Assignment or series of Assignments instead of paying a Transfer Fee;
"PSC"	means an Intermediary in which the Contingent Resource meets the Conditions of Liability, and where relevant includes the Intermediary Staff providing their services through the PSC and any substitute, or assignees or sub-contractors to whom the PSC has assigned or sub-contracted the delivery of the Assignment Services;
"Qualifying Period"	means (for the purposes of the AWR) 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 Client to work temporarily for and under the supervision and direction of the relevant Client in the same role;
"Relevant Period"	means (for the purposes of the Conduct Regulations) whichever ends the later of (a) the period of eight weeks commencing on the day after the last day on which a Contingent Resource worked for the Client having been supplied by the Agency; or (b) the period of 14 weeks commencing on the first day on which a Contingent Resource worked for the Client having been supplied by the Service Provider or 14 weeks from the first day of the most recent Assignment where there has been a break of more than six weeks (42 days) since any previous Assignment;
"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 Client whether by collective agreement or otherwise and including (without limitation) any such terms and conditions that have become contractual by virtue of custom and practice, including copies of all relevant documentation;
"Statement of Work"	means the assignment details set out in writing, including deliverables or assignment services and charges;
"Status Determination Statement"	means a written statement which meets the requirements of Section 61NA ITEPA and in which the Client confirms its decision, and the reasons for its decision, on the application of the Off-Payroll Rules to an Assignment
"Temporary Work Agency"	means as defined in the AWR;
"Transfer Fee"	means the fee set out in clause 34 and payable in accordance with clause 3;
"Worker"	means an individual worker, or a worker that is a company or other legal entity as the case may be.
"WTR"	means the Working Time Regulations 1998

- 1.2 Unless the context requires otherwise, references to the singular include the plural and the masculine includes the feminine and vice versa.
- 1.3 The headings contained in this Agreement are for convenience only and do not affect their interpretation.

- 1.4 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 Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.

2 THE AGREEMENT

- 2.1 This Agreement together with the Schedule(s) and any applicable Statement of Work, where relevant, is the entire Agreement between the Client and the Service Provider and covers
- 2.1.1 Services set out in one or more Statements of Work to be agreed by the Client and Service Provider
 - 2.1.2 the supply of Contingent Resources by the Service Provider to the Client; and/or
 - 2.1.3 the Introduction of permanent or contract staff (to be engaged directly by the Client).
- 2.2 Unless otherwise agreed in writing by a Director of the Service Provider, this Agreement shall prevail over any terms of business or purchase conditions (or similar) put forward by the Client.
- 2.3 No variation or alteration to this Agreement shall be valid unless the details of such variation are agreed between a Director of the Service Provider and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which the varied terms shall apply.
- 2.4 The Service Provider acts as
- 2.4.1 An employment business (as defined in Section 13(3) of the Employment Agencies Act 1973) when Introducing Contingent Resources for Assignments with the Client, and
 - 2.4.2 an employment agency (as defined in Section 13(2) of the Employment Agencies Act 1973) when Introducing Candidates to the Client for direct Engagement by that Client.

3 PAYMENT TERMS

- 3.1 Details of fees for
- 3.1.1 The supply of Services is given in clause 24 and will be set out in the Statement of Work.
 - 3.1.2 the supply of contingent workers is given in clause 32 and will be set out in the Statement of Work.
 - 3.1.3 the supply of permanent staff is given in clause 39.
- 3.2 VAT is charged at the standard rate on all fees.
- 3.3 Unless otherwise provided in the applicable Statement of Work, all Fees shall be payable within 30 days of the date of the Service Provider's invoice.
- 3.4 The Client shall be responsible for all sales, taxes, duties and charges of any kind imposed by any state or local governmental entity on any amounts payable by the Client hereunder; provided, that, in no event shall the Client pay or be responsible for any taxes imposed on, or regarding, the Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.
- 3.5 The Service Provider reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 3% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.
- 3.6 The Client shall also reimburse the Service Provider for all costs incurred in collecting any late payments, including, without limitation, legal fees.
- 3.7 In addition to all other remedies available under this Agreement or at law (which the Service Provider does not waive by the exercise of any rights hereunder), the Service Provider shall be entitled to suspend the

provision of any Services until the Client reimburses the Service Provider in full for the provision of the Service.

4 CONFIDENTIALITY AND DATA PROTECTION

- 4.1 From time to time during the Term of this Agreement, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party"), non-public, proprietary, and confidential information of the Disclosing Party that, if disclosed in writing or other tangible form is clearly labelled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within 30 days thereafter, is summarised in writing and confirmed as confidential ("Confidential Information"); provided, however, that Confidential Information does not include any information that:
- 4.1.1 Is or becomes generally available to the public other than as a result of the Receiving Party's breach of this Section 4;
 - 4.1.2 is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;
 - 4.1.3 was in the Receiving Party's possession prior to the Disclosing Party's disclosure hereunder; or
 - 4.1.4 was or is independently developed by the Receiving Party without using any Confidential Information.
- 4.2 The Receiving Party shall:
- 4.2.1 Protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
 - 4.2.2 not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and
 - 4.2.3 not disclose any such Confidential Information to any person or entity, except to the Receiving Party's Group who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.
- 4.3 If the Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify the Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at the Disclosing Party's sole cost and expense, a protective order or other remedy. For purposes of this Section 4 only, the Receiving Party's Group shall mean the Receiving Party's affiliates and its employees, officers, directors, shareholders, partners, members, managers, agents, independent contractors, service providers, sublicensees, subcontractors, solicitors, accountants, and financial advisors.
- 4.4 For the avoidance of doubt, all information relating to a Contingent Resource or Candidate is confidential and where that information relates to an individual is also subject to the Data Protection Laws and is provided solely for the purpose of providing work-finding or assignment services to the Client. Such information must not be used for any other purpose nor divulged to any third party and the Client undertakes to abide by the provisions of the Data Protection Laws in receiving and processing the data at all times.

5 INTELLECTUAL PROPERTY

- 5.1 All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that are delivered to the Client under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services, including any items identified as such in the Statement of Work (collectively, the "**Deliverables**") except for any Confidential Information of the Client or client materials shall be owned by the Service Provider.
- 5.2 The Service Provider hereby grants the Client a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable the Client to make reasonable use of the Deliverables and the Services.

6 NON-SOLICITATION OF PERSONNEL

- 6.1 Neither Party shall, directly or indirectly, during the term of this Agreement and for a period of twelve (12) months after all services to be provided under this Agreement have been performed, without prior written agreement of the other Party:
- 6.1.1 solicit away from the other Party;
 - 6.1.2 endeavour to solicit away from the other Party;
 - 6.1.3 employ, engage or contract for services with; or
 - 6.1.4 endeavour to employ, engage or contract services with, any employee, consultants or other personnel of the other Party engaged in the provision of Services.
- 6.2 A Party shall not be precluded from considering and accepting in good faith an application from any such person for a position in response to a general advertising campaign open to all comers and not specifically targets at the other Party's employees, consultants or personnel.
- 6.3 Should either Party choose to employ an employee of the other without written consent a fee of 40% of the annual total cost to company offered to the employee will be immediately payable.
- 6.4 A placement fee of 20% of the annual total cost to company offered to the employee will be immediately payable should it be arranged and agreed between the Parties that the employee become a permanent employee of other Party.

7 TERMINATION

- 7.1 This Agreement shall commence as of the Effective Date and shall continue thereafter unless sooner terminated pursuant to Section 7.2 or Section 7.3.
- 7.2 Either Party may terminate this Agreement, effective upon 30 days of written notice to the other Party (the "Defaulting Party") if the Defaulting Party:
- 7.2.1 Breaches this Agreement, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within 30 days after receipt of written notice of such breach.
 - 7.2.2 Becomes insolvent or admits its inability to pay its debts generally as they become due.

- 7.2.3 Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 7 business days or is not dismissed or vacated within 45 business days after filing.
 - 7.2.4 Is dissolved or liquidated or takes any corporate action for such purpose.
 - 7.2.5 Makes a general assignment for the benefit of creditors
 - 7.2.6 Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 7.3 Notwithstanding anything to the contrary in Section 7.2.1, the Service Provider may terminate this Agreement and any Statement of Work before the expiration date of the Term on written notice if the Client fails to pay any amount when due hereunder: (a) and such failure continues for 30 days after the Client's receipt of written notice of nonpayment; or (b) more than 3 times in any 6 month period.
- 7.4 Notwithstanding anything to the contrary in Section 7.2.1, the Client may terminate this Agreement and any Statement of Work for convenience and without cause, upon 90 business days written notice to the Service Provider and subject to:
- 7.4.1 Full payment of all invoiced and unpaid fees and expenses in accordance with the relevant Statement of Work;
 - 7.4.2 Full payment of all fees and expenses in accordance with the relevant Statement of Work which are not invoiced, in respect of any work in progress; and
 - 7.4.3 Full payment of all other expenses and costs incurred by the Service Provider in respect of any ongoing Services, which the Service Provider is legally obliged to pay where agreed in advance by the Client.
- 7.5 The rights and obligations of the Parties set forth in this Section 7, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

8 OFF-PAYROLL WORKING RULES

- 8.1 The Parties acknowledge that the determination of the "end client" and the "fee payer" for the purposes of IR35 legislation will depend on the nature of the services being provided. The determination will be made and agreed in writing, as part of the Statement of Work, at the commencement of each new Statement of Work for the provision of services and/or the supply of contingent workers.
- 8.2 Where it is determined that the Service Provider shall be the "end client":
- 8.2.1 The Service Provider shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Services.
 - 8.2.2 Nothing in this Agreement shall give the Client the right to instruct, supervise, control, or direct the details and manner of the completion of the Services.
- 8.3 Where it is determined that the Client shall be the "end client" and the Service Provider shall be the "fee payer", the Client agrees to comply with the client obligations as set out in clauses 9 and 10.

9 OFF-PAYROLL WORKING RULES WHERE THE CLIENT IS THE "END CLIENT"

- 9.1 **WHERE IT HAS BEEN DETERMINED THE ASSIGNMENT IS OUTSIDE IR35:** The Client acknowledges that where a Contingent Resource works through a PSC:
- 9.1.1 the PSC may supply any of the Intermediary Staff to perform the Assignment Services;
 - 9.1.2 and where a PSC is unable to provide any part of the Assignment Services for whatever reason, the PSC can send a substitute, or assign or sub-contract the performance of the Assignment Services provided that the Service Provider and the Client are reasonably satisfied that the substitute, assignee or sub-contractor has the required skills, qualifications, resources and personnel to provide the Assignment Services to the required standard and that the terms of any such assignment or sub-contract will contain the same acknowledgements under and obligations imposed by the agreement between the relevant Contingent Resource and the Service Provider. In these circumstances, the Client shall not unreasonably withhold or delay any agreement sought for the substitution, assignment or sub-contracting of the Assignment Services.
- 9.2 **WHERE THE ASSIGNMENT IS ASSESSED AS OUTSIDE IR35:** The Client acknowledges that the PSC shall be permitted to determine how it will provide the Assignment Services and will have the flexibility to determine the number of hours required and the times worked, to complete the Assignment Services, subject to the relevant PSC complying with any reasonable operational requirements of the Client. The PSC can determine the location where it will provide the Assignment Services, but where the Assignment Services are undertaken at the Client's site, the PSC will comply with any reasonable requirements relating to working hours, and any other operational requirements relating to the Client's site. The Client acknowledges that neither the relevant PSC nor any substitute, or assignee or sub-contractor work under (or subject to the right of) supervision, direction or control of the Client as to the manner in which they provide the Assignment Services.

10 THE CLIENT'S OBLIGATIONS REGARDING OFF-PAYROLL LEGISLATION

- 10.1 The Client confirms that it is not an Exempt Organisation and acknowledges that where a Contingent Resource provides their services through a PSC, the Client has certain obligations under the Off-Payroll Rules. The Client undertakes to advise the Service Provider immediately if it becomes an Exempt Organisation.
- 10.2 In order for the Service Provider to meet its obligations under the Off-Payroll Rules, the Client will:
- 10.2.1 give its Status Determination Statement ("SDS") to both the Contingent Resource and the Service Provider before the relevant Assignment starts. In the SDS the Client must confirm whether the relevant Assignment is Inside IR35 or Outside IR35 and give complete and accurate reasons for its decision. The Client will use best endeavours when making its status decision. The Client acknowledges that if it does not give a valid SDS (a) the Service Provider may not be able to supply or Introduce a PSC to it but (b) if the Service Provider does supply or Introduce a PSC to the Client, the Client will be deemed to be the fee-payer (as defined in the Off-payroll Rules) until such time as it does give a valid SDS;
 - 10.2.2 the Client will respond in full within 7 days to any query raised about its SDS by any of the PSC, the Contingent Resource providing their services through the PSC or the Service Provider;
 - 10.2.3 the Client will review the circumstances of the Assignment every 6 months to check whether its SDS remains correct. If the Client reviews the circumstances of the Assignment and the status of the Assignment has changed, the Client must withdraw its existing SDS and issue a new SDS immediately, stating the date from which the new SDS applies. Where the Client previously gave a

SDS which stated that the Assignment was Outside IR35, the Client is liable for any unpaid tax, national insurance (both employee and employer) and Apprenticeship Levy which would have been due had the Client initially given a SDS which stated that the Assignment was Inside IR35.

10.3 The Client warrants that:

- 10.3.1 all information and documentation supplied to the Service Provider in accordance with this clause 10 is complete, accurate and up-to-date; and
- 10.3.2 it will, during the term of the relevant Assignment, immediately inform the Service Provider in writing of any subsequent change in any information or documentation provided in accordance with this clause 10.

11 LIMITATION OF LIABILITY

- 11.1 In no event shall the Service Provider be liable to the Client or to any third party for any loss of use, revenue, profit, business opportunity or anticipated savings, loss of goodwill or injury to reputation, loss of data or diminution in value, loss of technology rights and services, or for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not the Service Provider has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.
- 11.2 In no event shall the Service Provider be liable to the Client or to any third party or be deemed to be in breach of its obligations under any provision in this Agreement, to the extent that such breach is a result of any delay or failure by the Client in its performance of the obligations under this Agreement or following the Client's reasonable instructions.
- 11.3 For the avoidance of doubt, the Service Provider does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 11.4 In no event shall the Service Provider's aggregate liability arising out of or related to this Agreement or any Statement of Work, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the sum of two million Pounds Sterling.
- 11.5 During the term of this Agreement, both Parties shall maintain in force, with a reputable insurance company, an adequate level of appropriate insurances.
- 11.6 The Client shall indemnify and keep indemnified the Service Provider against any Losses incurred by the Service Provider arising out of any non-compliance with the Data Protection Laws, and/or as a result of any breach of, these Terms by the Client.

12 ENTIRE AGREEMENT

- 12.1 This Agreement, including and together with any related Statements of Work, exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

- 12.2 The parties acknowledge and agree that if there is any conflict between the terms and conditions of this Agreement and the terms and conditions of any Statement of Work, the terms and conditions of this Agreement shall supersede and control.

13 NOTICES

- 13.1 All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice", and with the correlative meaning "Notify") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section).
- 13.2 Unless otherwise agreed herein, all Notices must be delivered either by personal delivery, by a nationally recognised overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid), or by e-mail to the receiving Party.
- 13.3 Except as otherwise provided in this Agreement, a Notice is effective only (a) on confirmation of receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 10.

Notice to Client	[CLIENT ADDRESS] Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]
Notice to Service Provider	3a The Roundal, Roddinglaw Business Park, Edinburgh, United Kingdom, EH12 9DB Attention: [TITLE OF OFFICER TO RECEIVE NOTICES]

14 SEVERABILITY

- 14.1 If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by applicable laws.
- 14.2 Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15 AMENDMENTS

No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorised representative of each Party.

16 WAIVER

No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy,

power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17 ASSIGNMENT

- 17.1 The Client shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Service Provider. Any purported assignment or delegation in violation of this Section 17 shall be null and void. No assignment or delegation shall relieve the Client of any of its obligations under this Agreement.
- 17.2 The Service Provider may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Service Provider's assets without the Client's consent.

18 RELATIONSHIPS OF THE PARTIES

- 18.1 The relationship between the Parties is that of independent contractors. The details of the method and manner for performance of the Services by the Service Provider shall be under its own control, the Client being interested only in the results thereof.
- 18.2 The Services must meet the Client's final approval and shall be subject to the Client's general right of inspection throughout the performance of the Services and to secure satisfactory final completion.
- 18.3 Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19 NO THIRD-PARTY BENEFICIARIES

This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

20 GOVERNING LAW AND JURISDICTION

- 20.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English Law.
- 20.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation.

21 FORCE MAJEURE

- 21.1 No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of the Client to make payments to the Service Provider hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional

emergency; (g) strikes, labour stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party.

- 21.2 The Impacted Party shall give notice within 30 days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimised. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 90 consecutive days following written notice given by it under this Section 19, the other Party may thereafter terminate this Agreement upon 30 days' written notice.

PART TWO: TERMS SPECIFIC TO THE PROVISION OF SERVICES

22 SERVICE PROVIDER OBLIGATIONS RELATING TO THE PROVISION OF SERVICES

- 22.1 The Service Provider shall designate employees, contractors, and third parties as it determines, in its sole discretion, to be capable of filling the following positions:
- 22.1.1 A primary contact to act as its authorised representative with respect to all matters pertaining to this Agreement (the "Service Provider Contract Manager").
- 22.1.2 A number of employees, contractors and third parties that it deems sufficient to perform the Services set out in each Statement of Work, (collectively, with the Service Provider Contract Manager, "Provider Representatives").
- 22.2 The Service Provider shall make changes in Provider Representatives as it determines, in its sole discretion.

23 CLIENT OBLIGATIONS RELATING TO THE SERVICE PROVIDER'S PROVISION OF SERVICES

- 23.1 The Client shall designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorised representative with respect to matters pertaining to this Agreement (the "Client Contract Manager"), with such designation to remain in force unless and until a successor Client Contract Manager is appointed.
- 23.2 The Client shall require that the Client Contract Manager respond promptly to any reasonable requests from the Service Provider for instructions, information, or approvals required by the Service Provider to provide the Services.
- 23.3 The Client shall cooperate with the Service Provider in its performance of the Services and provide access to the Client's premises, employees, contractors, and equipment as required to enable the Service Provider to provide the Services.
- 23.4 The Client shall take all steps necessary, including obtaining any required licenses or consents, to prevent Client-caused delays in the Service Provider's provision of the Services.

24 FEES AND EXPENSES SPECIFIC TO THE PROVISION OF SERVICES

- 24.1 The Client in consideration of the provision of the Services by the Service Provider and the rights granted to the Client under this Agreement, the Client shall pay the fees set out in the Service Provider's Statement of Work.
- 24.2 Payment to the Service Provider of such fees pursuant to this Section 21 shall constitute payment in full for the performance of the Services and shall include the reimbursement of all expenses incurred through the provision of the Service, as set out in the Statement of Work.

25 TERMINATION OF A STATEMENT OF WORK FOR SERVICES

- 25.1 Any of the Client or the Service Provider may terminate a Statement of work for services by giving 30 days written notice to the other Party, unless stated in the Statement of work which will take precedence. Otherwise, a Statement of work will terminate when the Services have been completed. However, and whenever a Statement of Work terminates, the Client must pay any Charges as set out in the relevant Statement of Work.
- 25.2 The Service Provider may terminate a Statement of work with immediate effect by notice in writing if:
- 25.2.1 the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, does not remedy the breach within 7 days of receiving written notice from the Service Provider to do so;
 - 25.2.2 the Client does not pay any amount due to the Service Provider, in full and on the date that the payment falls due; or
 - 25.2.3 the Client is dissolved, ceases 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; or
 - 25.2.4 an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client, or an order is made for the winding up of the Client, or where the Client 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 Agreement); or
 - 25.2.5 The Service Provider knows or suspects that the Client has breached the Data Protection Laws.

26 LIMITED WARRANTY AND LIMITATION OF LIABILITY

- 26.1 The Service Provider warrants that it shall perform the Services:
- 26.1.1 In accordance with the terms and subject to the conditions set out in the respective Statement of Work and this Agreement.
 - 26.1.2 Using personnel of required skill, experience, and qualifications.
 - 26.1.3 In a timely and professional manner in accordance with generally recognised industry standards for similar services.
- 26.2 The Service Provider's sole and exclusive liability and the Client's sole and exclusive remedy for breach of this warranty shall be as follows:
- 26.2.1 The Service Provider shall use reasonable commercial efforts to promptly cure any such breach; provided, that if the Service Provider cure such breach within a reasonable time (but no more than 30 days) after the Client's written notice of such breach, the Client may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 7.2.

- 26.2.2 In the event the Agreement is terminated pursuant to Section 23.2.1 above, the Service Provider shall within 30 days after the effective date of termination, refund to the Client any fees paid by the Client as of the date of termination for the Service or Deliverables (as defined in Section 6 below), less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.
- 26.2.3 The foregoing remedy shall not be available unless the Client provides written notice of such breach within 30 days after acceptance of such Service or Deliverable to the Client.
- 26.3 The Service Provider makes no warranties except for that provided in Section 23.1, above. All other warranties, express and implied, are expressly disclaimed.

PART THREE: TERMS SPECIFIC TO THE SUPPLY OF CONTINGENT WORKERS

27 AGREEMENT TO SUPPLY CONTINGENT WORKERS

- 27.1 The Service Provider carries on the business of sourcing and supplying contingent workers to provide services to its clients. Those contingent workers may be engaged directly by the Service Provider or through Intermediaries. The Client has instructed the Service Provider to supply contingent workers to provide services, as specified in the relevant Statement of Work).
- 27.2 The Service Provider will introduce Contingent Resources to the Client to provide the Assignment Services to the Client under the terms of this Agreement.
- 27.3 The Client acknowledges that where a Contingent Resource or any substitute or any person to whom the performance of the Assignment Services has been assigned or sub-contracted:
- 27.3.1 opt out of the Conduct Regulations, none of the Conduct Regulations (except for Regulation 13A) will apply to that Assignment; or
 - 27.3.2 do not opt out of the Conduct Regulations, all of the Conduct Regulations will apply to that Assignment.
 - 27.3.3 are supplied to work mainly or wholly variable hours in accordance with the definition of an irregular hours worker under the WTR.

28 THE CLIENT'S OBLIGATIONS REGARDING THE CONDUCT REGULATIONS

- 28.1 WHERE THE CONDUCT REGULATIONS APPLY: To enable the Service Provider to comply with its obligations under the Conduct Regulations the Client undertakes to provide to the Service Provider details of the position which the Client seeks to fill, including the following:
- 28.1.1 the type of work that the Contingent Resource would be required to do;
 - 28.1.2 the location and hours of work;
 - 28.1.3 the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Contingent Resource to possess in order to work in the position;
 - 28.1.4 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 28.1.5 the date the Client requires the Contingent Resource to start the Assignment; and
 - 28.1.6 the duration or likely duration of the Assignment.

- 28.2 WHERE THE CONDUCT REGULATIONS APPLY: The Client undertakes not to request the supply of a Contingent Worker to perform the duties normally performed by a worker who is taking part in official industrial action or duties normally performed by a worker who has been transferred by the Client to perform the duties of a person on strike or taking official industrial action.
- 28.3 WHERE THE CONDUCT REGULATIONS APPLY: The Client undertakes that it knows of no reason why it would be detrimental to the interests of a Contingent Resource for a Contingent Resource to fill the Assignment.
- 28.4 The Client warrants that:
- 28.4.1 all information and documentation supplied to the Service Provider in accordance with this clause 28 is complete, accurate and up-to-date; and
 - 28.4.2 it will, during the term of the relevant Assignment, immediately inform the Service Provider in writing of any subsequent change in any information or documentation provided in accordance with this clause 28.

29 THE CLIENT'S OBLIGATIONS REGARDING THE AWR

- 29.1 The AWR apply where a Contingent Resource is an Agency Worker as defined in the AWR. The provisions in this clause 29 inclusive apply when the AWR apply.
- 29.2 The Client will comply with its obligations under Regulations 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.
- 29.3 To enable the Service Provider to comply with its obligations under the AWR, the Client undertakes as soon as possible prior to the commencement of each Assignment and during each Assignment and at any time at the Service Provider's request:
- 29.3.1 to inform the Service Provider of any Calendar Weeks in which the relevant Agency Worker has worked in the same or a similar role with the Client through any third party and which count or may count towards the Qualifying Period;
 - 29.3.2 if the relevant Agency Worker has worked in the same or a similar role with the Client via any third party, to provide the Service Provider 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 Service Provider;
 - 29.3.3 to inform the Service Provider if, the relevant Agency Worker has before the start of the relevant Assignment and/or during the relevant Assignment, carried out work which could count toward the Qualifying Period for the relevant Assignment in accordance with Regulation 9 of the AWR because they have:
 - 29.3.3.1 completed two or more assignments with the Client;
 - 29.3.3.2 completed at least one assignment with the Client and one or more earlier assignments with any member of the Client's Group; and/or
 - 29.3.3.3 worked in more than two roles during an assignment with the Client and on at least two occasions worked in a role that was not the same role as the previous role
 - 29.3.4 except where the relevant Agency Worker will not complete the Qualifying Period during the term of the Assignment, to:
 - 29.3.4.1 provide the Service Provider with written details of the basic working and employment conditions the relevant Agency Worker would be entitled to for doing the same job if the Agency Worker had been recruited directly by the Client 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;
- 29.3.4.2 Inform the Service Provider 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;
 - 29.3.4.3 if the Relevant Terms and Conditions provided are those of a Comparable Employee, provide the Service Provider with a written explanation of the basis on which the Client considers that the relevant individual is a Comparable Employee; and
 - 29.3.4.4 inform the Service Provider in writing of any changes to the Relevant Terms and Conditions made at any time during the relevant Assignment after the Qualifying Period commenced; and
- 29.3.5 except where the relevant Agency Worker will not complete the Qualifying Period during the term of the Assignment, to give the Service Provider with written details of its pay and benefits structures and appraisal processes and any changes to the same.
- 29.4 In addition, for the purpose of awarding any bonus that the Agency Worker may be entitled under the AWR, the Client will:
- 29.4.1 include the Agency Worker in its relevant performance appraisal system;
 - 29.4.2 assess the Agency Worker's performance;
 - 29.4.3 give the Service Provider 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
 - 29.4.4 give the Service Provider all other assistance it may require for the assessment of the Agency Worker's performance for the purpose of awarding any bonus.
- 29.5 Without prejudice to clauses 38.7 and 38.8, the Client shall inform the Service Provider in writing of any:
- 29.5.1 oral or written complaint the Agency Worker makes to the Client which is or may be a complaint connected with rights under the AWR; and
 - 29.5.2 written request for information relating to the Relevant Terms and Conditions that the Client receives from the Agency Worker as soon as possible but no later than seven calendar days from the day the Client receives any such oral or written complaint. The Client undertakes to take such action and give such information and assistance as the Service Provider may request, and within any timeframe requested by the Service Provider in order to resolve any complaint or to provide any such information in a written statement to the Agency Worker within 28 days of the Client's receipt of such a request in accordance with Regulation 16 of the AWR and the Client will give the Service Provider a copy of any such written statement.
- 29.6 The Client will comply with all the Service Provider's requests for information and any other requirements to enable the Service Provider to comply with the AWR.
- 29.7 The Client warrants that:
- 29.7.1 all information and documentation supplied to the Service Provider in accordance with this clause 29 is complete, accurate and up-to-date; and
 - 29.7.2 it will, during the term of the relevant Assignment, immediately inform the Service Provider in writing of any subsequent change in any information or documentation provided in accordance with this clause 29.

30 INFORMATION TO BE PROVIDED BY THE SERVICE PROVIDER (WHERE THE CONDUCT REGULATIONS APPLY)

- 30.1 When Introducing a Contingent Resource to the Client the Service Provider shall inform the Client:
- 30.1.1 of the identity of the Contingent Resource;
 - 30.1.2 that the Contingent Resource has the necessary or required experience, training, qualifications and any authorisation required by law or a professional body to work in the Assignment;
 - 30.1.3 that the Contingent Resource is willing to work in the Assignment; and
 - 30.1.4 of the Charges.
- 30.2 Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any Public or Bank Holiday) following, except where the Contingent Resource Worker is Introduced for an Assignment in the same position as one in which the Contingent Resource had previously been supplied within the previous 5 business days and the information has already been given to the Client, unless the Client requests that the information be resubmitted.

31 CONFIRMATION OF DELIVERY OF THE ASSIGNMENT SERVICES

- 31.1 Where the charges are:
- 31.1.1 based on time worked by a Contingent Resource, at the end of each month of the Assignment (or at the end of the Assignment where the Assignment is for a period of less than one month or is completed or finished before the end of a month the Client shall sign the Service Provider's timesheet confirming the number of hours worked by a Contingent Resource during the previous month
 - 31.1.2 not based on time worked by a Contingent Resource, the Client shall otherwise confirm in writing the delivery of the Assignment Services or the delivery of a Specified Deliverable (as set out in the relevant Assignment Details Form).
- 31.2 The Client agrees that by confirming delivery of the Assignment Services it also agrees that the Assignment Services have been provided satisfactorily, or the Specified Deliverables have been delivered and in accordance with this Agreement. **The Client acknowledges that even if it does not sign a timesheet or confirm hours worked or services provided, it must still pay the Charges for hours worked or for the Assignment Services delivered.**
- 31.3 If the Client:
- 31.3.1 is dissatisfied with the work performed by a Contingent Resource, or considers that the Specified Deliverables have not been delivered, the provisions of clauses 35 (Unsuitability of a Contingent Resource) and 37.2 (Termination of an Assignment) shall apply;
 - 31.3.2 disputes the time worked by a Contingent Resource, the Client shall co-operate fully and as quickly as possible with the Service Provider to enable the Service Provider to establish what time, if any, were worked by the relevant Contingent Resource.

32 CHARGES FOR SUPPLY OF CONTINGENT WORKERS

- 32.1 The Charges will be set out in writing in a signed Statement of Work. The Client agrees to pay the Charges.
- 32.2 The Service Provider reserves the right to vary the Charges agreed with the Client, by giving written notice to the Client:
- 32.2.1 in order to comply with any additional liability imposed by statute or other legal requirement or entitlement, including but not limited to the Apprenticeship Levy, AWR, ITEPA, the NICs Legislation, and the Pensions Act 2008; or

32.2.2 if there is any variation in the Relevant Terms and Conditions.

- 32.3 The Service Provider will invoice the Client on a monthly basis. In accordance with clause 3, the Client will pay the Charges within 30 days of the date of the invoice.
- 32.4 WHERE THE AWR APPLY: In addition to the Charges, the Client will pay the Service Provider an amount equal to any bonus that the Client awards to an Agency Worker in accordance with clause 29.4 immediately following any such award and the Service Provider will pay any such bonus to that Agency Worker. The Client will also pay any employer's National Insurance Contributions and the Service Provider's commission due on the bonus amount in addition to any bonus payable to the Agency Worker.
- 32.5 The Client will pay the Charges due under this clause 32 and has no right to set-off, deduct or withhold any sums due.
- 32.6 The Service Provider will not refund any of the Charges for the supply of contingent workers.

33 PAYING A CONTINGENT RESOURCE

The Service Provider is responsible for paying all Contingent Resources. Where required, the Service Provider is responsible for the deduction and payment of national insurance contributions and PAYE income tax applicable to a Contingent Resource under the requirements of the NICs Legislation and ITEPA.

34 TRANSFER FEES

- 34.1 The Client shall pay the Service Provider a Transfer Fee where the Service Provider Introduces a Contingent Resource to the Client and the Client either:
 - 34.1.1 Engages the Contingent Resource either directly or through another employment business; or
 - 34.1.2 Introduces the Contingent Resource to a third party (including any member of the Client's Group), and the third party Engages the Contingent Resource other than through the Service Provider either during the Assignment; and
 - 34.1.2.1 WHERE THE CONDUCT REGULATIONS DO NOT APPLY: within a period of 6 months from the termination of the Assignment that the relevant Contingent Resource was supplied into, or if there was no supply, within 6 months of the Introduction of the Contingent Resource by the Service Provider to the Client; or
 - 34.1.2.2 WHERE THE CONDUCT REGULATIONS APPLY: within the Relevant Period, or if there was no supply, within 6 months of the Introduction of the Contingent Resource by the Service Provider to the Client.
- 34.2 The Service Provider will calculate the Transfer Fee as set out in clause 39.4 in Part three of this Agreement.

35 UNSUITABILITY OF A CONTINGENT RESOURCE

- 35.1 The Client undertakes to satisfy itself about a Contingent Resource's suitability to carry out the relevant Assignment Services. If the Client reasonably considers that the services of a Contingent Resource are unsatisfactory or that the Specified Deliverables have not been delivered, the Client must notify the Service Provider in writing immediately and may terminate the Assignment in accordance with clause 37.2.
- 35.2 The Client shall notify the Service Provider immediately, at least within 48 hours, if a Contingent Resource does not provide the Assignment Services or has notified the Client that they are unable to provide the Assignment Services for any reason.

- 35.3 The Service Provider shall notify the Client immediately if it receives or otherwise obtains information which gives the Service Provider reasonable grounds to believe that a Contingent Resource supplied to the Client is unsuitable for the Assignment and shall be entitled to terminate the Assignment immediately without prior notice and without liability. The Client will remain liable for all such Charges incurred before the Assignment was terminated.

36 INFORMATION TO BE PROVIDED IN SPECIAL SITUATIONS

- 36.1 The Client shall advise the Service Provider at the time of instructing the Service Provider to supply a Contingent Resource, whether during the course of the Assignment, that Contingent Resource will be required to work with, care for or attend one or more Vulnerable Persons or engage in activity or will otherwise work in a position covered by the Safeguarding Legislation.
- 36.2 The Client shall assist the Service Provider by providing any information required to allow the Service Provider to comply with its statutory obligations under the Safeguarding Legislation, and to allow the Service Provider to select a suitable Contingent Resource for the relevant Assignment.
- 36.3 If the Client removes a Contingent Resource from an Assignment in circumstances which would require the Service Provider to provide information to the Disclosure and Barring Service (or equivalent authority) under the Safeguarding Legislation, the Client will give enough information to the Service Provider to allow it to comply with its statutory obligations.

37 TERMINATION OF AN ASSIGNMENT

- 37.1 Any of the Client or the Service Provider may terminate an Assignment by giving 30 days written notice to the other Party, unless other stated in the Statement of Work which will take precedence. Otherwise, an Assignment will terminate when the Assignment Services have been completed. However, and whenever an Assignment terminates, the Client must pay any Charges as set out in the relevant Statement of Work.
- 37.2 Notwithstanding the provisions of clause 37.1, the Client may terminate an Assignment with immediate effect by notice in writing to the Service Provider where:
- 37.2.1 the relevant Contingent Resource has breached of any statutory or other reasonable rules and regulations applicable to them while providing the Assignment Services; or
 - 37.2.2 the Client reasonably believes that the relevant Contingent Resource has not observed any condition of confidentiality applicable to that Contingent Resource from time to time; or
 - 37.2.3 the Client reasonably considers that a Contingent Resource's provision of the Assignment Services is unsatisfactory or that the Contingent Resource has not delivered the Specified Deliverables.
- 37.3 The Service Provider may terminate an Assignment with immediate effect by notice in writing if:
- 37.3.1 the Client is in wilful or persistent breach of its obligations under this Agreement and where the breach is capable of being remedied, does not remedy the breach within 7 days of receiving written notice from the Service Provider to do so; or
 - 37.3.2 the Client does not pay any amount due to the Service Provider, in full and on the date that the payment falls due; or
 - 37.3.3 the Client is dissolved, ceases 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; or

- 37.3.4 an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Client, or an order is made for the winding up of the Client, or where the Client 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 Agreement); or
- 37.3.5 the Service Provider knows or suspects that the Client is an Exempt Organisation; or
- 37.3.6 the Service Provider knows or suspects that the Client has not used best endeavours in providing its SDS or that the SDS is incorrect; or
- 37.3.7 the Client advises that the circumstances of that Assignment have changed so that an Outside IR35 Assignment has become an Inside IR35 Assignment or vice versa; or
- 37.3.8 where the Contingent Resource works through a PSC, the Service Provider knows or suspects that the Contingent Resource no longer meets the Conditions of Liability;
- 37.3.9 The Service Provider knows or suspects that the Client has breached the Data Protection Laws.
- 37.3.10 Where the Assignment has been assessed as outside IR35:
 - 37.3.10.1 the Service Provider knows or suspects that the PSC or Intermediary Staff work under (or subject to the right of) supervision, direction or control of any person as to the manner in which they provide the Assignment Services, in breach of this Agreement; or
 - 37.3.10.2 the Client does not give accurate and sufficient evidence that the PSC or Intermediary Staff do not work under (or subject to the right of) supervision, direction or control of any person as to the manner in which it provides the Assignment Services; or
 - 37.3.10.3 either the Client or the PSC gives the Service Provider fraudulent information with the purpose of avoiding the Off-payroll rules or a document which fraudulently states that the PSC or Intermediary Staff do not work under (or is not subject to) the supervision, direction or control of any person as to the manner in which they provide the Assignment Services; or
 - 37.3.10.4 either the Client or the PSC enters into avoidance arrangements where the main purpose, or one of their main purposes, is to secure a tax advantage.

38 LIABILITY IN RELATION TO THE SUPPLY OF CONTINGENT WORKERS

- 38.1 Whilst the Service Provider makes reasonable efforts to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from a Contingent Resource and to provide the same in accordance with the Assignment details as provided by the Client, the Service Provider does not accept liability for any Losses made by the Client, arising from the failure to provide a Contingent Resource, for completion of the Assignment, the Assignment Services, or the Specified Deliverables, or from the negligence, dishonesty, misconduct or lack of skill of a Contingent Resource or if a Contingent Resource terminates the Assignment for any reason. The Service Provider does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.
- 38.2 Subject to clause 38.3, unless expressly stated otherwise, Contingent Resources supplied by the Service Provider under this Agreement are engaged under contracts for services. They are not the employees of the Service Provider but are deemed to be under the supervision and direction of the Client from the time they report to take up duties and for the duration of the Assignment. The Client agrees to be responsible

for all acts, errors or omissions of a Contingent Resource, whether wilful, negligent or otherwise as though the Contingent Resource was on the payroll of the Client.

- 38.3 WHERE THE ASSIGNMENT HAS BEEN ASSESSED AS OUTSIDE IR35: The Client warrants that neither it nor the Service Provider has (or has the right to) supervise, direct or control a Contingent Resource working through a PSC as to the manner in which they provide the relevant Assignment Services. The Client will notify the Service Provider in writing if it exercises or seeks the right to exercise supervision, direction or control over a Contingent Resource working through a PSC, in which case the Service Provider may terminate the relevant Agreement and/or any Assignments under the Agreement in accordance with clause 37.3.
- 38.4 The Client will also comply in all respects with all statutory provisions as are in force from time to time including, but not limited to the WTR, the Data Protection Laws, Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations (as amended), by-laws, codes of practice and legal requirements to which the Client is ordinarily subject in respect of the Client's own staff (excluding the matters specifically mentioned in clause 33 (Paying a Contingent Resource), including in particular the provision of adequate Employer's and Public Liability Insurance cover for all Contingent Resources during all Assignments.
- 38.5 The Client will comply in all respects with all relevant statutes, by-laws, codes of practice and legal requirements including the provision of adequate public liability insurance in respect of a Contingent Resource.
- 38.6 The Client shall indemnify and keep indemnified the Service Provider against any Losses incurred by the Service Provider because of any proceedings, claims or demands by a Contingent Resource or any third party arising out of any non-compliance with, and/or as a result of, any breach of the Data Protection Laws by the Client.
- 38.7 The Client shall inform the Service Provider in writing of any AWR Claim which comes to the notice of the Client as soon possible but no later than seven calendar days from the day on which any such AWR Claim comes to the notice of the Client.
- 38.8 If a Contingent Resource brings, or threatens to bring, any AWR Claim, the Client undertakes to take such action and give such information and assistance as the Service Provider may request, and within any timeframe requested by the Service Provider and at the Client's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

PART THREE: TERMS SPECIFIC TO THE SUPPLY OF PERMANENT STAFF

39 NOTIFICATION AND FEES FOR THE SUPPLY OF PERMANENT STAFF

- 39.1 The Client agrees to:
- 39.1.1 notify the Service Provider immediately of the terms of any offer of an Engagement which it makes to the Candidate;
 - 39.1.2 notify the Service Provider immediately that its offer of an Engagement to the Candidate has been accepted and to provide details to the Service Provider of the Remuneration agreed with the Candidate together with any documentary evidence as requested by the Service Provider; and
 - 39.1.3 pay the Introduction fee to be calculated in accordance with the provisions of this clause 39, by the due date(s) for payment in clause 3.

- 39.2 **Introduction Fee:** The Introduction Fee calculated in accordance with clause 39.4 below is payable if the Client Engages the Candidate within the period of 6 calendar months from the date of (a) the Introduction, (b) the Client's withdrawal of an offer of Engagement or (c) the Candidate's rejection of an offer of an Engagement, (whichever is the later).
- 39.3 In accordance with clause 3, the Introduction Fee shall be payable within 30 days of the date of the Service Provider's invoice which shall be rendered once the Candidate commences the Engagement.
- 39.4 The Introduction Fee is calculated in accordance with Schedule 1 based on the total Remuneration applicable during the first 12 months of the Engagement.
- 39.5 Where the actual Remuneration is not known, the Service Provider will charge an Introduction Fee calculated in accordance with clause 39.4 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 to the Service Provider by the Client and/or comparable positions in the market generally.
- 39.6 Where prior to the commencement of the Engagement the Service Provider and the Client agree that the Engagement will be on the basis of a fixed term of less than 12 months, the Introduction will apply pro-rata. If the Client (a) extends the Engagement beyond the initial fixed term or (b) re-Engages the Candidate within 6 calendar months from the date of termination of the agreed period of the fixed term Engagement, then the Client shall be liable to pay a further 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 Client not being liable to pay a greater sum in Introduction Fees than the Client would have been liable for under clause 39.4 had the Candidate first been Engaged for 12 months or more.
- 39.7 The Client's obligations under this clause 39 shall be performed without any right of the Client to invoke set-off, deductions, withholdings or other similar rights.
- 39.8 **Cancellation fee:** The cancellation fee is payable by the Client to the Service Provider when the Client withdraws an offer of Engagement made to the Candidate before the Candidate has accepted the offer and which is calculated in accordance with Schedule 2 based on the total Remuneration that would have been applicable during the first 12 months of the Engagement.
- 39.9 **ENGAGEMENT OF OUR OWN STAFF:** In the event that any Service Provider staff with whom the Client has had personal dealings accepts an Engagement with the Client while employed by the Service Provider or within 3 months of leaving the Service Provider, the Client shall be liable to pay the Service Provider a fee equivalent to the Introduction Fee calculated in accordance with clause 39.4. For the avoidance of doubt, the Client shall not be entitled to a refund for any fee due under this clause 39.9 in any circumstances.

40 REFUNDS IN RELATION TO FEES PAID FOR THE SUPPLY OF PERMANENT STAFF

- 40.1 If, after an offer has been made and accepted, the Engagement (a) does not commence because the Candidate withdraws their acceptance; or (b) once it has commenced, is terminated by either the Candidate or the Client (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 40.2 the Service Provider will refund the Introduction Fee in accordance with the accompanying Scale of Refunds set out in Schedule 3.

- 40.2 In order to qualify for the refund set out in clause 40.1 the Client must comply with the provisions of clause 38.1 and must notify the Service Provider in writing of the termination of the Engagement or the non-commencement of the Engagement within 7 days of its termination or non-commencement.
- 40.3 For the purposes of this clause 40 the date of termination of the Engagement shall be the date on which the Candidate ceases working or would have ceased working for the Client, but for any period of garden leave or payment in lieu of notice, whichever is the later.
- 40.4 In circumstances where clause 39.9 applies, the full Introduction Fee is payable and there shall be no entitlement to a refund.
- 40.5 If subsequent to the Client receiving a refund the Candidate is re-Engaged within a period of 6 calendar months from the date of termination then the refund shall be repaid to the Service Provider. The Client shall not be entitled to any further refunds in relation to the re-Engagement of this Candidate.

41 INTRODUCTIONS TO THIRD PARTIES

Introductions of Candidates are confidential. If a Client 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 Service Provider's Introduction of the Candidate to the Client, then the Client will be liable to the Service Provider for payment of an Introduction Fee calculated in accordance with clause 39.4. Neither the Client nor the third party shall be entitled to a refund of the Introduction Fee under clause 40 in any circumstances.

42 SUITABILITY CHECKS FOR THE SUPPLY OF PERMANENT STAFF

- 42.1 The Service Provider endeavours to ensure the suitability of Candidates Introduced to the Client to work in the position which the Client seeks to fill by taking reasonably practicable steps to:
- 42.1.1 ensure that it would not be detrimental to the interests of either the Client or the Candidate;
 - 42.1.2 ensure that both the Client and Candidate are aware of any requirements imposed by law or by any professional body;
 - 42.1.3 confirm that the Candidate is willing to work in the position.
- 42.2 Notwithstanding clause 42.1 the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. The Client is responsible for:
- 42.2.1 taking up any references provided by the Candidate before Engaging the Candidate;
 - 42.2.2 checking the Candidate's right to work and obtaining permission to work as may be required by the law of the country in which the Candidate is Engaged to work;
 - 42.2.3 the arrangement of medical examinations and/or investigations into the medical history of any Candidate; and
 - 42.2.4 satisfying any medical and other requirements, qualifications or permission required for the Candidate to work in the Engagement.
- 42.3 To enable the Service Provider to comply with its obligations under clause 42.1 above the Client undertakes to provide to the Service Provider details of the position which the Client seeks to fill, including the following:
- 42.3.1 the type of work that the Candidate would be required to do;
 - 42.3.2 the location and hours of work;

- 42.3.3 the experience, training, qualifications and any authorisation which the Client considers necessary or which are required by law or any professional body for the Candidate to possess in order to work in the position;
 - 42.3.4 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
 - 42.3.5 the date the Client requires the Candidate to commence the Engagement;
 - 42.3.6 the duration or likely duration of the Engagement;
 - 42.3.7 the minimum rate of Remuneration, expenses and any other benefits that would be offered;
 - 42.3.8 the intervals of payment of Remuneration; and
 - 42.3.9 the length of notice that the Candidate would be entitled to give and receive to terminate their employment with the Client.
- 42.4 Where the Candidate is Introduced for a position which involves working with, caring for or attending a Vulnerable Person the Service Provider shall, in addition to the obligations in clause 42.1, take reasonably practicable steps to:
- 42.4.1 obtain confirmation of the Candidate's identity;
 - 42.4.2 obtain confirmation that the Candidate has the experience, training, qualifications and any authorisation which the Client considers necessary or which may be required by law or by any professional body; and
 - 42.4.3 obtain and offer to provide copies to the Client of two references from persons who are not relatives of the Candidate and who have agreed that the references they provide may be disclosed to the Client; and any relevant qualifications or authorisations of the Candidate. If the Service Provider has taken all reasonably practicable steps to obtain such information and has been unable to do so fully it shall inform the Client of the steps it has taken to obtain this information in any event.

43 INFORMATION TO BE PROVIDED FOR THE SUPPLY OF PERMANENT STAFF

When the Service Provider Introduces a Candidate to the Client the Service Provider shall inform the Client that they have obtained confirmation of the matters set out in clause 42.1 (and in the case of a position which involves working with Vulnerable Persons the matters in clause 42.4). Where such information is not given in paper form or by electronic means it shall be confirmed by such means by the end of the third business day (excluding Saturday, Sunday and any public or bank holiday) following, save where the Candidate is being Introduced for an Engagement which is the same as one in which the Candidate has worked within the previous 5 business days and such information has already been given to the Client.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

The Client - [CUSTOMER NAME]

Signature: _____

Name:

Title:

Date:

The Service Provider – STELLAR OMADA LTD

Signature: _____

Name:

Title:

Date:

SCHEDULE 1: FEE STRUCTURE FOR THE SUPPLY OF PERMANENT STAFF (clause 39.4)

Remuneration	Fee
£0-£20,000	15%
£20,001-£30,000	15%
£30,001-£40,000	15%
£40,001-£50,000	15%
£50,001+	15%

SCHEDULE 2: SCALE OF CANCELLATION FEE (Clause 39.8)

The Cancellation Fee due in clause 39.8 above is calculated as follows:

Remuneration	Cancellation Fee
£0-£20,000	£1,000
£20,001-£30,000	£1,500
£30,001-£40,000	£2,000
£40,001-£50,000	£2,500
£50,001+	£3,000

SCHEDULE 3: SCALE OF REFUND (Clause 40.1)

1. The following scale of refund only applies in the event that the Client complies with the provisions of clauses 39.1, 40.1 and 40.2 of this Agreement.
2. Where the Candidate ceases working for the Client during the first 12 weeks of the Engagement (except where the Candidate is or will be made redundant) or fails to commence an Engagement, except in the circumstances set out in clause 39.8, a refund of the Introduction Fee shall be paid to the Client in accordance with the scale set out below, subject to the conditions in clause 40.1 and 40.2.

Week in which the Engagement terminates in accordance with clause 40.2	% of introduction fee refunded
Non-commencement	Full reimbursement
1 – 2	Full reimbursement
3 – 4	Two thirds (2/3) reimbursement
5 – 6	Two thirds (2/3) reimbursement
7 – 8	Two thirds (2/3) reimbursement
9 – 10	One third (1/3) reimbursement
11 – 12	One third (1/3) reimbursement

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.
4. For the avoidance of doubt, the Service Provider will not refund any of the Charges for the supply of Contingent workers (see clause 32.6).