

DATED:                    /        /

## **PREFERRED SUPPLIER AGREEMENT**

**BETWEEN:**

**(1) BADENOCH & CLARK LIMITED (“Vendor”)**

**AND**

**(2) [Insert Supplier Name] (“Supplier”)**

**Group Legal  
MPS Group International Plc  
2<sup>nd</sup> Floor,  
13-21 Curtain Road,  
London EC2A 3LU**

**Ref: HR/LEGAL/NEWHAM/1**

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**CONTRACT NUMBER: [INSERT INTERNAL REFERENCE]**

This agreement is **MADE** on                    /                    / **200**

**BETWEEN:**

(1) **Badenoch & Clark Limited** – (company number: 01356186), whose registered office is at Project House, 110-113 Tottenham Court Road, London W1T 5AE (“**Vendor**”)

(2) **[Insert Supplier Name and Address]** (“**Supplier**”)

together referred to as the parties.

**WHEREAS:**

- (a) The Mayor and Burgesses of London Borough of Newham (“**Client**”) has engaged the services of the Vendor, to manage the supply of Contractors.
- (b) The Vendor has decided to appoint a number of suppliers in order to meet the Client’s requirements for Contractors.
- (c) The parties agree that the Supplier will be appointed by the Vendor as a supplier to provide the Vendor with such suitable Contractors using Beeline™ on the terms and subject to the conditions of this agreement (“**Agreement**”).
- (d) For the purposes of the Conduct of Employment Agencies and Employment Businesses Regulations 2003, the Supplier shall operate as an Employment Business for the supply of Contractors for Temporary Assignment. The Vendor for such services to the Client shall also operate as an Employment Business.

**1 DEFINITIONS & INTERPRETATION**

1.1 In this Agreement, the following definitions shall apply unless expressly stated otherwise:

- “**Assignment**” means a Temporary Assignment
- “**Assignment Request**” means a request made by the Vendor for Candidates using Beeline™
- “**Associated Company**” means a subsidiary company and any other company which is a holding company (as defined by s.736 Companies Act 1985 as substituted by s. 144(1) Companies Act 1989) or another subsidiary of any such holding company
- “**Beeline™**” means the password protected Internet application service known as “Beeline” which the Vendor is licensed to use and sublicense the use of to the Client and Preferred Suppliers
- “**Beeline™ End-User Agreement**” means the agreement attached at Appendix A
- “**Billing Period**” A contiguous period of 4 working weeks. A working week shall mean Monday to Sunday inclusive

<b>“Candidate”</b>	means an individual (whether or not supplied through a limited company) Introduced to the Vendor by the Supplier
<b>“Commencement Date”</b>	means 30 <sup>th</sup> May 2005
<b>“Confidential Information”</b>	means any secret or confidential commercial, financial, marketing, technical, know-how, trade secrets and other information including but not limited to the contents of this Agreement and details relating to the other party’s clients, suppliers, contractors, candidates, agents and employees, in any form or medium obtained from a party by the other whether orally in writing or by any other means which is not in the public domain before or after the date of this Agreement and any reproductions of such information in any form or medium or any part(s) of such information
<b>“Contractor”</b>	means a person, limited company or other entity resourced and supplied by the Supplier under this Agreement and engaged by the Client or the Vendor on a Temporary Assignment
<b>“Contractor’s Personnel”</b>	means all person(s) employed by a Contractor and supplied by the Supplier under this Agreement and engaged by the Client or the Vendor on a Temporary Assignment
<b>“Fees”</b>	means all amounts payable in relation to the Services under this Agreement
<b>“Introduced”</b>	means when the Supplier supplies an individual’s details (whether or not through a limited company) via Beeline™ in response to an Assignment Request, whose details are not already known to the Vendor or the Client
<b>“Confidentiality Agreement”</b>	means a document in a form substantially similar to the document attached as Appendix B
<b>“DP Act”</b>	means the Data Protection Act 1998
<b>“Quarterly Review”</b>	means a review of the performance of the Supplier determined against performance requirements and levels set in this Agreement and Appendices attached thereto
<b>“Service Levels”</b>	means the levels of service required under the Service Level Agreement
<b>“Service Level Agreement”</b>	means the agreement attached at Appendix C
<b>“Services”</b>	means the recruitment, resourcing and supply within the UK of Candidates in response to an Assignment Request for engagement on Assignments with the Vendor or the Client
<b>“Temporary Assignment”</b>	means an assignment worked or to be worked by a Contractor on a temporary basis
<b>“Term”</b>	means the term of this Agreement as set out in clause 2

- 1.2 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- 1.3 Words imparting the singular shall include the plural and vice versa and words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.
- 1.4 References to any statute or statutory provision shall include, any subordinate legislation made under it, any provision, which it has modified or re-enacted (whether with or without modification), and any provision, which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.5 The words "other" and "including" and the phrase "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.6 References to any statute or statutory provision shall include: (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.7 All references in this Agreement to clauses and Appendices are to the clauses and appendices to this Agreement, unless otherwise stated. Documents derived from the Appendices form part of this Agreement.
- 1.8 A reference to the Client includes any Associated Company of the Client and a reference to the Vendor includes any other MPS Group International Plc subsidiary or Associated Company.

## **2 COMMENCEMENT & DURATION**

- 2.1 This Agreement shall commence on the Commencement Date and continue subject to Quarterly Reviews pursuant to which and as a direct result this Agreement may be determined without notice or until it is terminated pursuant to clause 14.

## **3 AGREEMENT**

- 3.1 The parties agree that in consideration for the payment of the Fees by the Vendor to the Supplier, the Supplier shall provide the Services to the Vendor for the Term.
- 3.2 The Supplier acknowledges that in making this Agreement the Vendor gives no guarantee of the volume or value of the Services that may be required or that it will issue all or any requests for the Services to the Supplier.
- 3.3 The Supplier will ensure that all relevant timesheets and expenses approved by the Client and supported by receipts are submitted to the Vendor in a timely manner and where agreed in advance.
- 3.4 The overall performance of the Supplier in the selection and introduction of suitably qualified and experienced Contractors shall be reviewed quarterly by both parties. A failure by the Supplier to monitor the Service Levels it is achieving and to provide the Vendor with the reports specified will be regarded as a failure to meet the relevant Service Levels.
- 3.5 No Contractor should work more than an average 48-hour week relating to combined employment. For a Contractor to work more than 48 hours per week an opt out agreement must be signed. The Supplier shall keep a database of information on hours worked by individual Contractor's.
- 3.6 The Supplier shall comply with the Working Time Directive and shall also comply with any amendments to that Directive made by European or Domestic legislation.

#### **4 FEES AND PAYMENT**

- 4.1 The Vendor shall pay the Supplier the Fees as described in Appendix D
- 4.2 The Vendor shall use its reasonable endeavours to remit payment for each Billing Period within 30 days from the end of that Billing Period.
- 4.3 Provided payment has been received from the Client, in respect of the Services provided by the Supplier under this Agreement, the Vendor shall pay the undisputed parts of the invoices within 5 days. Should any sum be disputed, the Vendor shall notify the Supplier as may be reasonably practicable.
- 4.4 All sums referred to in this Agreement are exclusive of VAT.
- 4.5 Overtime will not be paid to either the Supplier or the Contractor unless otherwise agreed in writing between the Parties.
- 4.6 Notwithstanding anything in this clause 4, the Vendor shall not pay any amounts that are not supported by valid timesheets in accordance with the procedures defined and communicated to the supplier.
- 4.7 It is understood and agreed that the Vendor's obligation and/or duty to pay the Supplier is strictly conditioned upon the Vendor receiving payment from the Client for Services rendered to, for and on behalf of the Client. Whilst the Vendor will use its reasonable endeavours to recover payment from the Client it is acknowledged that the Supplier shall bear any credit risk.
- 4.8 For the avoidance of doubt, the Supplier shall at all times be fully and solely responsible under this Agreement for the payment of all income or other taxes, national insurance contributions and levies of every kind, relating to or arising out of the engagement of any of the Contractors.

#### **5 RELATIONSHIP**

- 5.1 Nothing in this Agreement or any agreement arising out of it shall imply a relationship of principal and agent between the parties. The parties are independent commercial and business entities who have no rights to bind one another.

#### **6 THE SUPPLIER'S OBLIGATIONS**

- 6.1 The Supplier will:
  - 6.1.1 source Candidates on behalf of the Vendor following the Resourcing Process or other procedure agreed between the parties;
  - 6.1.2 if requested carry out criminal record checks, through the Criminal Records Bureau (CRB), in respect of Candidates or Contractors to be supplied by the Supplier;
  - 6.1.3 Indemnify and keep indemnified the Vendor in the event that the Supplier fails to carry out the appropriate checks as requested under the Asylum and Immigration Act 1996 in respect of illegal workers;
  - 6.1.4 identify Contractors which meet the Client's requirements and ensure compliance in relation to the Contractor **prior to Engagement in the following:**
    - 6.1.4.1 evidence of the Contractor's legal right to work in the UK for the duration of the Assignment and any extension;

- 6.1.4.2 a declaration from all Candidates regarding criminal convictions. Declared convictions will be notified to the Vendor where, in the reasonable opinion of the Supplier, such convictions ought properly to be brought to the attention of the Vendor;
- 6.1.4.3 signed copy (by the Contractor) of the Confidentiality Agreement set out in Appendix B;
- 6.1.5 keep and maintain such necessary data and information and shall provide such assistance as the Vendor may reasonably require to enable the Client to complete all official returns, including but without limitation:
  - 6.1.5.1 returns to the Department of Health and the Department of Social Security;
  - 6.1.5.2 returns to the Chartered Institute of Public Finance and Accountancy;
  - 6.1.5.3 information required by the Audit Commission;
  - 6.1.5.4 information required for the purposes of compliance with Best Value Reviews, Best Value performance plans and inspections; and
  - 6.1.5.5 information required in order to ensure compliance with the Race Relations Act 1976 (as amended), other applicable legislation and generally to ensure conformity with obligations contained in Condition 22 (Unlawful Discrimination and Equal Opportunities).
- 6.1.6 The Supplier shall provide such data and information as the Vendor from time to time shall reasonably require to permit the Vendor and/or Client to complete management reports (whether of a regular, cyclical or ad hoc nature) on the performance of the Supplier and Contractor's.
- 6.1.7 use its best endeavours to:
  - 6.1.7.1 adhere to the time scales for the provision of the Services set out in the Service Level Agreement; and
  - 6.1.7.2 find Candidates suitable to fill Temporary Assignments notified to it by an Assignment Request; and
  - 6.1.7.3 only supply individual's details to the Vendor via Beeline™ in response to an Assignment Request and will not supply unsolicited details. Failure to comply with this clause 6.1.7.3 is a material breach of this Agreement; and
  - 6.1.7.4 provide details of disciplinary and grievance procedures and other policies of its Contractors and will produce such policies in respect of Contractors, which the Vendor may request from time to time; and
  - 6.1.7.5 adhere to and comply with any guidelines and/or codes of practice issued by the Client when selecting and/or recruiting Contractors or employees or volunteers who may have substantial and unsupervised access to children.

## **7 THE CLIENT'S OBLIGATIONS**

### **7.1 The Client will:**

- 7.1.1 brief Contractors in relation to what is expected of them whilst working at the Client (with regard to tasks and performance standards) and supervise their day to day activities;
- 7.1.2 provide such training to Contractors as the Client deems reasonably necessary to enable Contractors to carry out their duties.

## **8 ABSENCES AND PUBLIC HOLIDAYS**

- 8.1 The Vendor shall not be liable to make any payment, in respect of a period during which a Contractor is absent from work, for whatever reason, including but not limited to public holidays.
- 8.2 In the event that a Contractor is absent from work, for whatever reason, the Supplier shall
- 8.2.1 inform the Vendor authorised representative promptly of any difficulties encountered by the Contractor in the provision of the Services caused by the Client or its personnel or failure by the Client to supply appropriate equipment for the Contractor to use;
  - 8.2.2 notify the Vendor prior to 0930hrs on any work day if the Contractor is unable to perform the Assignment on that day together with verification of the reason for such Contractor inability;
  - 8.2.3 inform the Vendor immediately if there is likely to be any interference in the provision or performance of the Assignment by the Contractor for any reason, together with details of the reason and expected period of likely interference;
  - 8.2.4 inform the Vendor as soon as possible if the Contractor requires to take leave for any period due to urgent or compelling reasons and the period of leave requested, which the Vendor may in its sole discretion refuse or agree, and the operation of the Temporary Assignment shall be suspended during the period of such leave only if the authorised representative of the Vendor agrees the leave in writing in advance. Suspension of services due to leave taken in excess of entitlement and not in accordance with these provisions may result in breach of this Agreement.
- 8.3 Neither the Vendor nor the Client shall be liable for payment of sick pay, maternity pay, redundancy pay, holiday pay and the like in respect of Contractors.

## **9 WARRANTIES**

- 9.1 The Supplier warrants that it:
- 9.1.1 has adequate expertise and resources to provide the Services promptly and efficiently in accordance with this Agreement and the Service Level Agreement and that such expertise and resources will be applied to the performance of its obligations under this Agreement; and
  - 9.1.2 has and will comply with all laws applicable to the recruitment, selection and payrolling of Candidates and Contractors, including but not limited to laws regarding discrimination, equal opportunities, immigration and data protection.
- 9.2 The Supplier warrants that the Contractors including the Contractor's Personnel:
- 9.2.1 are fully qualified to the level required by the Assignment Request;
  - 9.2.2 shall have access to and have the possibility to derive knowledge and expertise from all resources available to Supplier; and
  - 9.2.3 are either employed by the Supplier or engaged under contracts for services and are not employed by the Vendor or the Client.

- 9.3 The Vendor warrants that it will comply with the provisions of the Data Protection Act 1998 in relation to the personal data of Candidates and Contractors, whether supplied to the Vendor by Supplier or otherwise.
- 9.4 The Supplier and Vendor warrant that they have each full capacity and authority and all necessary consents to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative.
- 9.5 The Contractors shall be under the direction, supervision and control of the Client for the duration of the Assignment. The Client shall be responsible for the Contractors and shall comply in all respects with all statutes, bye-laws and legal requirements, including the Health and Safety at Work Act 1974, but excluding those legal requirements expressly assumed by the Vendor and the Supplier to which the Client is ordinarily subject in respect of the Client's own staff.

## **10 LIABILITY AND INSURANCE**

- 10.1 Nothing in this Agreement shall limit or exclude the parties' liability in respect of death or personal injury arising out of any breach of this Agreement, in tort or however so arising.
- 10.2 The Supplier will take out and maintain throughout the Term the following insurances:
- 10.2.1 Public Liability insurance to the sum of £[10] million;
  - 10.2.2 Employer's Liability insurance to the sum of £[5] million; and
  - 10.2.3 Professional Indemnity insurance to the sum of at least £[1] million.
- 10.3 Where so required by the Vendor, the Supplier shall:
- 10.3.1 produce evidence of payment of premiums in respect of any such insurances; and
  - 10.3.2 produce the insurance policies for inspection by the Vendor.
- 10.4 The Supplier shall fully indemnify:
- (a) the Vendor; and
  - (b) the Client
- against all liabilities, damages, costs, losses, claims, demands and proceedings (including legal costs and disbursements) against all incurred or suffered in connection with the Supplier's obligations under this Agreement in respect of:
- 10.4.1 any claims, demands or proceedings brought against the Vendor and/or the Client by any third party by reason of any default or breach by the Service Provider of any provision of the Contract other than one for which a remedy is provided under any other provision of these Conditions or any additional conditions agreed in writing between the Parties;
  - 10.4.2 any fraudulent or negligent act or omission by the Supplier in the provision of the Services (including, without limitation, any misappropriation of monies properly due to the Vendor and/or Client);
  - 10.4.3 any liability of the Vendor and/or Client to pay compensation to a Contractor arising out of the Supplier default in respect of failure to perform the Services in accordance with this Agreement;
  - 10.4.4 any failure by the Supplier to perform the Services in accordance with all and any terms of this Agreement;

- 10.4.5 misrepresentation by the Supplier of the experience, qualifications, career history or personal background of Contractors;
- 10.4.6 any action, claim or assertion brought by a Contractor against the Vendor or the Client in connection with the replacement of that Contractor in accordance with clause 13;
- 10.4.7 any infringement or alleged infringement of any intellectual property or other proprietary rights of any third party resulting from the use of the Contractors work output in accordance with this Agreement and/or the receipt of the Services save to the extent that the infringement is the Vendor's or Client's fault;
- 10.4.8 any failure or omission of the Supplier in performing its obligations under Clause 12.4.
- 10.4.9 all third party claims, actions or assertions brought against the Vendor or the Client arising in connection with:
  - 10.4.9.1 the negligent or fraudulent act or omission of the Supplier or any of the Contractors; or,
  - 10.4.9.2 any taxes or National Insurance contributions imposed upon the Vendor or the Client in respect of a Contractor; or,
  - 10.4.9.3 employment rights or alleged employment rights of any Contractor.

10.5 The Supplier will indemnify and keep indemnified the Vendor against any loss, damage or claim resulting from a breach of any of the warranties contained in clause 9 except to the extent that such breach is caused by the negligent acts or omissions of the Vendor or the Client.

## **11 INFORMATION**

- 11.1 The Supplier undertakes to keep the following records in respect of each Contractor supplied or to be supplied:
- 11.1.1 full name and address;
  - 11.1.2 verified personal identification (birth certificate or passport) and recent photograph;
  - 11.1.3 signed references identifying the most recent employer and at least two of the Contractor's references, one of which shall be the most recent employer and on a copy of the headed notepaper of that employer which shall be satisfactory and refer to employment undertaken in the 6 month period prior to assignment with the Client and covering the previous two year;
  - 11.1.4 full Curriculum Vitae or employment history and evidence of all relevant training undertaken;
  - 11.1.5 verified copies of certificates of qualification and evidence of membership of professional bodies where appropriate;
  - 11.1.6 a copy of the Contractor's immigration status, if appropriate (see Home Office guidance on Prevention of Illegal Working);
  - 11.1.7 a copy of the driving licence if necessary for the duties to be carried out;
  - 11.1.8 details of any spent and unspent convictions, subject to the Rehabilitation of Offenders Act (1974) Exemption Order 1975.

## **12 PUBLICITY, CONFIDENTIALITY & INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Supplier shall not use the name of the Vendor or the Client in any publicity, advertisement or other disclosure without the prior written consent of the Vendor, which shall not be unreasonably withheld or delayed.
- 12.2 The Supplier shall not during the Term of this Agreement and for 6 years after the termination of this Agreement (for any reason whatsoever) disclose to any third party or use for themselves (other than in the proper performance of their duties under this Agreement) any Confidential Information of the either the Vendor or the Client, whether or not that Confidential Information is expressly stated to be confidential or is confidential by its very nature unless the information is authorised to be released in writing by the disclosing party or is required by law to be disclosed. The Supplier will use the same standard of care in dealing with the Vendor or the Client's Confidential Information as if it were Confidential Information of its own and in any event with no less than a reasonable standard of care.
- 12.3 The Supplier will procure, prior to the commencement of a Temporary Assignment, that each Contractor signs or has signed a Confidentiality Agreement and a copy is provided to the Vendor.
- 12.4 The Supplier will procure that prior to the commencement of an Assignment each Contractor or Contractor's Personnel signs or has signed a Confidentiality Agreement with the Vendor.
- 12.5 The Vendor shall be under no obligation to accept the Contractor or Contractor's Personnel unless and until such documentation as specified in Clause 12.4 has been received by, and is reasonably satisfactory to, the Vendor. The Vendor may change the form and content of the Confidentiality Agreement from time to time in its sole discretion.
- 12.6 The Vendor agrees and acknowledges that, as between itself and the Client, the Client shall be the owner of all of the intellectual property or other proprietary rights in the work performed by the Contractors under any and all Assignments.
- 12.7 The Supplier shall indemnify the Vendor and Client against any claims, liabilities, costs, losses, expenses, proceedings and damages arising out of or as a consequence of any infringement of any third party Intellectual Property Rights in connection with the provision of the Services.
- 12.8 Subject to Condition 12.9 the Supplier shall notify the Vendor of and conduct any litigation arising from (including all negotiations in connection with) any claims, demands and actions in respect of any infringement of any Intellectual Property Rights.
- 12.9 If so requested by the Vendor, the Supplier shall either:
- 12.9.1 take all such steps as may be necessary to avoid the infringement of any Intellectual Property Rights; or
  - 12.9.2 procure such licence as may be necessary to continue the carrying out of the Services without infringement, on terms which are reasonably acceptable to the Vendor.

## **13 TERMINATION OF TEMPORARY ASSIGNMENTS**

- 13.1 If any Contractor supplied by the Supplier is found at the discretion of the Client or Vendor unsuitable at any time the Supplier will provide a suitable replacement at no additional premium.
- 13.2 If the Client and/or Vendor notifies the Supplier of the unsuitability of a Contractor within four hours of the Contractor commencing his/her duties, no charge will be made by the Supplier and the Contractor will be withdrawn immediately.
- 13.3 When a Contractor supplied by a Supplier is found at the sole discretion of the Client and or Vendor to be unsuitable, and the Supplier has been informed of this within four to twenty-four hours of the

Contractor starting work on site, the Client and or Vendor may assess the time claimed and request that the timesheet is amended accordingly.

- 13.4 Should a Contractor leave an assignment without notice before completion of the Temporary Assignment, they will be deemed to have breached the terms of their agreement and the Client will only be liable for the payment of the hours worked.
- 13.5 Following such events (as outlined in Conditions 13.1, 13.2, 13.3, and 13.4) the Supplier shall use its reasonable endeavours to provide a replacement within one hour of the event and in accordance with a normal booking.
- 13.6 The Vendor may terminate a Temporary Assignment with immediate effect (and without prejudice to any other right the parties may have) and without the need for notice or payment in lieu of notice.
- 13.7 If the Vendor terminates the Assignment then the Supplier agrees that it will replace the terminated Temporary Assignment and will replace the relevant Contractor in accordance with the Service Levels if requested by the Vendor and at no extra cost to the Vendor or the Client.
- 13.8 If the Supplier becomes aware of any issue with a Contractor that does (or may) impact on the performance or suitability of the Contractor and/or provision of the Temporary Assignment it will notify the Vendor of such issue as soon as becoming aware of such issue.

#### **14 TERMINATION OF AGREEMENT**

14.1 This Agreement may be terminated:

- 14.1.1 upon written notice by any party, at any time, for the other party's material breach of this Agreement;
- 14.1.2 by the Supplier on not less than three (3) calendar month's prior written notice, such notice to expire at the end of a calendar month;
- 14.1.3 by the Vendor on not less than one (1) calendar month's prior written notice, such notice to expire at the end of a calendar month;
- 14.1.4 immediately (and without prejudice to any other right the parties may have) and without the need for notice or payment in lieu of notice if:
  - 14.1.4.1 any party to this Agreement becomes insolvent or is deemed insolvent (within the meaning of the Insolvency Act 1986), or passes any resolution to wind up, or if any proceedings in insolvency are taken against the other party or by the other party, or if a guardian, a trustee, administrator, a liquidator, or any person with similar duties and powers is appointed to the other party; or
  - 14.1.4.2 in the event that any party commits a material breach of any of its obligations under this Agreement or materially neglects to comply fully with any of its obligations under this Agreement, and after having received a written notice from the other party to that effect continues to be in breach after a period of thirty (30) days from receiving written notice; or
  - 14.1.4.3 in the event that the Client terminates its agreement with the Vendor with immediate notice (for whatever reason).

- 14.2 Any termination of this Agreement pursuant to this clause 14 shall be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## **15 ACTION UPON TERMINATION**

- 15.1 Upon termination or expiry of this Agreement for any reason whatsoever:
- 15.1.1 any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;
  - 15.1.2 each party shall immediately return to the other party (or, if the other party so requests by notice in writing, destroy) all property of the other party in that party's possession at the date of termination, including all Confidential Information, together with all copies of such Confidential Information and shall certify that it has done so, and shall make no further use of such Confidential Information;
  - 15.1.3 the Supplier shall provide the Vendor with all information held by the Supplier electronically or otherwise which originated from the Vendor or the Client;
  - 15.1.4 the Supplier shall co-operate with the Vendor or any new incoming supplier or managing vendor in respect of such information or assistance as may reasonably be required by the Vendor.

## **16 DATA PROTECTION**

- 16.1 For the purposes of the Supplier's obligations to the Vendor under this Agreement the Supplier shall comply with the requirements of the DP Act as if he was the Data Controller. This contractual obligation shall not entitle the Supplier to treat personal data as if he was the Data Controller in law or to process such data (as defined in Section 1 of the DP Act) for the Supplier's own purposes.
- 16.2 The Supplier shall not under any circumstances receive or seek to obtain from the Vendor or process on the Vendor's behalf any personal data (as defined in the DP Act) unless there is in existence a contract with the Vendor which is made or evidenced in writing and pursuant to which the Supplier is required, inter alia, to process personal data as part of performing the Services. Taking possession of personal data or seeking to do so in circumstances where no such contract with the Vendor is in existence shall be sufficient grounds to entitle the Vendor to terminate this Agreement in accordance with Clause 14 hereof, notwithstanding that the act or default in question may have occurred before this Agreement comes into existence.
- 16.3 The Supplier shall throughout the duration of the Agreement (and for so long as he shall have personal data in his possession) have in place appropriate technical, security and organisational procedures and measures ("the Measures") to protect against accidental or unlawful disclosure and against accidental loss or destruction of, or damage to personal data received, obtained, being processed by or otherwise in the possession of the Supplier pursuant to the Agreement. The Supplier's Measures shall be recorded in writing and supplied to the Vendor at the commencement of the Agreement, within 5 working days of any amendment thereto or when otherwise required by the Vendor to do so. The Supplier's Measures may be inspected by the officer nominated by the Vendor for that purpose at any time by giving 24 hours notice of such inspection to the Supplier.
- 16.4 The Supplier covenants with the Vendor that "data" (as defined by Section 1 of the DP Act) in the Supplier's possession pursuant to the provisions of this Agreement:

- 16.4.1 is received, obtained, processed by or in the possession of the Supplier solely for the purposes of enabling the Supplier to perform the Services as required by this Agreement and for no other purpose;
- 16.4.2 will not be amended or altered by the Supplier in any way whatsoever unless required by the Vendor or as required by the provisions of this Agreement;
- 16.4.3 shall be and shall remain solely the property of the Vendor and upon expiration or earlier termination of this Agreement shall be returned to the Vendor in such form or format as the Vendor may specify at no additional cost to the Vendor;
- 16.4.4 shall not be copied and retained by the Supplier upon expiration or earlier termination of this Agreement other than as required by the law for taxation or accounting purposes and even then, for only so long as shall be specifically required for those purposes;
- 16.4.5 shall be kept secure and shall be treated as confidential information as provided by Clause 29 of this Agreement, save that where there is any conflict between treating data as confidential information and dealing with it in accordance with the DP Act, the provisions of the DP Act shall prevail;
- 16.5 Where the Supplier is collecting personal data on behalf of the Vendor, the Supplier shall, in accordance with the provisions of the DP Act, supply a data protection notice at the time it collects any such personal data.
- 16.6 Where the Vendor receives any subject access requests relating to data in the possession custody or control of the Supplier, the Supplier shall,
  - 16.6.1 fully co-operate with the Vendor in complying with the Vendor's obligations under the DP Act in relation to that data;
  - 16.6.2 only make disclosure of the data or do anything else required by the DP Act with the Vendor's express written consent;
  - 16.6.3 respond promptly (and in any event within 10 working days) to any Vendor request for details of data held pursuant to the Agreement;
  - 16.6.4 ensure that it processes any subject access requests concerning disclosure of personal data in such a manner that the Vendor can access that data and respond to the request within the 40 day period (or such other relevant time) specified by the DP Act.
- 16.7 Any breach by the Supplier of the provisions of this Clause 16 or of the DP Act in relation to the processing of data (as defined in Section 1 of the DP Act) or of any other obligation of the Supplier (whether as Data Controller, Data Processor or otherwise) pursuant to that Act shall amount to a breach of a fundamental term of the Agreement entitling the Vendor to terminate it forthwith in accordance with Clause 14.1 hereof.
- 16.8 The Supplier shall fully indemnify the Vendor in relation to all liabilities, damages, costs, losses, claims, expenses, demands and proceedings arising out of:
  - 16.8.1 any breach by the Supplier (which shall include breach by the Supplier's employees, agents or representatives); or
  - 16.8.2 any breach by the Vendor of the provisions of the DP Act caused in whole or in part by any breach by the Supplier (which shall include breach by the Supplier's employees, sub-contractors, agents or representatives) of the provisions of this Clause 16 or the DP Act.

## 17 FREEDOM OF INFORMATION

17.1 The Supplier recognises that the Client and Vendor are subject to legal duties which may require the disclosure of information under the FOIA or the Environmental Information Regulations 2002 or any other applicable legislation or codes governing access to information and that the Vendor and Client may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way.

17.2 The Supplier recognises that in order to facilitate openness with and accountability to its citizens the Vendor's and Client's general view is that all relevant information concerning its contracts should be subject to disclosure unless the information:

17.2.1 is commercially sensitive and/or subject to an FOIA Exemption, and

17.2.2 has expressly in writing been subject to a request from the Supplier not to disclose the information, which request the Vendor's and or Client's appropriate officer has expressly in writing agreed to.

The Supplier hereby consents to disclosure of information by the Vendor and/or Client in accordance with this clause.

17.3 Notwithstanding anything in this Agreement to the contrary including, but without limitation, the general obligation of confidentiality imposed on the parties pursuant to Clause 12 in the event that the Vendor or Client receives a request for information under the FOIA or any other applicable legislation governing access to information, the Vendor or Client shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable legislation governing access to information, save that in relation to any such information that is Exempted Information but in any event subject to Clause 17.2 the Vendor shall use reasonable endeavours to consult the Supplier as soon as reasonably practicable and should not:

17.3.1 confirm or deny that the information in question is held by the Vendor or Client; or

17.3.2 disclose the information requested,

without having attempted to seek the views of the Supplier in relation to the request for disclosure.

17.4 In the event that the Vendor incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Supplier shall fully indemnify the Vendor.

17.5 In any event the Vendor and/or Client shall not be liable for any loss damage harm or other detriment however caused arising from the disclosure of any Exempted Information or other information relating to this Agreement under the FOIA or other applicable legislation governing access to information.

17.6 The Supplier will assist the Vendor to enable the Vendor and /or Client to comply with its obligations under the FOIA or other applicable legislation governing access to information. [In particular it acknowledges that the Vendor and Client is entitled to any and all information relating to the performance of this Agreement or arising in the course of performing this Agreement]. In the event that the Vendor and/or Client receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the Supplier's assistance in obtaining the information that is the subject of such request or otherwise, the Supplier will respond to any such request for assistance from the Vendor and/or Client at its own cost promptly and in any event within 10 days of receiving the Vendor and/or Client's request.

- 17.7 The Supplier will fully indemnify the Vendor in relation to all liabilities, damages, costs, losses, claims, expenses, demands and proceedings whatsoever arising as a consequence of the Vendor and/or Client failing to disclose relevant information under the FOIA or any other applicable legislation governing access to information within any time limit imposed by the FOIA or other applicable legislation where the Vendor and/or Client's failure to disclose is attributable in whole or in part to a breach by the Supplier of its obligations under this Clause 17.

## **18 UNLAWFUL DISCRIMINATION AND EQUAL OPPORTUNITIES**

- 18.1 In the performance of the Agreement the Supplier shall comply and shall require that all their Contractors, employees, and agents comply with the best professional practice in relation to equal opportunities in particular (but not limited to) all relevant Legislation (including the Sex Discrimination Acts 1975 and 1986, the Race Relations Act 1976, the Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 1995) as well as statutory and other official guidance and codes of practice.
- 18.2 The Supplier acknowledges that the Vendor and the Client have a general duty under the Race Relations (Amendment) Act 2000 ("the Act") to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity and good race relations in carrying out their functions.
- 18.3 The Supplier shall be considered to have the same obligations as the Vendor and Client under the Act when providing the Services under this Agreement. The Supplier shall comply with the general duty under the Act as set out in Condition 18.2 above and any Codes of Practice issued by the Commission for Racial Equality including (but not limited to) the Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment. The Supplier shall be considered to be in breach of this Condition in the event of any non-compliance with the Act and any Codes of Practice.
- 18.4 The Supplier shall adopt the Client's own equal opportunities policies and procedures (as the same may be adopted and amended from time to time as notified to the Supplier) to comply with the statutory requirements of the Act and accordingly shall not, when employing persons for the purposes of performing the Services, discriminate on the grounds of race, whether directly, indirectly or by victimisation.
- 18.5 The Supplier shall indemnify the Vendor in respect of any costs and legal expenses incurred in defending any action brought by the Commission of Racial Equality and/or any third party against the Vendor for non-compliance with the Act and/or any Codes of Practice as a result of the breach of Condition 18.4 by the Supplier.
- 18.6 The Supplier shall, at the request of the Vendor, provide for the Vendor a suitable breakdown of the workforce by race and grade as the Vendor may reasonably require in order to be satisfied as to the Supplier compliance with these Conditions 18.2 to 18.4.
- 18.7 The Supplier shall monitor the representation of the Contractors supplied of different racial groups (meaning groups of persons defined by reference to colour, race, nationality, ethnic or national origins) and further undertakes to report to the Vendor the results of such monitoring at the Vendor's request. If it appears to the Supplier or the Vendor that a particular racial group is under-represented in the workforce as a whole or in a particular area of work in the workforce, the Supplier shall take such action as the Vendor or Client may consider to be reasonably necessary to ensure that Supplier remedies the said lack of representation and encourage members of particular racial groups to apply for jobs or take up training opportunities, wherever possible.

- 18.8 The Supplier shall inform the Vendor as soon as it becomes aware of any legal proceedings (whether civil or criminal) brought against the Supplier under Race Relations legislation or of any judgements, awards, convictions (not spent or exempted under the Rehabilitation of Offenders Act 1974), or settlements arising therefrom, and shall provide the Vendor with such further information and documentation as may be required in relation thereto.

## **19 MISCELLANEOUS**

- 19.1 This Agreement is governed by the laws of England and is subject to the exclusive jurisdiction of the English Courts.
- 19.2 This Agreement may not be varied save expressly by agreement of both parties in writing and signed on behalf each party by a director.
- 19.3 The Supplier will indemnify the Vendor and the Client, their officers and agents (and in the case of Clause 19.3.2 the Vendor's or Client's replacement provider) against:
- 19.3.1 any liability for taxation which the Vendor or Client incurs in respect of income received by the Contractors or Supplier, its employees, the Contractors, officers, agents, sub-contractors and sub-suppliers;
  - 19.3.2 all costs, expenses and liabilities arising from any claim by the Contractors or any of the Suppliers' employees or ex employees (and any claim by any employees or ex employees of suppliers of the Supplier) for breach of contract, unfair or wrongful dismissal, redundancy or any other claim whether statutory or contractual or otherwise, incurred by virtue of the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) or any subsequent or related legislation.
- 19.4 This is the sole and entire agreement between the parties relating to the Services and supersedes all prior discussions representations and agreements. For the avoidance of doubt no other terms and conditions put forward by either party shall apply to the Services.
- 19.5 Any failure by a party to enforce its rights under this Agreement shall not be construed as a waiver of those rights, any waiver of a breach of this Agreement is not a waiver of any subsequent breaches and a waiver must be in writing and signed by an authorised representative of the party.
- 19.6 Any person who is not a party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term under this Agreement although this does not affect any right or remedy of a third party, which exists or is available apart from the Act.
- 19.7 In the event of conflict between this Agreement and any of its Schedules, Appendices, documents derived from its Appendices the former shall prevail.
- 19.8 For the avoidance of doubt this Agreement is a contract for services and does not create any agency, partnership or employment arrangement between any parties named in this Agreement.
- 19.9 Should the law in relation to this Agreement or any other Agreement entered into pursuant to this Agreement or any obligation arising hereunder be changed to the extent that any provision herein becomes void or unenforceable after the date hereof, the Parties shall in good faith review the terms of the agreement and agree such amendments as are reasonable in the light of the changes.
- 19.10 The parties shall not assign, transfer, subcontract or otherwise delegate any of the benefits, rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party, save that the Vendor shall be entitled to assign, transfer, sub-contract or otherwise delegate to an Associated Company.
- 19.11 The Supplier will allow the Vendor or the Client to audit the Supplier so that the Vendor or the Client may check that the Supplier is complying with this Agreement and to verify the Fees payable by the

Vendor under this Agreement. The Supplier will provide the Vendor or the Client, on request, at no additional charge, with:

- 19.11.1 reasonable access to and copies of the records kept by the Supplier in connection with the Services;
- 19.11.2 reasonable access to all relevant information, premises, data, employees, agents, sub-contractors, software, hardware and other assets at all locations from which obligations of the Supplier are being carried out; and
- 19.11.3 all reasonable assistance in carrying out the audit

subject to compliance with all privacy and data protection rules and regulations, including the Data Protection Act 1998, as amended from time to time provided always that the Supplier procures from all the Contractors and other relevant persons sufficient consents and all other permissions required under such data protection legislation to allow the Vendor or the Vendor or the Client to fully exercise its rights under Clause 19.11.

- 19.12 The Supplier will allow the Vendor or the Client reasonable access to and copies of the records kept by the Supplier in connection with the Services on 7 days notice to the extent reasonably required for the Vendor or the Client to establish that the Supplier is complying with this Agreement and to verify the Fees payable by the Vendor or the Client under this Agreement.
- 19.13 The Supplier will at the request and reasonable cost of the Vendor or the Client execute (or procure the execution of) any additional documents and do (or procure the doing) of any other acts or things which may reasonably be required from time to time to give the Vendor or the Client the full benefit of all the provisions of this Agreement.
- 19.14 The parties acknowledge that the Supplier has been providing the Services to the Vendor since the Commencement Date and, accordingly, the terms of this Agreement shall apply to the acts and omissions of the parties in relation to the subject matter of this Agreement from the Commencement Date.
- 19.15 Where the Vendor (or a third party appointed by the Vendor) operate a self billing arrangement, the Supplier shall abide by the following terms of this agreement: (1) the Supplier's agreement for the Vendor (or a third party appointed by the Vendor) to raise invoices in respect of the Suppliers and its Candidate's Services; (2) the Supplier shall agree not to raise VAT invoices for supplies covered by the Assignment under a self billing arrangement; (3) the self bill arrangement shall expire when the Agreement ends; and (4) the Supplier will notify the Vendor if it ceases to be registered, transfers its business as a going concern or becomes registered under another VAT number.

**Executed as an Agreement:**

**For and on behalf of the Vendor:**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

**For and on behalf of the Supplier:**

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Print Name

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Signature

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Position

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Date

## Appendix A:

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### BEELINE SUPPLIER ACCESS AND SERVICES AGREEMENT

This **Beeline Supplier Access and Services Agreement** (“**Agreement**”) is entered into on the last date signed below (the “**Effective Date**”) by and between Beeline.com, Ltd., a company incorporated under the laws of England and Wales whose registered office is at Project House, 110-113 Tottenham Court Rd, London, W1T 5AE (“**Beeline**”), and [**Insert Supplier’s Name**] (a company incorporated in England and Wales and whose registered office is [**Insert Supplier’s registered address**] (and all affiliated and subsidiary companies thereof) (“**Supplier**”), and describes the terms and conditions governing Supplier’s remote access to and use of Beeline’s services via the World Wide Web.

#### 1. Definitions.

Besides the terms defined elsewhere in this Agreement, the following terms shall have the following meanings: (i) “**Client**” means the Beeline customer described in Exhibit A to which Supplier is an approved vendor of labour, professional and/or support services; (ii) “**Documentation**” means the collateral and User instructions provided for use with the Site and Services; (iii) “**Exhibit**” means any Exhibits signed by the parties that set forth additional terms which are incorporated herein by reference subject to the other terms of this Agreement; (iv) “**Services**” means the electronic procurement and automated labour supply chain management services available on the Site which are offered by Beeline and its licensors and suppliers, and any other services set forth in an Exhibit; (v) “**Site**” means the collection of files available through the http protocol of the Internet at the domain: [www.beeline.com](http://www.beeline.com) (or other domain agreed between the parties), on which Beeline’s Services are available; (vi) “**Supplier Personnel**” means any employees, contractors, subcontractors (any tier), or any employee, contractor or agent of any of them, who delivers products or services to Client through or on behalf of Supplier; (vii) “**Users**” means employees of Supplier using and accessing the Site, Services and Documentation.

#### 2. Site Access; Services Use.

Beeline hereby grants to Supplier a limited, non-exclusive, non-transferable licence to use and access (i) the Site areas or accounts designated for Supplier; (ii) solely for Supplier’s use in fulfilling Client’s labour and/or support requirements; (iii) by the maximum number of Users and/or Supplier Personnel permitted by an Exhibit who are properly registered and authorised by virtue of password(s) controlled and administered by Supplier; and (iv) for the duration of this Agreement. Supplier may also use the Services and Documentation in association with the approved use of the Site. Supplier agrees to immediately notify Beeline of any unauthorised use of any registration or password.

#### 3. Proprietary Rights.

Beeline, its suppliers and licensors, retain all right, title and interest in, to and under the Site and Documentation, and in all software, source code and components thereof, and to all know how, ideas and developments derived thereby, and no title or right, or any intellectual property or other right therein, express or implied, is transferred to Supplier by virtue of this Agreement. The right granted hereunder is limited solely to remote access via the World Wide Web and does not include the transfer or distribution of software or source code to Supplier. Except as expressly permitted herein or under applicable laws, Supplier shall not, and shall not permit any Supplier Personnel, User or third party to, copy, transmit, distribute, sell, rent, lease, transfer, reproduce, modify, adapt, enhance, translate, reverse engineer, disassemble, decompile, attempt to

derive source code, or create derivative works or competing products from, the Site, Services or Documentation, or any software, source code or components thereof.

4. Purpose; Supplier's Information.

- a) Supplier shall be solely responsible for its services and observance of the terms between Supplier and Client. Supplier shall be solely responsible for the hours or work reported by Supplier Personnel and the submission of information by Supplier Personnel and its Users. Supplier shall remain solely responsible for the payment of all compensation and benefits due its Users, Supplier Personnel and vendors, and for all taxes, deductions and contributions related thereto. Supplier shall indemnify and hold harmless Beeline from any claims or liabilities arising from the subjects identified as Supplier's responsibilities in this section.
- b) Beeline may provide timekeeping and/or bill consolidation services but shall bear no responsibility except to report information to Client and/or Supplier accurately and completely as inputted by Supplier or Client. Unless stated otherwise in an Exhibit, Beeline shall not handle payments, refunds or any exchange or transfer of moneys, or act as a payment-clearing house. Beeline shall in no case be responsible for failure or delay in payment by Client or act as surety or guarantor for Client.

5. Fees and Payment.

All fees and payments for the use of Beeline are incorporated into the fee payable by the Client under the Managed Service Agreement between the Client and Modis Managed Services (an associated company of Beeline). Consideration under this agreement is Modis Managed Services' payment to Beeline under the Managed Service Agreement.

6. Prohibited Uses; Termination of User Rights.

- a) Supplier shall not, and shall not permit any User, Supplier Personnel or third party to, engage in any of the following prohibited acts: (i) attempting or gaining access to data not intended for Supplier or logging into accounts or Site areas which Supplier is not authorized to access; (ii) probing or breaching Site security measures without written consent of Beeline; (iii) transmitting or modifying any data or information that Supplier does not possess the lawful right to transmit or modify; (iv) using or accessing the Site in violation of any applicable local, state, federal or international law, rule or custom, including, but not limited to, United States export laws or regulations; or (v) using any information accessed from the Site for personal purposes or for other than the properly licensed purpose hereunder.
- b) Notwithstanding anything stated herein or elsewhere, Beeline reserves the right to terminate, restrict or deny use or access of or to the Site, Services or Documentation by or to any User or Supplier Personnel it determines is or may be engaged in improper use or access in Beeline's sole discretion, in addition to any other rights or remedies Beeline may possess.

7. Acknowledgement

Supplier acknowledges and agrees that Site use and access involves browser-based technology that entails the transmission of information back and forth across the Internet. Beeline has no control over anything or any unauthorised access that occurs on servers, transmission media and equipment not controlled by Beeline.

8. Confidential Information.

- a) The parties acknowledge and agree that they each may come into contact with confidential or proprietary information of the other party, including but not limited to, employee and candidate identities, components or elements of the Site, Services or Documentation, business plans and information, Supplier and customer data, sales and product plans and data, which is designated, or which a reasonable person knows or should know is, confidential ("Confidential Information"). The parties each agree that they will not, directly or indirectly, disclose any of the other party's Confidential Information to any third party, or use any of the other party's Confidential Information, for any purpose other than the furtherance of the purposes of this Agreement, except with the other party's prior written consent.

- b) Notwithstanding anything in this Agreement to the contrary, the term "Confidential Information" shall not include any information that (i) is or becomes generally known to the public other than as a result of a disclosure in breach of this Agreement; (ii) is rightfully in the possession of a party prior to disclosure by the other party; (iii) is received by a party in good faith and without restriction from a third party having the right to make such disclosure and not under a confidentiality obligation to the other party; or (iv) is independently developed by a party without reference to the Confidential Information of the other party. Either party may disclose Confidential Information of the other party if disclosure is required by law or process, but only after giving advance written notice to the other party reasonable to allow for an opportunity for the other party to secure an appropriate protective order or other measure limiting disclosure, with reasonable cooperation between both parties in seeking such protection, at the expense of the party seeking such protection.
- c) The parties acknowledge that the improper disclosure or use of Confidential Information may cause irreparable injury and damages may not be readily ascertainable, such that injunctive relief may be proper in addition to such other remedies as may be available at law or in equity. Either party shall advise the other party promptly in the event that it has reason to suspect a threatened or actual disclosure or improper use of the other party's Confidential Information contrary to this Agreement.

9. Warranty Disclaimer; Liability Limit.

BEELINE OFFERS THE SITE, SERVICES AND DOCUMENTATION "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. BEELINE EXPRESSLY DISCLAIMS ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY, TITLE OR NON-INFRINGEMENT. NO ACT OR STATEMENT BY BEELINE OR ITS PERSONNEL SHALL OPERATE TO MAKE OR CONSTITUTE A WARRANTY OR REPRESENTATION. EXCEPT FOR BREACH OF CLAUSES THREE (3), SIX (6) OR SEVEN (7), OR CLAIMS EXPRESSLY INDEMNIFIED HEREIN OR IN ANY EXHIBIT, IN NO EVENT SHALL SUPPLIER OR BEELINE, THEIR AFFILIATES, SUPPLIERS OR LICENSORS, BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES RESULTING FROM LOSS OF PROFITS, DATA, USE OF DATA OR BUSINESS ARISING OUT OF THIS AGREEMENT.

10. Term; Termination.

Either party may terminate this Agreement and all use rights: (i) at any time for convenience, with or without cause, by giving at least thirty (30) days' advance written notice to the other party; or (ii) if the other party commits a material breach of this Agreement that remains uncured after the expiration of ten (10) days' advance written notice specifying the basis for the breach and requiring its cure. The parties shall reasonably cooperate in an effort to resolve and cure the alleged breach. Beeline shall have the right to terminate this Agreement immediately (i) upon notice by Client that Supplier is no longer an approved vendor, or (ii) for violation by Supplier of the obligations stated in clauses 2, 3 or 6. Supplier shall have the right to terminate this Agreement immediately upon notice by Client that Beeline is no longer providing Beeline Services to Client.

11. Miscellaneous.

- a) This Agreement and its interpretation shall be governed by the laws of England. The United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties. The parties also disclaim application of any law based in any way on the Uniform Computer Information Transaction Act (UCITA) to this Agreement or the parties. The parties hereby submit to the non-exclusive jurisdiction of the courts and laws of England and Wales.
- b) The parties agree that the relationship between them is solely that of independent contractors, not employment, partner, joint venture, master-servant or agency, and that no act or statement of either of them will operate to bind the other.
- c) Any provision of this Agreement found to be unenforceable shall be severed from this Agreement, and the remaining provisions of this Agreement shall otherwise remain in full force and effect. The provisions of this Agreement which by their nature are intended to continue beyond the termination of this Agreement or the

completion of any services shall survive the expiration or the termination of this Agreement by any party for any reason.

- d) This Agreement represents the entire Agreement of the parties with respect to the subject matter hereof, and any such previous agreements entered into prior hereto are revoked and superseded by this Agreement, and no representations, warranties, inducements or oral agreements concerning the subject matter hereof have been made by any of the parties except as expressly set forth herein. Nothing in this clause 10(d) shall be construed as limiting or excluding liability for fraudulent misrepresentation. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorised representative.

**For and Behalf of the Supplier**

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**For and on Behalf of Beeline**

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Appendix B**

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### **CONFIDENTIALITY AGREEMENT**

#### **NON DISCLOSURE AGREEMENT (AGENCY WORKERS)**

**THIS DEED is made the            day of  
BETWEEN:**

- 1        **[INSERT NAME OF CLIENT] of [INSERT ADDRESS OF CLIENT] ("the Company"); and**
- 2        **[INSERT NAME OF TEMPORARY WORKER] of [INSERT ADDRESS OF TEMPORARY WORKER]**  
          **("the Recipient").**

**NOW IT IS HEREBY AGREED** as follows:

- 1        "Confidential Information" shall mean all information, whether commercial, financial, technical or otherwise, disclosed to or otherwise obtained by the Recipient in connection with the main purpose of Company's business (the "Business Purpose") specified in the Schedule hereto which is contained in or discernible from any form whatsoever (including without limitation data, drawings, films, documents and computer readable media), whether or not that information is marked or designated as confidential or proprietary. The Confidential Information includes, but is not limited to, information concerning The Company's current and future products and services, its clients and its marketing plans.
- 2        In connection with the Business Purpose the Recipient has received or shall receive Confidential Information, which has been or may be communicated orally, in document form, by demonstration or otherwise to the Recipient through personnel of The Company and/or personnel of The Company's clients.
- 3        The Recipient acknowledges that the Confidential Information includes commercial assets of considerable value to The Company and the Recipient undertakes:
  - (a)      to treat all the Confidential Information as confidential, regardless of when it is disclosed or obtained and the form in which it is disclosed or obtained;
  - (b)      not without The Company's prior written consent in each case to communicate or disclose any part of the Confidential Information to any other person;
  - (c)      not to use the Confidential Information except solely to the extent necessary for the purposes of the Business Purpose or any other purpose The Company may hereafter expressly authorise in writing;
  - (d)      not to use the Confidential Information in any way which would be harmful to The Company;
  - (e)      to effect and maintain adequate security measures to safeguard the Confidential Information from unauthorised access, use and misappropriation.
- 4        The obligations of confidentiality in Clause 3 above shall not apply to any portion of the Confidential Information where the Recipient can satisfactorily document and demonstrate that the Confidential Information concerned:

- (i) is or has become publicly known through no fault of the Recipient; or
- (ii) is lawfully received from an independent third party without any restriction and without any obligation of confidentiality; or
- (iii) is independently developed by the Recipient without access to or knowledge or use of the Confidential Information.

5 The parties agree that:

- (i) all work done by the Recipient for The Company pursuant to the Business Purpose shall be owned exclusively by The Company; and
- (ii) the Recipient as beneficial owner hereby irrevocably and in perpetuity assigns to The Company all property copyright and all other intellectual and proprietary rights in such work; and
- (iii) the Recipient hereby unconditionally, irrevocably and in perpetuity waives all moral and author's rights and rights of a similar nature under the laws of any jurisdiction in respect of the work performed in connection with the Business Purpose; and
- (iv) the Recipient shall disclose to The Company all discoveries, inventions, ideas or techniques ("Inventions") made by the Recipient in connection with the performance of the Business Purpose. The Recipient agrees that all such Inventions shall be the exclusive property of The Company; and
- (v) all material containing the Confidential Information, including without limitation, magnetic tapes, documents, manuals, specifications, flowcharts, program listings and data file printouts ("the Materials"), shall be and remain the property of The Company and shall not be reproduced in whole or part without The Company's express written consent. Any copies of the Materials shall become The Company's property and shall include a notice stating that copyright and all other intellectual property rights of whatever nature in the Materials are vested in The Company.

6 Upon the first to occur of: (i) completion or termination of the Business Purpose; (ii) breach of any of the terms herein; or (iii) the demand of The Company, the Recipient shall promptly deliver up to The Company all Materials supplied by The Company incorporating any Confidential Information and all copies thereof and destroy or erase any Confidential Information contained in any Materials prepared by or on behalf of the Recipient or recorded in any memory device. Within 14 days of such request or completion of the Business Purpose the Recipient shall certify in writing to The Company that he or she has fully complied with his or her obligations under this Clause.

7 The Recipient shall not make or permit others to make any reference to the subject matter of the Agreement, the Confidential Information or use the name of The Company in any public announcements, promotional, marketing or sales materials or efforts without the prior written consent of The Company.

8 The Recipient shall indemnify and keep The Company fully indemnified in respect of all losses, damages, claims and expenses of whatsoever nature arising out of or in connection with any wrongful disclosure or misuse of the Confidential Information by the Recipient without prejudice to any other rights or remedies including without limitation injunctive or other equitable relief.

9 If any part of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of the Agreement shall not be affected.

- 10 The termination of this Agreement or the completion of the Business Purpose for any reason shall not affect the obligations of the Recipient set out in this Agreement.
- 11 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

**EXECUTION:**

**EXECUTED AS A DEED by**

**Signed:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**In the presence of:**

**Signed:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix C

### Service Level Agreement

This Appendix outlines the Service Levels that must be met by the Supplier in delivering the Services specified in this Agreement.

Action	Target Resolution for Service Level	Responsible
1. Assignment Request queries, requests for additional information and responses to be completed within:	<b>24 hours</b>	Vendor/Supplier
1. Response via Beeline™ with a maximum of 3 CV's together with a CV Cover Form within:	<p><b>Assignment Start Date</b> <b>CV Response Time</b></p> <p>Same Business Day 1 hour (CV(s) to be submitted no later than 16:30 hours) that Business Day)</p> <p>Next Business Day 2 hours (CV(s) to be submitted no later than 16:30 hours) that Business Day)</p> <p>Next Business Day - 2 Business Days Time 6 Hours (CV(s) to be submitted no later than 16:30 hours) that Business Day)</p> <p>In 3 – 6 Business Days 24 Hours (CV(s) to be submitted no later than 16:30 hours) that Business Day)</p> <p>In 7 Business Days or More 48 Hours (CV(s) to be submitted no later than 16:30 hours) that Business Day)</p> <p><i>*For the purposes of this Clause only Business Day shall mean 09:00 – 16:30 Hours.</i></p>	Supplier
2. Number of CVs submitted with references (All candidates will have their right to work documentation verified prior to start):	<b>3 CV's per requirement</b>	Supplier
3. Number of CVs to interviews:	<b>3:2</b>	Vendor/Supplier
4. Selection of Candidates to interview within:	<b>48 hours</b>	Vendor
5. The Supplier will confirm Candidate interview dates	<b>8 hours</b>	Supplier

within:		
6. After all interviews complete Candidate interview feedback on Beeline™ will be provided within:	<b>24 hours</b>	Vendor
7. Number of Interviews to Appointment:	<b>2:1</b>	Vendor/Supplier
8. Provide any other requested information within:	<b>24 hours</b>	Vendor/Supplier
9. Call Contact Person to ascertain satisfaction with service / candidate delivered within:	<b>4 weeks</b>	Supplier
10. All day-to-day operational issues referred to relevant Account Managers, escalations directed to relevant Business Services Manager and thereafter to the Regional Director each within:	<b>24 hours</b>	Supplier
11. Performance review of service levels listed above and the Resourcing Process every:	<b>Quarter</b>	Vendor/Supplier

## Appendix D

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### Proposed Fees Schedule

- Fees payable for Agency staff provided to London Borough of Newham via the Managed Agency Service for Temps (MAST) will be based on the categories below and paid at the mark-ups shown in Table 1 – MAST Pricing
- Where the current rate being charged to London Borough of Newham is less than the proposed rate, the current rate will continue to apply
- For “PAYE” workers
  - Mark-up is applied to the Pay Rate to the worker exclusive of Holiday Pay
  - Holiday pay will be calculated at 10.17% the Pay Rate
  - Employers National Insurance Contribution will be calculated at 11.5% of Pay Rate + Holiday Pay
- For “Limited Company” workers
  - Mark-up is applied to the Pay Rate

WORKER CATEGORY	Supplier Mark-up %
Professional Services	22%
Financial Services	20%
Technical Services	20%
Housing Services	20%
IT Services	20%
Benefits Services	20%
Social Services	20%
Social Care	15%

**Table 1 - MAST Pricing**

Categories	Proposed Mark-up
<b>Admin Clerical (AC)</b>	<b>13.00%</b>
<b>Trades and Operatives (TO)</b>	<b>19.00%</b>
<b>Labour Force (LF)</b>	<b>12.00%</b>

**Examples****Admin Clerical PAYE Worker**

<b>Pay to Worker</b>		<b>£</b>	<b>10.00</b>
<b>Holiday Pay (at 10.17%) plus Emp. National Insurance (at 11.5%)</b>		<b>£</b>	<b>2.28</b>
<b>Mark-up</b>	<b>13.00%</b>	<b>£</b>	<b>1.30</b>
<b>Charge Rate</b>		<b>£</b>	<b>13.58</b>

**Professional Services Ltd Co.**

<b>Pay to Worker</b>		<b>£</b>	<b>20.00</b>
<b>Mark-up</b>	<b>22.00%</b>	<b>£</b>	<b>4.40</b>
<b>Charge Rate</b>		<b>£</b>	<b>24.40</b>