

**APPENDIX 1 to the FRAMEWORK AGREEMENT**  
**ADVERTISING AND HUMAN RESOURCE (HR) RELATED SERVICES**  
**CLIENT BODY AGREEMENT**

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This Agreement together with relevant Order comprise the contractual provisions which apply to the Order that is entered into between the Client Body and the Service Provider and which govern the provision of the Services to the Client Body.

**CONDITIONS OF CONTRACT**

**THIS AGREEMENT** is made the 13 day of JUNE 2018

**BETWEEN:**

- (1) Department for International Trade (the Client Body)  
and
- (2) TMP (UK) Ltd whose registered office is at 265 Tottenham Court Road, London, W1T 7RQ (the Service Provider)

**WHEREAS:**

- A. The Client Body wishes to purchase the Services.
- B. The Service Provider having been awarded Service Provider status under a Framework Agreement with the Eastern Shires Purchasing Organisation the 'Framework Agreement' (a copy of which is available upon request will supply the Services in accordance with his obligations to the Client Body.

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

**1. INTERPRETATION**

1.1 As used in this Agreement:

1.1.1 the terms and expressions set out below shall have the meanings ascribed therein;

<b>Agreement</b>	means this agreement between the Client Body and the Service Provider, comprised of the Conditions and the Schedules and Annexes thereto and any Order.
<b>Authorised Representative</b>	means a representative of the Client Body or the Service Provider as appropriate for the purposes of this Agreement
<b>Charges</b>	means the charges set out in the Pricing Schedule
<b>Commencement Date</b>	Means 7 <sup>th</sup> May 2018
<b>Confidential Information</b>	means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, Client Bodies and Service Providers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

<b>Contract Manager</b>	means the nominated officer or employee of the Client Body responsible for managing this Agreement for the provision of the Services
<b>Default</b>	means any breach of the obligations of either party (including but not limited to a fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other.
<b>EIR</b>	means the Environmental Information Regulations 2004
<b>ESPO</b>	means the Eastern Shires Purchasing Organisation being the central purchasing body responsible for creating the Framework Agreement
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and / or codes of practice issued by the Information Commissioner in relation to such legislation
<b>Framework Agreement</b>	means the Agreement between ESPO (on behalf of Pro5) and the Service Provider under which this contract is entered into by the Client Body and the Service Provider for the supply of the Services
<b>Implementation Plan</b>	means the plan to be developed by the Client Body and the Service Provider in accordance with <b>Schedule 5</b> and which will contain a schedule of tasks to be done, the timescale for completion of those tasks, identifying the party responsible for those tasks, together with the milestones to be achieved and against which payment will be made
<b>Invitation to Tender</b>	means the invitation to tender issued to the Service Provider in response to a request following the publication of the OJEU notice for the procurement of the Services
<b>Interim Manager</b>	means a temporary (non-permanent) worker offered and provided on assignment by the Service Provider to fulfil a specific role for a defined period of time in return for a Fee. The Interim Manager is not an employee of the Client Body and will not be treated as if he/she is. The Interim Manager will complete a timesheet, signed by a hiring manager of the Client Body, which will be processed by the Service Provider in order to invoice for the fee(s) defined in the Pricing Schedule at <b>Schedule 3</b>
<b>Order</b>	means an official order in such form as may be issued by the Client Body to the Service Provider in respect of the Services
<b>Parent Company</b>	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term Holding Company shall

have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto

**Pricing Schedule**

means the Pricing Schedule attached to the Service Provider's Framework Agreement – attached hereto at **Schedule 3**

**Protocol**

means the Client Body Protocol describing the Client Body's obligations in relation to their local arrangements and contract management requirements and which is attached hereto as **Schedule 1**

**Pro5**

means all or any of the following professional buying organisations: Central Buying Consortium (CBC), Eastern Shires Purchasing Organisation (ESPO), North Eastern Procurement Organisation (NEPO), West Mercia Supplies (WMS) and Yorkshire Purchasing Organisation (YPO).

**Requests for Information**

shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the EIR

**Services**

means the Client Body requirements for advertising and/ or human resource related services more particularly set out in the Specification attached as **Schedule 2** hereto

**Specification**

means the Specification for the Services which the Service Provider is authorised to provide under the Framework Agreement and which is more particularly set out in **Schedule 2** hereto

**Tender**

means the Service Provider's tender submitted in response to the Invitation to Tender and attached to the Framework Agreement as **Schedule 2**

**Term**

means the period of 7 months, with an option for an additional 4 under a call off arrangement, from the Commencement Date

**Working Day**

means Monday to Friday in any week but excluding any public or bank holidays

1.1.2 the masculine includes the feminine and the neuter; and

1.1.3 the singular includes the plural and vice versa.

1.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.4 References to Conditions and Schedules are, unless otherwise provided, references to conditions of and schedules to this Agreement.

1.5 In the event and to the extent only of any conflict between the Conditions and the Schedules or the Order, the Conditions shall prevail.

**2. SERVICE PROVIDER'S OBLIGATIONS**

2.1 The Service Provider shall supply the Services in accordance in all respects with the terms of the Framework Agreement and the terms of this Agreement and the terms and conditions of the relevant Order and in accordance with any local arrangements agreed and set out in **Schedule 4**

- 2.2 For the avoidance of doubt the Client Body shall not be responsible for any Services that are delivered by the Service Provider and are not the subject of a valid Order.
- 2.3 For the avoidance of doubt any terms that the Service Provider may seek to impose and which in any way vary or contradict the terms of this Agreement shall be excluded and not form part of the Order.
- 2.4 The Services to be supplied under the Order shall be provided in accordance with the terms of the Order. Where the Order identifies that provision will be in accordance with an Implementation Plan, the Implementation Plan will be agreed between the Client Body and the Service Provider unless otherwise agreed in writing by the Client Body. The Service Provider acknowledges the importance to the Client Body of performing the Services by the required date, and shall take all reasonable steps to achieve provision by those dates in accordance with best industry practice and the Service Level Agreement.
- 2.5 The Service Provider shall use all reasonable endeavours to ensure that the Services meet the requirements of the Specification and where the purpose for which they are required is indicated in the Order, either expressly or by implication, be fit for that particular purpose.
- 2.6 The Service Provider warrants to all its reasonable endeavours that the Services to be supplied under the Order shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.
- 2.7 The Service Provider shall be deemed to have satisfied itself as to the sufficiency and correctness of the Pricing Schedule. Unless otherwise expressly stated in the Order the Pricing Schedule shall cover all the Service Provider's obligations and everything necessary for the supply of the Services under the Order.
- 2.8 Unless otherwise expressly stated in the Framework Agreement or the Order no claim by the Service Provider will be allowed for any addition to the charges specified in the Pricing Schedule on the grounds of any matter relating to any document forming part of the Framework Agreement or the Order or any ambiguity or discrepancy therein on which an experienced Service Provider could have satisfied himself by reference to the Client Body or any other appropriate means.
- 3. CLIENT BODY'S OBLIGATIONS**
- 3.1 The Client Body shall select a Service Provider for Orders in accordance with the criteria outlined in the Framework Agreement.
- 3.2 The Client Body will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 3.3 The Client Body shall respond to any reasonable request for information from the Service Provider.
- 3.4 The Client Body will assign an Authorised Representative who will interface with the Service Provider's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 3.5 The Client Body shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2006 (and any subsequent re-enactment thereof).
- 3.6 The Client Body hereby agrees to comply with the Protocol set out in **Schedule 1** hereto.
- 4. PROVISION OF THE SERVICES**
- 4.1 The Service Provider shall provide the Services identified in the Order in accordance with the **Services Description and Specification in Schedule 2 and the Service Level Agreement in Schedule 6**. In addition, the Service Provider shall host and grant access to any software solution forming part or all of the Services for the Term of the Agreement in accordance with the **End User License Agreement in Schedule 7**. The Charges in respect of such Services shall be as detailed in the **Pricing Schedule at Schedule 3**. And as may be supplemented by any **Local Arrangements** as set out in **Schedule 4**.
- 5. CHARGES**
- 5.1 In consideration of the provision of the Services in accordance with the terms of the Framework Agreement and the Order, the Client Body shall pay the Charges calculated in accordance with the **Pricing Schedule** of the Framework Agreement and published from time to time by ESPO therein and in accordance with the invoicing procedure and payment profile specified in **Schedule 3**. The client body shall also take financial responsibility for the ESPO 1% framework fee.

- 5.2 Payment shall be made within thirty (30) days of receipt by the Client Body (at its nominated address for invoices) of a valid invoice, in accordance with the provisions of **Schedule 3**, from the Service Provider.
- 5.3 The Charges are exclusive of Value Added Tax. The Client Body shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
- 5.4 The Client Body will not be liable for any additional costs incurred by either candidate application volume increases or changes to the scope of work, not approved by the Client Body, as set out in **Schedule 3**.
- 6. RECOVERY OF SUMS DUE**
- 6.1 If any sum of money shall be due from the Service Provider, the same may be deducted from any sum then due or which at any time thereafter may become due to the Service Provider under this Agreement or any other agreement with the Client Body.
- 7. IMPLEMENTATION PLAN**
- 7.1 The Service Provider shall provide the Services in accordance with any Implementation Plan as agreed with the Client Body as attached hereto as **Schedule 5**.
- 7.2 The Service Provider shall deliver a draft Implementation Plan to the Client Body on or before the commencement of the Services to the Client Body. The draft Implementation Plan shall be sufficiently detailed as is necessary to manage the implementation of the Services effectively. Once agreed with the Client Body (agreement not to be unreasonably delayed or withheld) the Service Provider shall monitor its performance jointly with the Client Body against the Implementation Plan.
- 8. MONITORING AND REPORTING**
- 8.1 The Service Provider shall:
- 8.1.1 appropriately manage the provisions of the Services that it provides under this Agreement;
- 8.1.2 be required to provide to the Client Body such management information as it reasonably requires including but not limited to the information identified in **Schedule 8** and the Framework Agreement. In particular, management information necessary to seek approval of cost increases, is required.
- 8.1.3 on reasonable notice grant to the Client Body's external and internal auditors access to any relevant data or documentation relating to the Framework Agreement and Order and the supply of the Services for the purpose of carrying out an audit.
- 8.1.4 Institute, keep and maintain proper and sufficient records in connection with business conducted under this Agreement and for the continuance of this Agreement and for a period of twelve (12) months thereafter allow any nominated representative of the Client Body (including the Client Body's Authorised Representative, the chief financial officer and the internal and external auditors of the Client Body) reasonable access and co-operation with regard to such records.
- 9. SERVICE LEVELS**
- 9.1 The Service Provider shall provide the Services to meet or exceed the service levels contained in any Service Level Agreement forming part of this Client Body Agreement as attached hereto as **Schedule 6**.
- 10. SERVICE PROVIDER'S PERSONNEL**
- 10.1 The Service Provider shall select, employ, train, furnish and deploy in and about the performance of the Services only such persons as are of good character and who are appropriately skilled and experienced.
- 10.2 The Service Provider shall comply with any statutory requirements in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997. The Service Provider shall ensure that all employees, servants or agents engaged by him in the discharge of his obligations under this Agreement who may be required to work within school premises, or other sites occupied by children and/or vulnerable adults shall be appropriately checked by the Criminal Records Bureau and shall upon reasonable request produce evidence of such satisfactory disclosure.
- 10.3 The Service Provider and the Service Provider's sub-contractors, staff and agents shall comply with all reasonable requirements of the Client Body whilst present at the Client Body's premises.

- 10.4 The Service Provider shall use reasonable endeavours to ensure that its sub-contractors are subject to the provisions of **conditions 10.1, 10.2 and 10.3** above.
- 10.5 The Service Provider, its agents, sub-contractors and Service Providers shall employ sufficient staff to ensure that the Services are provided at all times in accordance with this Agreement. Without prejudice to the generality of this obligation, it shall be the duty of the Service Provider to ensure that a sufficient reserve of staff is available to provide the Services in accordance with this Agreement during staff holidays or absence through sickness or any other cause.
- 10.6 The Client Body, acting reasonably, shall have the right to refuse access to its premises at any time to any employee of the Service Provider, its agents, sub-contractors or Service Providers. The exercise of this right shall not diminish the Service Provider's obligation of performance arising under this Agreement.

## **11. DEFAULT IN PERFORMANCE OF THE SERVICE**

- 11.1 The Service Provider shall respond promptly to all complaints, oversights and omissions and shall immediately make good any default on its part at its own expense.
- 11.2 Where Services are required or ordered under the Agreement and the Service Provider fails to provide such Services or any element thereof in accordance with the Agreement, or in the event of breach or default by the Service Provider (which ESPO or the Client Body has invited the Service Provider to remedy but which has not been remedied) ESPO or the Client Body may take whatever action it reasonably considers necessary or appropriate to effect a suitable remedy which may include (but not be limited to) ESPO or the Client Body terminating part or all of the Agreement or obtaining substituted provision of the Services to be supplied under this Agreement. This shall be without prejudice to any other remedy for breach of this Agreement and shall be in addition to and without prejudice to the provisions of **Condition 15** hereof.
- 11.3 In taking such above mentioned remedial actions ESPO and/ or the Client Body shall be entitled to claim from the Service Provider any reasonable and demonstrable excess of costs so directly incurred by ESPO and/ or the Client Body over the rates contained in the Pricing Schedule together with all associated costs, charges and expenses as direct losses (including professional fees and VAT). Such amount shall be due as a debt from the Service Provider to ESPO or the Client Body and payable within 28 days of demand.
- 11.4 Any dispute as to the reasonableness of any debt owed to ESPO and/or the Client Body under **Condition 11.3** may be referred for determination in accordance with **Condition 29**.
- 11.5 The rights of ESPO and/ or the Client Body under any of the **Conditions 11.1 to 11.4** shall be without prejudice to its rights under any other provision of this Agreement.

## **12. WARRANTIES AND REPRESENTATIONS**

- 12.1 The Service Provider warrants and represents that:
- 12.1.1 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 12.1.2 the Service Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;

## **13. INSURANCE AND INDEMNITY**

- 13.1 The Service Provider shall indemnify and keep indemnified the Client Body against all losses, damages, costs, charges and expenses at any time incurred or suffered by the Client Body and arising directly from any breach by the Service Provider of this Agreement, or any of its obligations to the Client Body, or from any negligence, negligent act, negligent omission, default, or breach of Contract, on the part of the Service Provider or, its employees, and provided always that the Service Provider's liability to indemnify the Client Body shall be reduced proportionately to the extent that an act or omission the Client Body, its servants or officers may have contributed to the said death, loss, injury or damage. The Service Provider shall effect and maintain at all times during the continuance of this Agreement and for twelve months thereafter (or such longer period as, depending on the basis of claims covered by the insurance, will effect cover for the limitation period applicable to any relevant claim):
- 13.1.1 Public Liability insurance in the minimum sum of five million pounds
- 13.1.2 Employers Liability insurance of not less than ten million pounds

13.1.3 Professional Indemnity insurance of not less than two million pounds

The levels of insurance cover stipulated for Public Liability and Employer's Liability shall be in respect of any one claim, and without limit, in respect of the number of claims made in any 12 month period of insurance, such insurance to be effected with a reputable insurance company and evidenced immediately upon any reasonable demand by the ESPO Contract Manager to do so.

- 13.2 Interim Managers engaged via this Agreement by the Service Provider will be insured under the Service Provider's own Employer's Liability and Public Liability insurance policies whilst under its direction and control.
- 13.3 Interim Managers engaged via this Agreement will be insured under the Client Body's own Employer's Liability and Public Liability insurance policies whilst under its discretion and control, except where the individual Interim Manager holds his or her own Public Liability insurance
- 13.4 Save to the extent that the cost, liability, expense or demand is caused by the Client Body the Service Provider shall indemnify the Client Body against each and every cost, liability, expense or demand (including redundancy payments or protective awards) and any liability for wrongful dismissal or unfair dismissal or otherwise incurred by the Client Body in connection with any interim placement under the terms of this Agreement, including without limitation any such matter relating to
- 13.4.1 Any claim, cost or proceeding arising directly as a result of the Service Provider's failure to co-operate or provide information in relation to any Interim Manager;
- 13.4.2 The Service Provider's failures to pay the Interim Manager any sums properly due;
- 13.4.3 Any claim by a trade union, staff association or staff body in respect of any or all of the Interim Managers arising out of the Service Provider's failure to comply with its legal obligations;
- 13.4.4 Any circumstance where the either the Service Provider or the Client Body might be deemed to have become the employer of any Interim Manager engaged by the Client Body under this Agreement.
- 13.5 Save to the extent that the claim, cost or proceeding is caused by the Client Body, the Service Provider shall indemnify the Client Body against any claim, cost or proceeding arising directly as a result of:
- 13.5.1 Any claim by a trade union, staff association or staff body in respect of any or all of the Interim Managers arising out of the Service Provider's failure to comply with its legal obligations;
- 13.5.2 Any circumstance where the Service Provider is deemed to be the employer of any Interim Manager engaged by the Client Body under this Agreement.
- 13.5.3 Provided that if any third party makes a claim, or notifies an intention to make a claim, against the Client Body which may reasonably be considered likely to give rise to a liability under this indemnity (in this clause referred to as "the Claim"), the Client Body shall:
- as soon as reasonably practicable, give written notice of the Claim to the Service Provider, specifying the nature of the Claim in reasonable detail
  - not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Service Provider (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Client Body may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Service Provider, but without obtaining the Service Provider's consent) if the Client Body reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
  - give the Service Provider and its professional advisers access at reasonable times (on reasonable prior notice) to its officers, directors, employees, agents, representatives or advisers, and to any relevant accounts, documents and records within the power or control of the Client Body, so as to enable the Service Provider and its professional advisers to examine them and to take copies (at the Service Provider's expense) for the purpose of assessing the Claim; and
  - subject to the Service Provider providing security to the reasonable satisfaction of the Client Body to the Client Body against any claim, liability, costs, expenses, damages or losses which may be incurred, permit the Service Provider to take over the handling of the Claim and if the Service Provider considers it appropriate to compromise or settle the Claim.

- 13.6 Neither party shall do anything or refrain from doing or omit doing anything, which might render any of the foregoing insurance policies void or voidable.
- 13.7 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall exclude, restrict or limit either party's liability for death or personal injury resulting from its negligence.
- 13.8 Notwithstanding 13.2 above, the parties liability to each other under or in connection with this Agreement and the Services or otherwise, whether arising under contract, tort, negligence, breach of statutory duty or otherwise shall be the levels of cover specified in **Condition 13.1** where a claim falls within the Service Providers' insurance policy, or where a claim is not required to be covered by an insurance policy, [£1 million (one million pounds)].
- 13.9 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in this Agreement whether express or implied by statute, common law, trade usage or otherwise and whether written or oral are hereby expressly excluded to the fullest extent permissible by law.
- 13.10 Neither party shall other than as a consequence of fraud or wilful default by that party, be liable for any claim by the other party for loss of profit or revenue or loss of business, loss of goodwill, loss of anticipated savings nor for any other consequential, economic, special or indirect loss.
- 13.11 For the avoidance of doubt the Service Provider will not be responsible for the acts and omissions of Interim Managers under the direction, supervision and control of ESPO or the Client Body.
- 14. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**
- 14.1 The Service Provider shall fully indemnify and hold the Client Body harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of confidential information by the use or possession of the Services or any part thereof provided by the Service Provider or licensed by the Service Provider to the Client Body under the Agreement subject to:
- 14.1.1 the Client Body promptly notifying the Service Provider of any alleged infringement and, subject to **sub-condition 14.1.3** below, allowing the Service Provider at their own expense to conduct all negotiations for settlement or litigation;
- 14.1.2 the Client Body making no admission without the Service Provider's written consent unless and until the Service Provider shall have failed to take over the conduct of the negotiations or litigation;
- 14.1.3 the conduct by the Service Provider of such negotiations or litigation shall be conditional upon the Service Provider having given the Client Body such reasonable security as the Client Body may require for the compensation, damages, costs and expenses for which the Client Body may become liable. The Client Body at the Service Provider's expense shall give the Service Provider all available assistance.
- 14.2 If the Services or any part thereof becomes, or in the Service Provider's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under **sub-condition 14.1.1** above, the Service Provider shall at its own expense negotiate to obtain the right for the Client Body to continue to use the infringing items, if necessary by replacing, remove or modifying them, but without reducing their quality or ability to meet the Client Body's requirements as specified by the Agreement.
- 14.3 The Service Provider shall indemnify the Client Body against all losses, costs, damages and expenses whatsoever during the period that the Client Body is deprived of the use of the Services by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by the issue of a Change Request which shall not entitle the Service Provider to any addition to the Charges or any extension of the Order lead time.
- 14.4 The Service Provider shall not be liable under **sub-condition 14.1.1 and 14.1.2** above for any such infringement or alleged infringement which arises as a result of the including in the Services or any element supplied by the Client Body or any use of the Services for a purpose or in a manner different from that specified in, or reasonably to be inferred from, the Agreement.
- 15. TERMINATION**



- 15.1 Either party may at any time by notice in writing terminate this Agreement as from the date of service of such notice:-
- 15.1.1 if there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the other party or its Parent Company; or
  - 15.1.2 the other party being an individual, or where the other party is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or
  - 15.1.3 the other party, being a company, passes a resolution, or the Court makes an order that the other party or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the other party or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.
  - 15.1.4 the Client Body may at any time by notice in writing terminate this Agreement forthwith, if the Service Provider is in Default of any material or fundamental breach of any obligation under this Agreement
- 15.2 Either party may at any time by notice in writing terminate this Agreement forthwith, if the other party is in Default of any obligation under this Agreement and:
- 15.2.1 the Default is capable of remedy and the other party shall have failed to remedy the Default within thirty (30) days of written notice to the that party specifying the Default and requiring its remedy; or
  - 15.2.2 the Default is not capable of remedy.
- 15.3 The Client Body may by not less than three month's notice in writing to the Service Provider expiring at any time terminate the Agreement.
- 15.4 Termination in accordance with this **Condition 15** shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party.
- 15.5 In the event of any termination of this Agreement whether under this **Condition 15** or otherwise, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Client Body under this Agreement or otherwise, the Client Body shall be entitled to obtain a refund of any Charges paid by the Client Body in respect of any Services which have not been performed by the Service Provider in accordance with the terms of this Agreement.
- 16. CONFIDENTIALITY**
- 16.1 Each Party:
- 16.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
  - 16.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
- 16.2 The Service Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Client Body under or in connection with the Agreement:

- 16.2.1 is given only to such of its staff, sub-contractors and agents engaged in connection with the Agreement and only to the extent necessary for the performance of this Agreement;
- 16.2.2 is treated as confidential and not disclosed (without prior approval) or used by any staff, sub-contractors or agents otherwise than for the purposes of this Agreement.
- 16.3 Where it is considered necessary in the opinion of the Client Body, the Service Provider shall ensure that its staff, sub-contractors and agents sign a confidentiality undertaking before commencing work in connection with this Agreement. The Service Provider shall ensure that its staff, sub-contractors and agents are aware of the Service Provider's confidentiality obligations under this Agreement.
- 16.4 The Service Provider shall not use any Confidential Information it receives from the Council, Contracting Authority or the Client Body otherwise than for the purposes of this Agreement.
- 16.5 The provisions of **Conditions 16.1 to 16.4** shall not apply to any Confidential Information received by one Party from the other:-
  - 16.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);
  - 16.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - 16.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 16.5.4 is independently developed without access to the Confidential Information; or
  - 16.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the EIR pursuant to **Condition 18**.
- 16.6 Nothing in this Condition shall prevent the Client Body from:
  - 16.6.1 disclosing any Confidential Information for the purpose of the examination, audit and certification of the Client Body's accounts
  - 16.6.2 disclosing any Confidential Information obtained from the Service Provider to any person engaged in providing any services to the Client Body for any purpose relating to or ancillary to the Agreement;
  - 16.6.3 provided that in disclosing information under **condition 16.6.2** the Client Body discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.
- 16.7 The Service Provider shall not without the prior written consent of the Client Body divulge the existence of the Agreement or any Order or disclose any information relating to or contained in the Agreement to any person who is not engaged in the performance of the Agreement.
- 16.8 In the event that the Service Provider fails to comply with this **Condition 16** the Client Body reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 16.9 The provisions of this **Condition 16** shall apply notwithstanding termination of the Agreement.
- 17.1 DATA PROTECTION**
- 17.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client body is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in **Schedule 9** by the Client body and may not be determined by the Contractor.
- 17.3 The Contractor shall notify the Client body immediately if it considers that any of the Client body's instructions infringe the Data Protection Legislation.
- 17.4 The Contractor shall provide all reasonable assistance to the Client body in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client body, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 17.5 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with **Schedule 9**, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Client body before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Client body as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular **Schedule 9**);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Contractor's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client body or as otherwise permitted by this Agreement; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Client body has been obtained and the following conditions are fulfilled:
    - (i) the Client body or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client body;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client body in meeting its obligations); and
    - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Client body with respect to the processing of the Personal Data;
    - (e) at the written direction of the Client body, delete or return Personal Data (and any copies of it) to the Client body on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.
- 17.6 Subject to clause 17.7, the Contractor shall notify the Client body immediately if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 17.7 The Contractor's obligation to notify under clause 17.6 shall include the provision of further information to the Client body in phases, as details become available.
- 17.8 Taking into account the nature of the processing, the Contractor shall provide the Client body with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Client body) including by promptly providing:
- (a) the Client body with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Client body to enable the Client body to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Client body, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Client body following any Data Loss Event;
  - (e) assistance as requested by the Client body with respect to any request from the Information Commissioner's Office, or any consultation by the Client body with the Information Commissioner's Office.
- 17.9 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Client body determines that the processing is not occasional;
  - (b) the Client body determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Client body determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 17.10 The Contractor shall allow for audits of its Data Processing activity by the Client body or the Client body's designated auditor.
- 17.11 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 17.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:
- (a) notify the Client body in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Client body;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [X] such that they apply to the Sub-processor; and
  - (d) provide the Client body with such information regarding the Sub-processor as the Client body may reasonably require.
- 17.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 17.14 The Client body may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 17.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client body may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1. FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)**

- 18.1 The Service Provider acknowledges that the Client Body is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Client Body (at the Service Provider's expense) to enable the Client Body to comply with these information disclosure requirements.
- 18.2 The Service Provider shall and shall procure that its sub-contractors shall;
- 18.2.1 transfer any request for information to the Client Body as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information (or such other period as stipulated by the Client Body requesting the information); and
  - 18.2.2 provide the Client Body with a copy of all information in its possession or power in the form that the Client Body requires within seven (7) Working Days (or such other period as the Client Body requesting the information); and
  - 18.2.3 provide all necessary assistance as reasonably requested by the Client Body to enable the Client Body to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 18.3 The Client Body shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information;
- 18.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
  - 18.3.2 is to be disclosed in response to a request for information and in no event shall the Service Provider respond directly to a request for information unless expressly authorised to do so by the Client Body.
- 18.4 The Service Provider acknowledges that the Client Body may be obliged under the FOIA or the EIR to disclose information;
- 18.4.1 without consulting the Service Provider; or
  - 18.4.2 following consultation with the Service Provider and having taken its views into account.
- 18.5 The Service Provider shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Client Body to inspect such records as requested from time to time.
- 18.6 The Service Provider acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Client Body may nevertheless be obliged to disclose Confidential Information in accordance with **Condition 18.4**.

## **2. SOCIAL RESPONSIBILITY**

- 19.1 The Parties agree that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of age, culture, disability, gender, marital status, race, religion or sexual orientation.
- 19.2 The Parties shall in all matters arising in the performance of the Agreement comply with the provisions of the Disability Discrimination Act 1995 and any regulations made there under.
- 19.3 The Parties shall in all matters arising in the performance of the Agreement comply with the provisions of the Employment Equality (Age) Regulations 2006.
- 19.4 The Parties must comply with the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000 and shall ensure that they perform their responsibilities under this Agreement with due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relationships between different racial groups.
- 19.5 The Parties shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving goods or services from, the performance of the Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to the health and safety of persons and any amendment or re-enactment thereof.
- 19.6 ESPO and the Client Body shall be entitled at ESPO's and the Client Body's expense to inspect such books, accounts and records belonging to the Service Provider as are necessary to demonstrate compliance with **Conditions 19.1 to 19.5** above.
- 19.7 The cost to the Service Provider of complying with this **Condition 19** shall be included in the Charges.

### **3. CORRUPT GIFTS AND PAYMENTS**

- 20.1 The Client Body shall be entitled to cancel and terminate the Agreement and to recover from the Service Provider the amount of any loss resulting from such cancellation or termination if the Service Provider or any person on its behalf shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Client Body or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other contract with the Client Body or if like acts shall have been done by any person employed by the Service Provider or acting on its behalf (whether with or without the knowledge of the Service Provider) or if in relation to any contract with the Client Body the Service Provider or any person employed by the Service Provider or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- 20.2 The decision of the Client Body shall be final and conclusive in any dispute, difference or question arising in respect of:
- 20.2.1 the interpretation of this **Condition 20**; or
- 20.2.2 the right of the Client Body under this **Condition 20** to terminate the Agreement

### **4. FORCE MAJEURE**

- 21.1 For the purposes of the Agreement the expression Force Majeure shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 21.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 21.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 21.4 It is expressly agreed that any failure by the Service Provider to perform or any delay by the Service Provider in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Service Provider shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 21.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

### **5. HEALTH AND SAFETY**

- 22.1 Both Parties shall comply with the provisions of the Health & Safety at Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and the Provision and Use of Work Equipment Regulations 1998. All other health and safety assessments required by specific regulation and codes of practice relating to your business must also be strictly applied. The Service Provider is to have monitoring, inspection, review and, where appropriate, health surveillance arrangements in place to meet its responsibilities and may be required to produce documentation to prove that procedures have been carried out in accordance with the regulations upon reasonable request. All Temporary Interim Managers must be aware of and abide by Health & Safety standards and be aware of their duty of care to other employees and members of the public. Interim Managers shall adhere to a Client Body's health and safety requirements at all times and work within the Client Body's culture and values.

- 22.2 Both Parties shall in performing the Services adopt safe methods of work in order to protect the health and safety of its own employees and to the extent applicable the employees of the Client Body and all other persons, including members of the public provided that the Client Body shall be responsible for the Health and Safety of the Interim Managers whilst they are under the Client Body's control and shall supply the Service Provider with any pertinent Health and Safety information relating to any Services. Save to the extent that the losses, costs, or damages are caused or contributed to by ESPO or the Client Body, the Service Provider shall indemnify ESPO and the Client Body for any direct losses, costs, or damages, caused to ESPO and/ or the Client Body for any breaches of health and safety laws, policies, or codes of practice, by the Service Provider.
- 22.3 The Service Provider shall request that any sub contractors used are bound by the requirements of this **Condition 22**.
- 22.4 In respect of each Interim Manager assignment, the Client Body shall provide the Service Provider full details of:
- 22.4.1 the intended duties of the Interim Manager;
  - 22.4.2 any special skills which it requires the Interim Manager to have including any experience, training, qualifications or authorisations including those required by a professional body or by law;
  - 22.4.3 any risks to health and safety known to the Client Body and any steps that may have been taken to prevent or control such risks;
  - 22.4.4 any specific health and safety information which the Client Body wishes to be passed on to the Interim Manager.
- 22.5 The Client Body acknowledges that the Service Provider does not have the obligation (or the opportunity) to supervise, direct or control the manner, time or place of any Interim Manager's work. The Client Body shall provide on behalf of the Service Provider sufficient supervision, direction and control over the Interim Manager throughout the assignment.

#### **6. TUPE**

- 23.1 The Client Body warrants that it has to the best of its ability prior this agreement given to the Service Provider sufficient and accurate information regarding each and every Relevant Employee as is necessary to enable the Service Provider to assess fully the impact of the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) and the consequences for the Service Provider
- 23.2 In the event that the Transfer of Undertaking (Protection of Employment) Regulations 2006 (or as may be amended) apply upon expiry or termination of this Agreement or any of the contracts of employment of any person employed or engaged by the Service Provider shall be transferred from the Service Provider to any third party (replacement service provider) engaged by Client Body to perform any of the Services or any service equivalent or similar to any of the Services the Service Provider shall indemnify and keep indemnified Client Bodies and the replacement service provider(s) from and against all employment liabilities arising directly as a result of the acts or omissions of the Service Provider and which relate to claims brought by any of the employees or by a Trade Union or other employee representative against Client Bodies or any replacement service provider in respect of or in any way relating to any period on or prior to the date of the employee transfer envisaged by this **Condition 23.2**
- 23.3 For the purposes of this clause "Relevant Employee" means person employed or engaged by the Client Body or by any third party engaged by Client Body to perform any of the Services or any service equivalent or similar to any of the Services prior to the commencement of this Agreement

#### **7. TRANSFER AND SUB-CONTRACTING**

- 24.1 The Agreement is personal to the Service Provider. The Service Provider shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the prior consent in writing of the Client Body.
- 24.2 Notwithstanding any sub-contracting permitted hereunder, the Service Provider shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

#### **8. AMENDMENTS TO THE AGREEMENT**

- 25.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the respective Authorised Representative of the Client Body and by a duly authorised representative



of the Service Provider. No variation of this Agreement shall limit or remove the Service Provider's obligations under the Framework Agreement.

#### **9. COMMUNICATIONS**

- 26.1 Any notice which either party is required to give to the other shall be given in or confirmed by writing and shall be sufficiently served if sent to the other party at its address specified in the Order form either by (a) hand, (b) first class post or recorded delivery or, (c) facsimile, or (d) electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.
- 26.2 Either party may change its address for service by notice as provided in this **Condition 26.1**.

#### **10. SEVERABILITY**

- 27.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Client Body and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

#### **11. WAIVER**

- 28.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 28.2 A waiver of any Default shall not constitute a waiver of any subsequent Default whether of the same or a different nature.
- 28.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of **Condition 26**.

#### **12. DISPUTE RESOLUTION**

- 29.1 If any dispute or difference of any kind whatsoever shall arise between the Client Body and the Service Provider in connection with or arising out of this Agreement or the carrying out of the Services, including any disputes as to any decision, opinion, instruction, direction, certificate or valuation given by any officer of the Client Body (whether during the progress of this Agreement or after its completion and whether before or after the termination, abandonment or breach of this Agreement, the Parties shall attempt in good faith to negotiate a settlement and to this end the respective Authorised Representative of the Client Body and the Service Provider shall meet to endeavour to resolve the conflict.
- 29.2 If the respective Authorised Representatives of the Client Body and the Service Provider fail to reach agreement within fifteen (15) Working Days of either Party notifying the other of the dispute the dispute shall be escalated to a discussion between the relevant Service Director of the Client Body and the Managing Director (or equivalent) of the Service Provider for resolution.
- 29.3 If the Parties fail to reach agreement within twenty (20) Working Days of reference to the Service Director and the Managing Director (or equivalent) the dispute shall be referred to the ESPO Contract Manager for mediation.
- 29.4 If the Parties remain unable to resolve the dispute within thirty (30) Working Days of the Mediator being appointed, or such longer period as may be agreed, then either Party may seek redress via the Courts.

#### **13. ACTION UPON EXPIRY OR TERMINATION**

- 30.1 On expiry or termination of this Agreement the Parties will comply with the provisions of **Schedule 9** in order to maintain an orderly continuation of the Services.

#### **30.2 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 31.1 With the exception of ESPO which shall have the right to enforce the provisions set out in the Framework Agreement in relation to the payment of retrospective rebate neither party intends to confer any other right or benefit upon a third party and for the avoidance of doubt save as excepted herein the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

#### **14. LAW AND JURISDICTION**



- 32.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.
- 32.2 This Agreement is binding on the Client Body and its successors and assignees and the Service Provider and the Service Provider's successors and permitted assignees.

**15. ENTIRE AGREEMENT**

- 33.1 This Agreement together with the Framework Agreement and the Order constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referenced or referred to herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day first above written

SIGNED for and on behalf of

Department for International Trade, the Client Body

By: 

Name: Tom Hyner

Title: Commercial Deputy Director

Date: 13<sup>th</sup> June 2018

SIGNED for and on behalf of

TMP (UK) Ltd, the Service Provider

By: 

Name: ANDREW WILKINSON

Title: CEO

Date: 18/6/18

**SCHEDULE 1 to the CLIENT BODY AGREEMENT  
PROTOCOL**

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ESPO on behalf of Pro5 is the lead contracting body and as such will maintain overall responsibility for the performance management, review and renewal of the Framework Agreement unless otherwise agreed within Pro5.

Client Bodies will be responsible for managing their own local arrangements including contract reviews for their own service delivery needs.

As such Client Bodies will be required to:

- a) Agree the local implementation of the provision of the Services and integration of electronic systems between their own organisation and the Service Provider.
- b) Identify a named officer (Contract Manager) who shall be a single point of contact for the Service Provider and ESPO and/or Pro5 member.
- c) Specify individual requirements for the provision of Management Information reporting.
- d) Be responsible for the payment of invoices issued by the Service Provider in respect of the Services delivered to them and to specify any local variations to invoicing requirements.
- e) Attend overarching contract review meetings as organised by ESPO from time to time.
- f) Manage locally any performance issues or continuous improvement actions and to escalate to ESPO only those matters that frustrate the local arrangements.
- g) Note that ESPO shall need to access all management information for the purpose of managing the Agreement.

Any service delivery requirements that are locally agreed relating to the above points and any other variations to the Client Body Agreement including Contract Standards and the Service Level Agreement should be recorded in **Schedule 2 (Local Arrangements)** to this Client Body Agreement

**SCHEDULE 2 to the CLIENT BODY AGREEMENT**  
**SERVICES DESCRIPTION (Service Delivery proposal offered by the Tenderer) and**  
**SPECIFICATION (Specification provided in the Invitation to Tender)**

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**Introduction**

To establish the new UK Trade Remedies Authority (TRA), the Department for International Trade (DIT) is seeking to recruit Trade Remedies investigations staff. In order to recruit the required number of investigations staff, DIT have awarded this contract to TMP (UK) Ltd, to undertake all aspects of recruitment for these specialist roles to enable the TRA to be operational in time for the UK's exit from the EU.

**Objectives and Scope**

The investigation vacancies TMP (UK) Ltd are contracted to fill, comprise investigator roles, economist/statistician roles and legal roles: a guide on numbers is provided. However, these numbers may be subject to change as the project evolves and should be used only as a guide to ensure a significant imbalance does not take place throughout the recruitment process.

Rank	G6	G7	SEO	HEO
Investigations Units	Up to 10	Up to 35	Up to 30	Up to 20
Analysis	Up to 5	Up to 15	Up to 5	Up to 15
Policy & Legal Services	Up to 5	Up to 15	Up to 5	Up to 5

**Approach**

The Recruitment Lead and DIT HR will work closely with the service provider to ensure recruitment processes comply with the Civil Service Commission Recruitment Principles. We will therefore require the service provider to consult the Recruitment Lead at each stage of the process (as outlined in the DIT Procurement Requirement Form), including receiving regular assessment reports before job offers are made. We will assure the quality and consistency of the recruitment process by observing a selection of telephone interviews, assessment centres and formal interviews. The service provider is required to familiarise themselves with the Civil Service Commission Recruitment Principles (2018). For any interview panels a Civil Servant will be present.

The proposed recruitment process methodology is provided in **Annex A**.

**Key Policy Assurance**

Job adverts will need to include details on the Guaranteed Interview Scheme (GIS) and the recruitment process should be designed and implemented so that all necessary steps have been taken to ensure no individual is prevented from being able to apply and be successful in their application.

All personal data held must be held in compliance with the GDPR clause and schedule provided within this contract.

### Proposed Recruitment Timeline

As our target to get the first cohort of staff in post is by end of July 2018, we will be looking for job adverts to go live in before the end of May. We are seeking a service provider that can provide a rolling recruitment to meet the following anticipated candidate timeline (subject to candidate availability for interview as well as the length of their notice period):

These timescales should be reported on as part of the regular contract management meeting and are the minimum expected timescales for the recruitment timeline, factoring in variables outside of the control of the service provider.

<b>Day 1</b>	The candidate submits their application
<b>Day 2-6</b>	Service provider assesses/sifts application and engages with candidate if any further assessment at this stage is required
<b>Day 7 (at latest)</b>	Contact with candidate to inform that they have progressed to the next stage
<b>Day 8-14</b>	Candidate invited to final-stage assessment (section 3 in pricing assessment tool)
<b>Day 15 (one day following final assessment)</b>	Candidate informed of outcome of assessment process. Job offer made.
<b>Day 16-44</b>	On-boarding (with regular candidate communication)
<b>Day 45</b>	Candidate takes up duty

All communication with candidates should be conducted by the service provider, with the email templates to be agreed with the Recruitment Lead in advance.

### Data and Management Information

Management information and Data constitute an important element of service delivery, as DIT will be evolving our engagement based on the data provided through the contract. As stipulated in the previous section, the following data and management information will be required on a weekly basis:

- Recruitment Analytics (inc. total no. applicants, total to interview, total to be sifted)
- Marketing and Campaign Analytics (website traffic and engagement, social media engagement, campaign reach, campaign engagement)
- Candidate Data (inc ongoing updates on pass mark parameters)
- Candidate Diversity Data

This data will be expected in the form of a slide deck and where appropriate, graphs and tables should be used to provide usable summaries and insights. The exact form of the presentation can be agreed following contract award, as long as it includes the above pre-requisites.

It is essential that all service providers are compliant with GDPR and that the collection and distribution of data takes place only after the permission of the candidate has been gained and only where there is legitimate interest.

Candidates will need to meet the Civil Service Nationality Requirements for the security clearance for the roles. Further information on the Nationality requirements will be made available with job specifications. The service provider will be expected to ensure all successful candidates meet the Nationality Requirements, and make copies of original documents (e.g. passport, NI number) to provide to DIT. The set list of appropriate documents will be provided to the successful service provider along with the job specifications.

**SCHEDULE 3 to the CLIENT BODY AGREEMENT**

**PRICING SCHEDULE**

**(Including Invoicing Procedures)**

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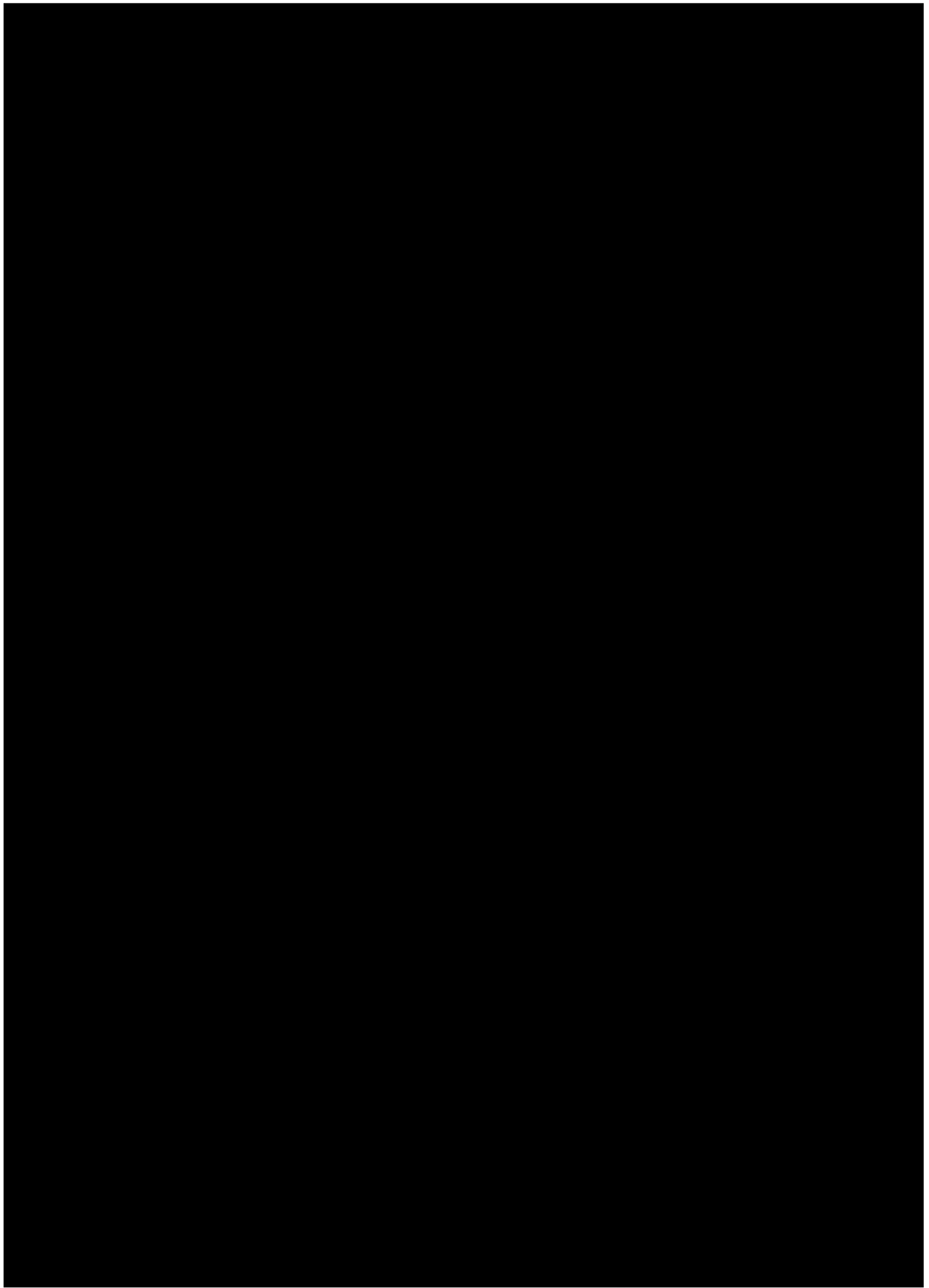
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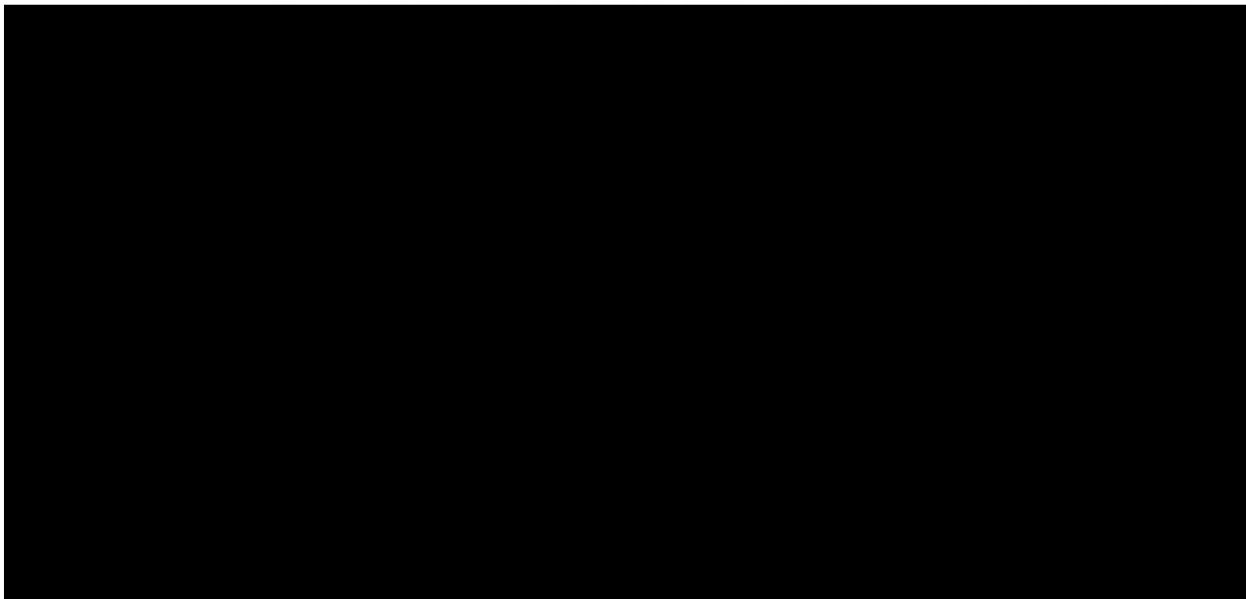


TABLE 1		SUMMARY OF DATA	
Year	Population	Area	Population
1950	1,000,000	100	100
1960	1,200,000	120	120
1970	1,500,000	150	150
1980	1,800,000	180	180
1990	2,000,000	200	200
2000	2,200,000	220	220
2010	2,400,000	240	240
2020	2,600,000	260	260



#### **SCHEDULE 4 to the CLIENT BODY AGREEMENT**

##### **LOCAL ARRANGEMENTS**

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1. No local arrangements are required under this contract. TMP (UK) Ltd will conduct work within their own premises, booked venues for assessment centres and with limited on-site work taking place at DIT, outside of regular meetings and contract management.

**SCHEDULE 5 to the CLIENT BODY AGREEMENT**  
**IMPLEMENTATION PLAN**

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1. An Implementation Plan will be required where identified in the order.
2. An Implementation Plan will be requested from the Service Provider by the Client Body in one of two ways:
  - a. Where Client Bodies are calling off from the Framework, an Implementation Plan will be requested by the Client Body.
  - b. Where Client Bodies are re-opening competition underneath the Framework and invite tenders as part of a further competition process, an Implementation Plan will be requested as part of the tender submission.
3. The Implementation Plan will vary in degrees of complexity and timescales depending on the Client Body's specific requirements and the Client Body's current position.
4. The Implementation Plan will include a schedule of tasks to be undertaken, against a set timescale and will identify the responsibilities of the Service Provider and Client Body in implementing the Contract.. The Service Provider will (with full agreement with the Client Body) create the Implementation Plan with milestone dates for achieving delivery and commencement of the Services.

**SCHEDULE 6 to the CLIENT BODY AGREEMENT**  
**SERVICE LEVEL AGREEMENT**

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Between

The Department for International Trade (the Client Body)

and

TMP (UK) Ltd (the Service Provider)

This Service Level Agreement (SLA) is intended to provide a framework for the way in which the Client Body and the Service Provider will work together to maximise the benefits of using the Service Provider's services.

Both parties agree to deliver the services in accordance with the contents of this agreement.

**1. Services covered**

- 1.1. This Service Level Agreement sets out the agreed Service Levels to be provided by the Service Provider to the Client Body under the Contract entered into between the Client Body and the Service Provider under ESPO Framework reference number 3/12.
- 1.2. This Service Level Agreement (SLA) covers the core level of service applicable to all Services provided as defined in the Specification (see Section 12 of the Invitation to Tender document).

**2. Duration**

- 2.1. This Service Level Agreement (SLA) will be valid for as long as there are Services still in use by the Client Body which have been supplied in accordance with the Contract let under the ESPO Framework reference 3/12.

**3. Services required**

- 3.1. The Services shall be delivered in accordance with the Service Provider's Tender submitted and accepted by the client.

**4. Communications and Account Management**

**4.1. Account Management**

4.1.1. The Client Body's Contract Manager is Samuel Nicholls who can be contacted for further information or any issues or to give feedback on [Samuel.nicholls@trade.gov.uk](mailto:Samuel.nicholls@trade.gov.uk).

4.1.2. The Contract Manager shall be available for queries during Normal Working Hours 08:00 to 17:30

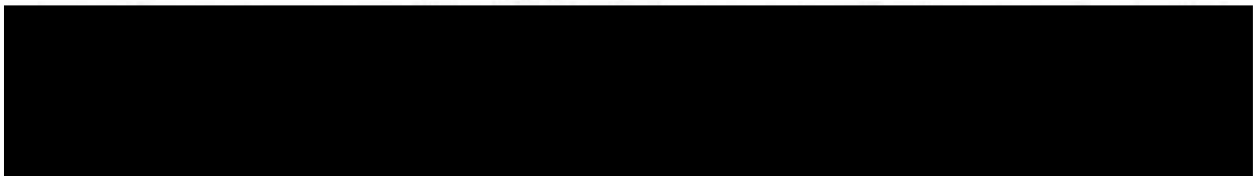
4.1.3. 

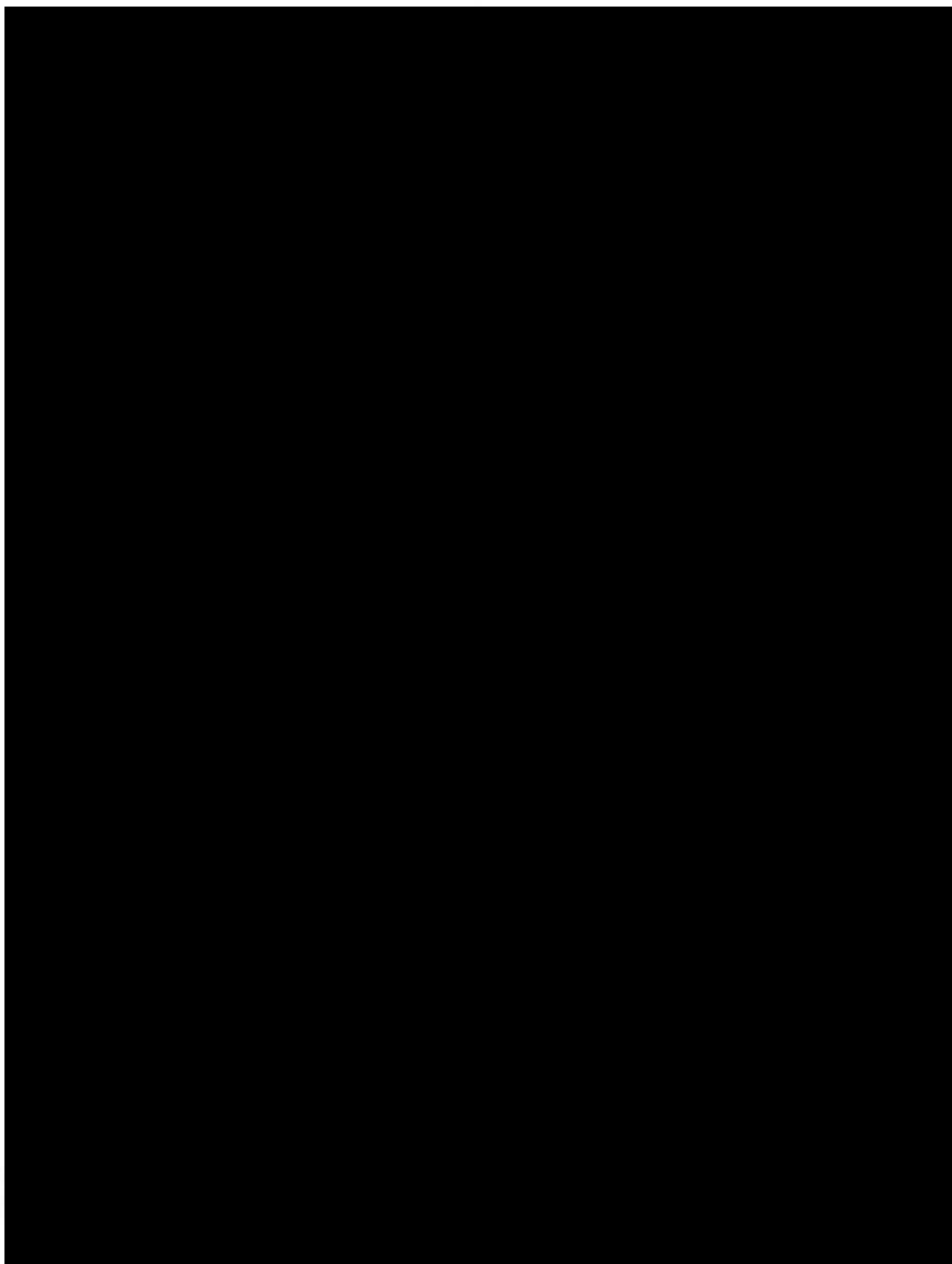
4.1.4. the Account Manager shall be available for queries during Normal Working Hours 09:00 to 17:30

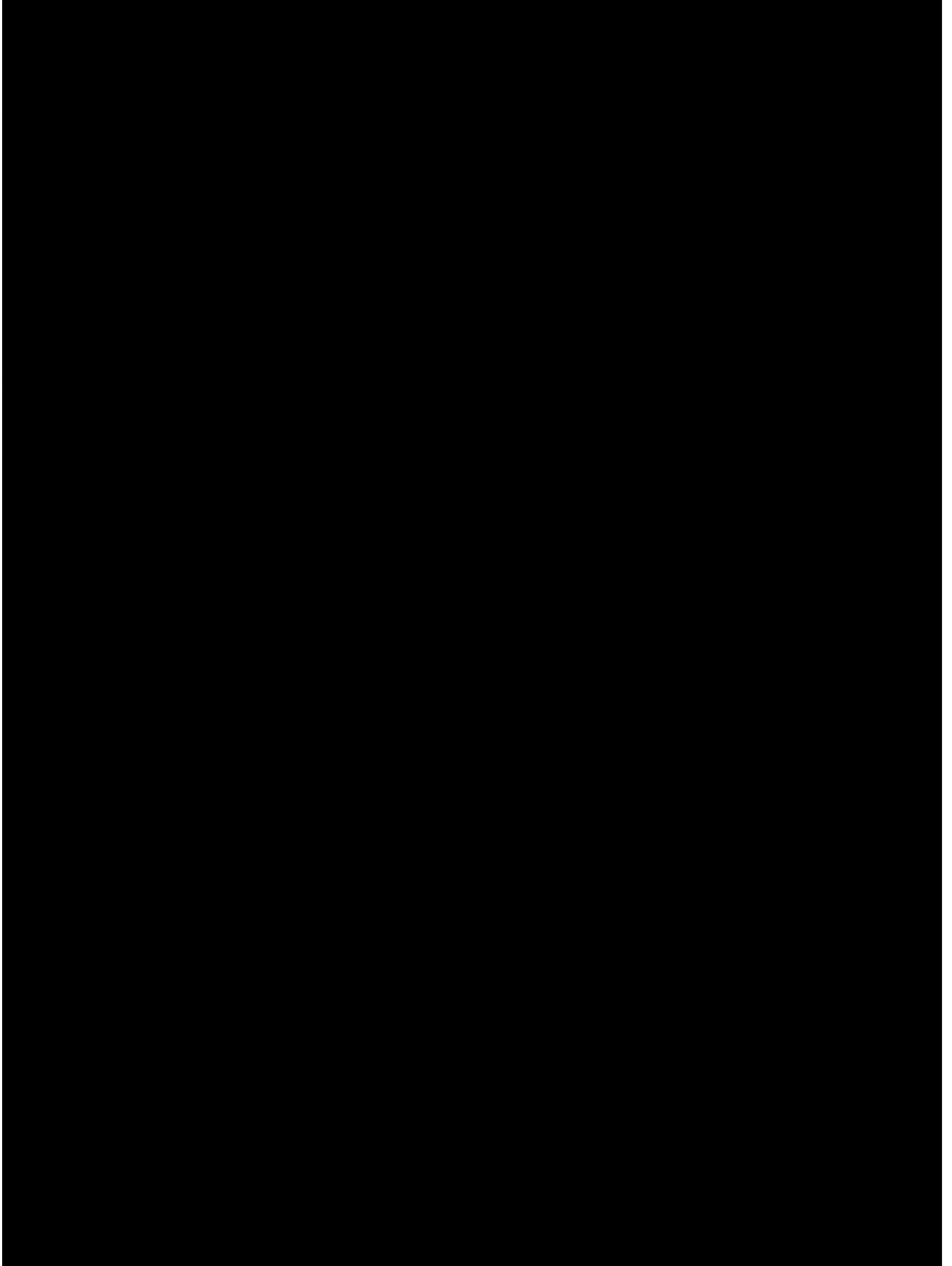
**5. Service Levels – Measures and Reporting**

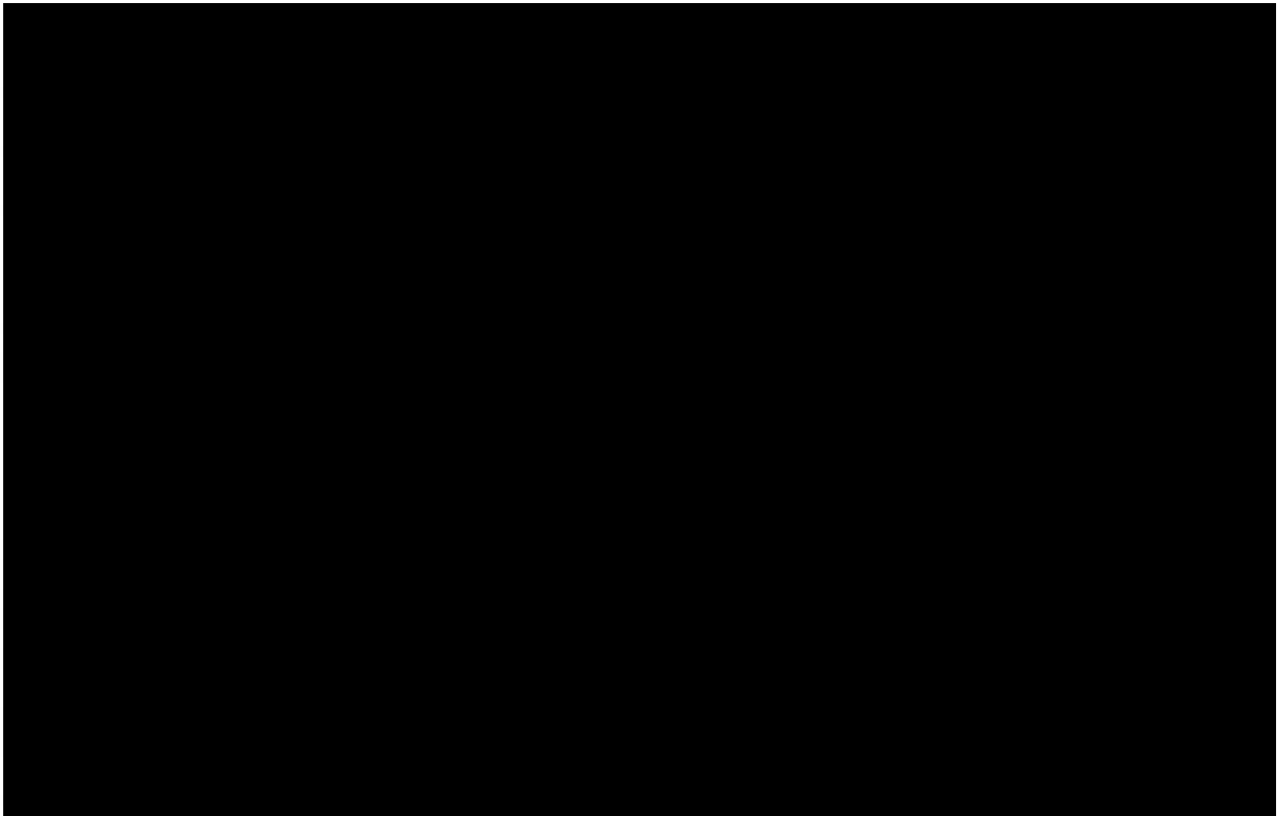
Due to the newness of the role where there is no historic evidence to detail and support performance metrics we are proposing a mix of SLAs and targets. With the roles being completely new to the UK we believe a fair set of SLAs that we can be accountable for must be SLAs that we can directly be in our control and have the ability to change based on TMPs actions and influence. The targets are best estimates utilising similar role data that can be used sensibly to give a realistic measure of performance.

The following SLAs are in our control to impact and influence;









The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for ensuring the integrity of the financial data and for facilitating the audit process. The document also highlights the need for transparency and accountability in all financial dealings.

The second part of the document provides a detailed overview of the company's financial performance over the past year. It includes a comprehensive analysis of the revenue, expenses, and profit margins, as well as a comparison of the current year's performance with the previous year's. The document also identifies the key factors that have contributed to the company's success and outlines the strategies for future growth.

The third part of the document discusses the company's financial risks and the measures taken to mitigate them. It identifies the major risks, such as market volatility, credit risk, and operational risk, and describes the various strategies and controls that have been implemented to minimize the potential impact of these risks. The document also outlines the company's contingency plans for dealing with unexpected events.

The fourth part of the document provides a detailed overview of the company's financial position at the end of the year. It includes a summary of the company's assets, liabilities, and equity, as well as a comparison of the current year's financial position with the previous year's. The document also identifies the key factors that have contributed to the company's financial strength and outlines the strategies for maintaining and improving the company's financial position.

The fifth part of the document discusses the company's financial outlook for the future. It provides a detailed analysis of the company's financial performance over the next five years, based on the company's current strategies and assumptions. The document also identifies the key factors that will influence the company's financial performance and outlines the strategies for achieving the company's financial goals.

The sixth part of the document provides a detailed overview of the company's financial performance over the next five years. It includes a comprehensive analysis of the revenue, expenses, and profit margins, as well as a comparison of the current year's performance with the previous year's. The document also identifies the key factors that have contributed to the company's success and outlines the strategies for future growth.

The seventh part of the document discusses the company's financial risks and the measures taken to mitigate them. It identifies the major risks, such as market volatility, credit risk, and operational risk, and describes the various strategies and controls that have been implemented to minimize the potential impact of these risks. The document also outlines the company's contingency plans for dealing with unexpected events.

The eighth part of the document provides a detailed overview of the company's financial position at the end of the year. It includes a summary of the company's assets, liabilities, and equity, as well as a comparison of the current year's financial position with the previous year's. The document also identifies the key factors that have contributed to the company's financial strength and outlines the strategies for maintaining and improving the company's financial position.

The ninth part of the document discusses the company's financial outlook for the future. It provides a detailed analysis of the company's financial performance over the next five years, based on the company's current strategies and assumptions. The document also identifies the key factors that will influence the company's financial performance and outlines the strategies for achieving the company's financial goals.

**SCHEDULE 7 to the CLIENT BODY AGREEMENT**  
**END USER LICENCE AGREEMENT**

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1.



**SCHEDULE 8 to the CLIENT BODY AGREEMENT**  
**MONITORING AND MANAGEMENT INFORMATION**

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1. The Department for International Trade (the client body) shall manage this contract with TMP (UK) Ltd, in line with the Invitation to Tender.
2. The contract will be managed by the Department for International Trade, with review meetings being held on a monthly basis. The first monthly review will be held on **Thursday 21<sup>st</sup> June 2018** with subsequent review meetings diarised post this meeting. The review meetings will enable the Department for International Trade and the service provider to review performance of the contract, discussing matters which may include but not be limited to;
  - i. Key updates on the recruitment process and reaching of delivery milestones
  - ii. Feedback from key stakeholders;
  - iii. Discussion regarding any complaints of poor performance and agreement of actions to address;
  - iv. Consideration of any improvements or developments;
  - v. Any changes in key personnel, processes, or delivery;
  - vi. Any timeline adjustments that are required
  - vii. The service provider will be expected to field the appropriate personnel to a review meeting accordingly. However, regular contact is expected between the service provider, recruitment lead and the DIT HR team to ensure the processes comply with the Civil Service Commission Recruitment Principles and are delivering as designed.
  - viii. The contract management team at DIT will be comprised of a contract manager from Trade Policy Group, a Commercial Lead from DIT Commercial and colleagues from the appropriate business areas, including HR.
3. At each monthly contract management meeting, a slide deck with the following management information and data is expected:
  - i. All standard recruitment data
  - ii. Finalised SLA results and supporting evidence
  - iii. Breakdown of spend and burn rates through the total contract value
4. Outside of this slide deck, the following data and management information is expected every 2 days:
  - i. Number of hires linked to role type and grade
  - ii. Pass rates
  - iii. Number of applicants and relevant data
  - iv. Breakdown of marketing spend and type
  - v. Draft SLA data



**SCHEDULE 9 to the CLIENT BODY AGREEMENT**  
**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Contractor shall comply with any further written instructions with respect to processing by the Client body.
2. Any such further instructions shall be incorporated into this Schedule.

DESCRIPTION	DETAILS
Subject matter of the processing	Personal Data to be used for a recruitment process
Duration of the processing	7 months, with the potential for a 4-month extension
Nature and purposes of the processing	Personal data shall be collected through this contract, in order to run an effective recruitment process and shall be stored for up to 2 years, in line with the Civil Service Commissions guidelines on Civil Service recruitment. The data shall not be changed in any way, but it will be manipulated for reporting purposes. The data of successful candidates will be passed over to the Trade Remedies Authority as their employer.
Type of personal data	Name, address, date of birth, details of education and work experience, recruitment process scores and feedback, contact details (inc. mobile number, email and address), NI number, gender, race/ethnicity, details of disability if relevant,
Categories of Data Subject	Candidates in a recruitment process
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	The data of candidates will be held for 2 years, in line with Civil Service Commission guidelines. After the 2-year period all records held by TMP (UK) Ltd or the Department for International Trade, as a result of this recruitment process, will be deleted. However, the data of successful candidates will be passed onto the Trade Remedies Authority as the employer of these candidates, and they will retain it in line with their policies as a public body.

**SCHEDULE 10 to the CLIENT BODY AGREEMENT**  
**ACTION ON EXPIRY OR TERMINATION**

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**1. TRANSFER OF RESPONSIBILITY**

- 1.1 The Service Provider acknowledges that on termination or expiry of this Agreement for any reason, the continuity of the Service is of paramount importance. The Service Provider shall minimise disruption caused and assist the implementation of any contingency plan proposed by the Client Body to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 1.2 The Service Provider shall promptly provide such assistance and comply with such timetable as the Client Body may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent) in the period immediately before the expiry or other termination of this Agreement. The Service Provider shall ensure that its sub-contractors are under a similar obligation. The Client Body shall be entitled to require the provision of such assistance both prior to and up to twelve (12) months after the expiry or other termination of this Agreement. If the Client Body requires such assistance after the expiry or other termination of this Agreement and within twelve (12) months of the expiry or other termination of this Agreement, the Client Body shall reimburse any reasonable costs incurred by the Service Provider in the course of providing such assistance.
- 1.3 Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Service Provider or its subcontractors which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, and which the Service Provider may otherwise be obliged to disclose under this Agreement or otherwise beneficial to orderly transfer.
- 1.4 The Service Provider shall not knowingly or purposely obstruct the ability of the Client Body to ensure an orderly transfer of responsibility for service provision.
- 1.5 Within 21 days of being so requested by the Authorised Representative, the Service Provider shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Client Body to issue tender documents for the future provision of Services.
- 1.6 The Client Body shall take all necessary precautions to ensure that the information referred to in paragraph 1.5 above is given only to Service Providers who have qualified to tender or/have been successful in being selected as the Service Provider following a tender exercise for the future provision of the Services. The Client Body shall require that such Service Providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Client Body; and that they shall not use it for any other purpose.
- 1.7 The Service Provider shall indemnify the Client Body against any claim made against the Client Body at any time by any person in respect of any liability incurred by the Client Body arising from any deficiency or inaccuracy in information which the Service Provider is required to provide under paragraph 1.5 above.

**2. TRANSFER OF UNDERTAKINGS**

- 2.1 Where, in the opinion of the Service Provider and/or the Authorised Representative, the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are likely to apply on the termination or expiration of the Agreement, the information to be provided by the Service Provider under paragraph 1.5 shall include, as applicable, accurate information relating to the Staff or Interim Managers who would be transferred under the same terms of employment under those Regulations, including in particular:-
- 2.2 the number of Staff or Interim Managers who would be transferred, but with no obligation on the Service Provider to specify their names;
- 2.3 in respect of each of those members of Staff or Interim Managers their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- 2.4 the general terms and conditions applicable to those members of Staff or Interim Managers, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of

mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.

- 2.5 The Service Provider agrees that if upon termination of this Framework Agreement, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are applicable, the Service Provider shall in good faith co-operate with the Client Body in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties
- 2.6 The Service Provider shall comply with the requirements of those Regulations in respect any personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Service Provider.
- 2.7 The Service Provider shall indemnify the Client Body in full and upon demand against any claim made against the Client Body at any time by any person currently or previously employed by the Client Body or by the Service Provider for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Client Body) resulting from any act or omission of the Service Provider on or after the date of this Agreement, except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Client Body

**SCHEDULE 11 to the CLIENT BODY AGREEMENT**  
**CHANGE CONTROL**

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**1.1 Change Control Note ("CCN")**

<b>CCN Number</b>	
<b>Contract Reference Number and Title</b>	
<b>Variation Title</b>	
<b>Number of Pages</b>	

WHEREAS the Contractor and the Authority entered into a contract for the supply of recruitment process outsourcing dated 04/06/18 (the "Contract") and now wish to amend the Contract

IT IS AGREED as follows:

**1.2 The contract shall be amended as set out in this change control notice:**

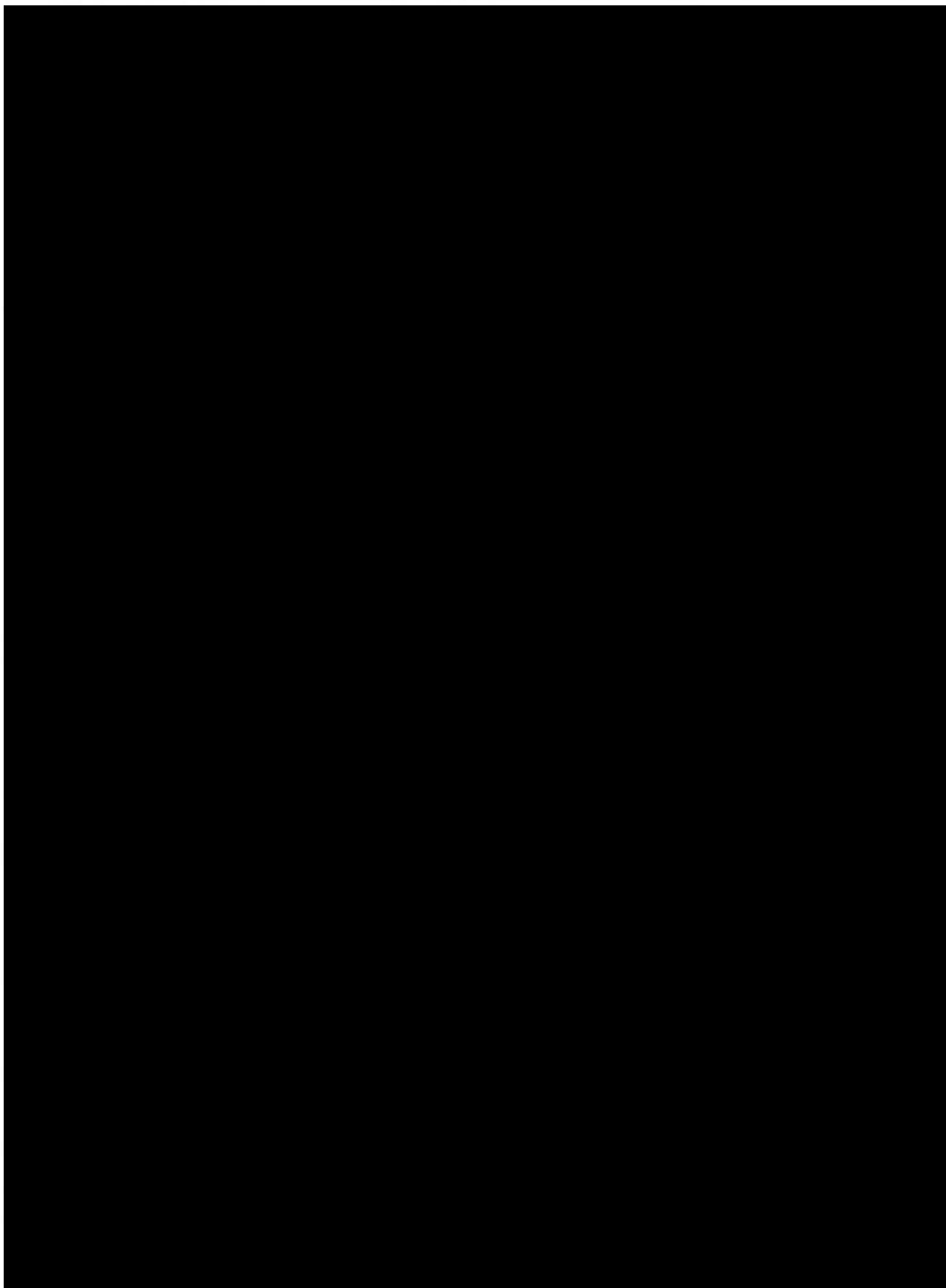
<b>Change Requestor/Originator</b>	
<b>Summary of Change</b>	
<b>Reason for Change</b>	
<b>Revised Contract Price</b>	<b>Original Contract Value - £</b>
	<b>Previous Contract Changes - £</b>
	<b>Contract Change Note [X] - £</b>
	<b>New Contract Value - £</b>
<b>Revised Payment Schedule</b>	
<b>Revised Specification (see Annex A)</b>	
<b>Revised Contract Period</b>	
<b>Changes in Contract Manager</b>	
<b>Other Changes</b>	

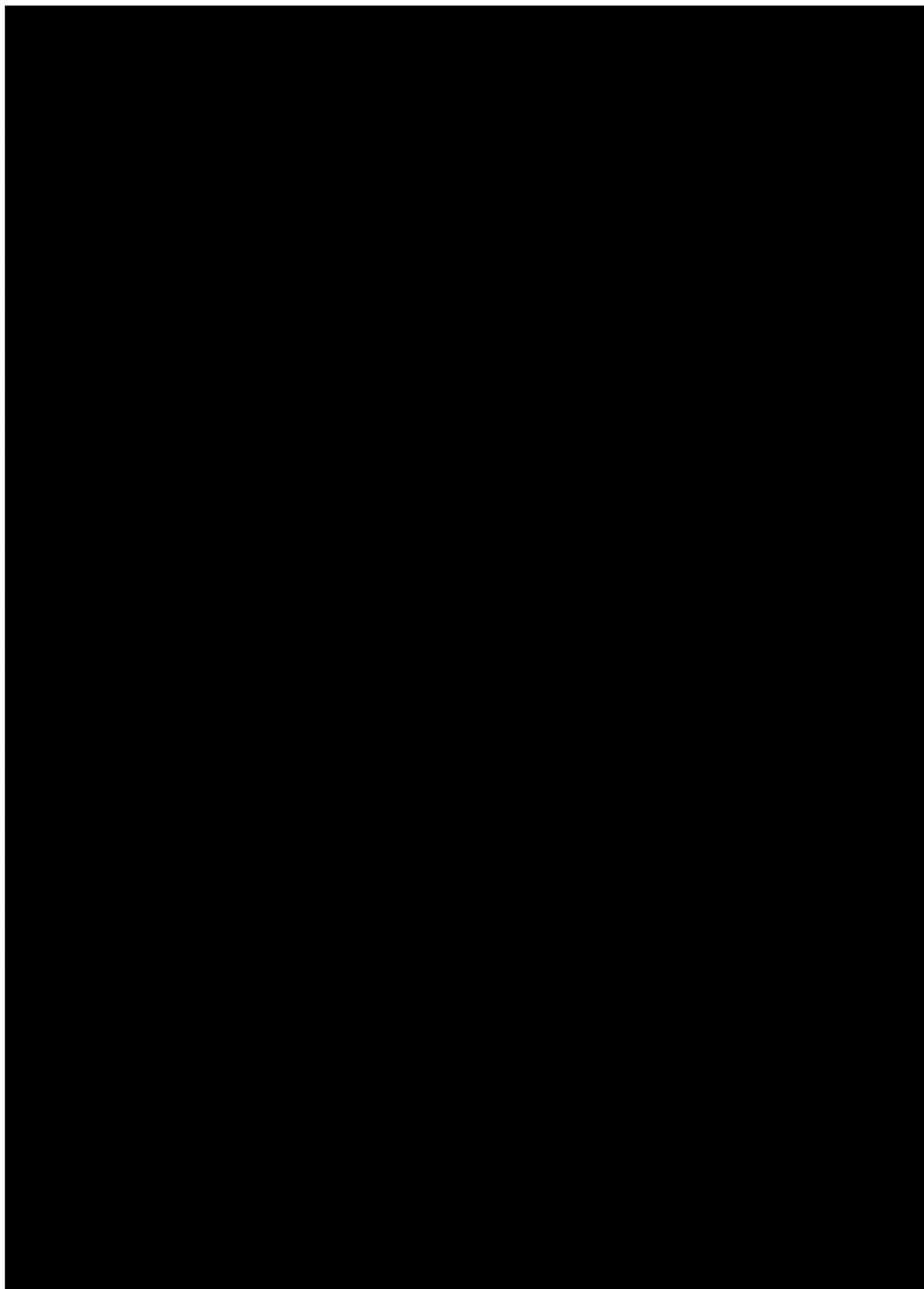
2.1 Save as amended all other terms of the contract shall remain effective.

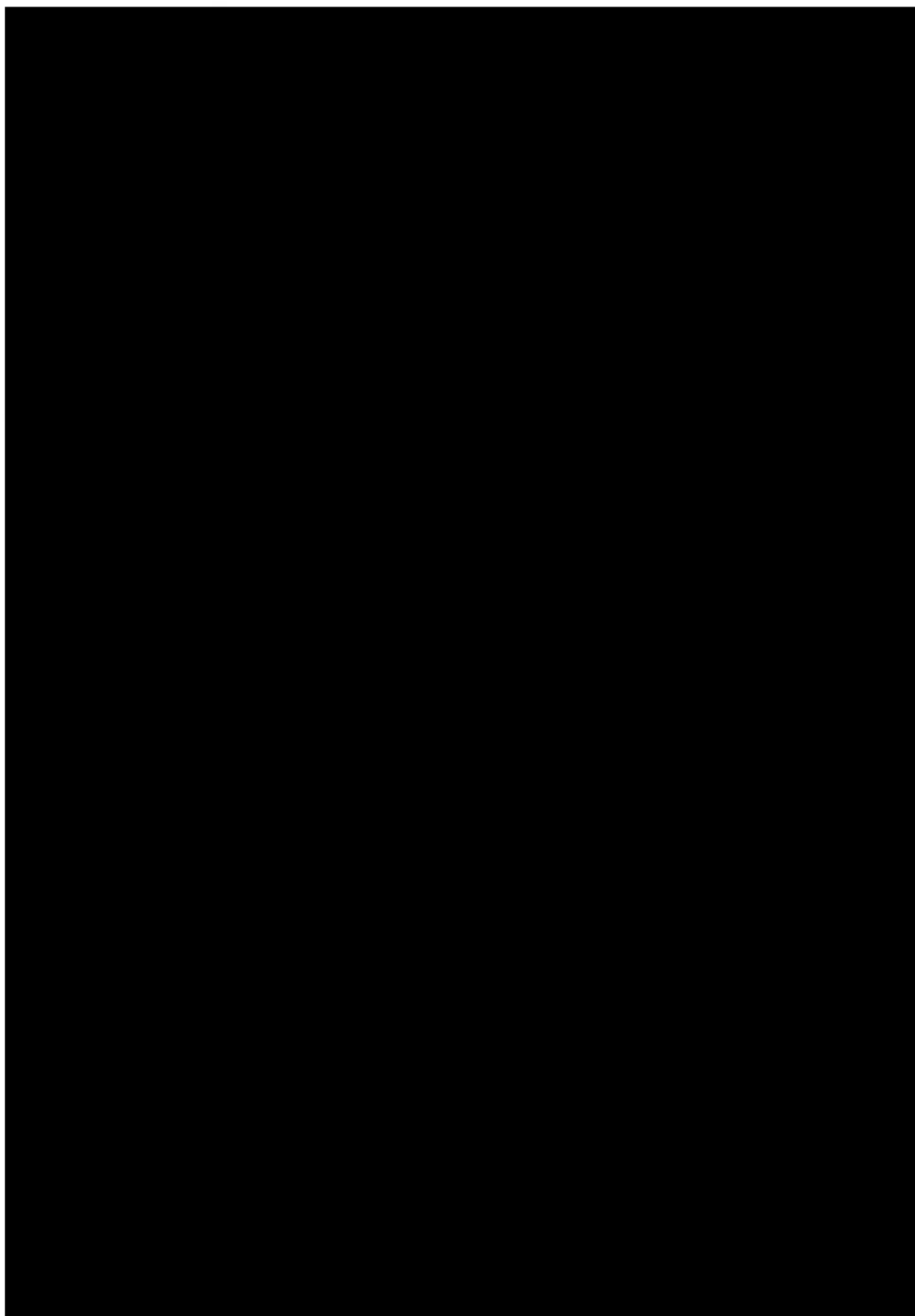
3.1 This CCN takes effect from the date on which both parties communicate acceptance of its terms.

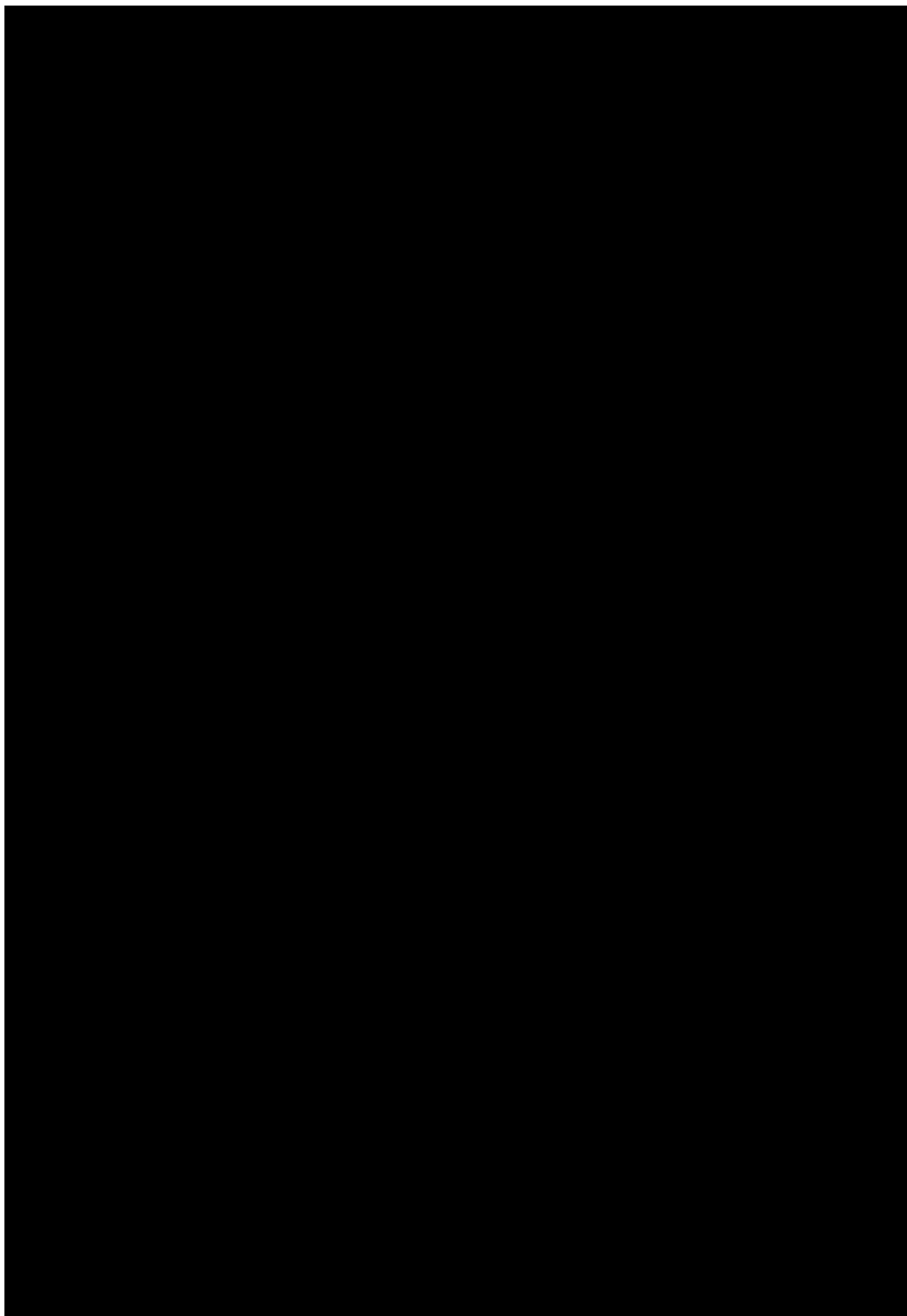
## Annex A: Recruitment Process Methodology

20<sup>th</sup> April 2018



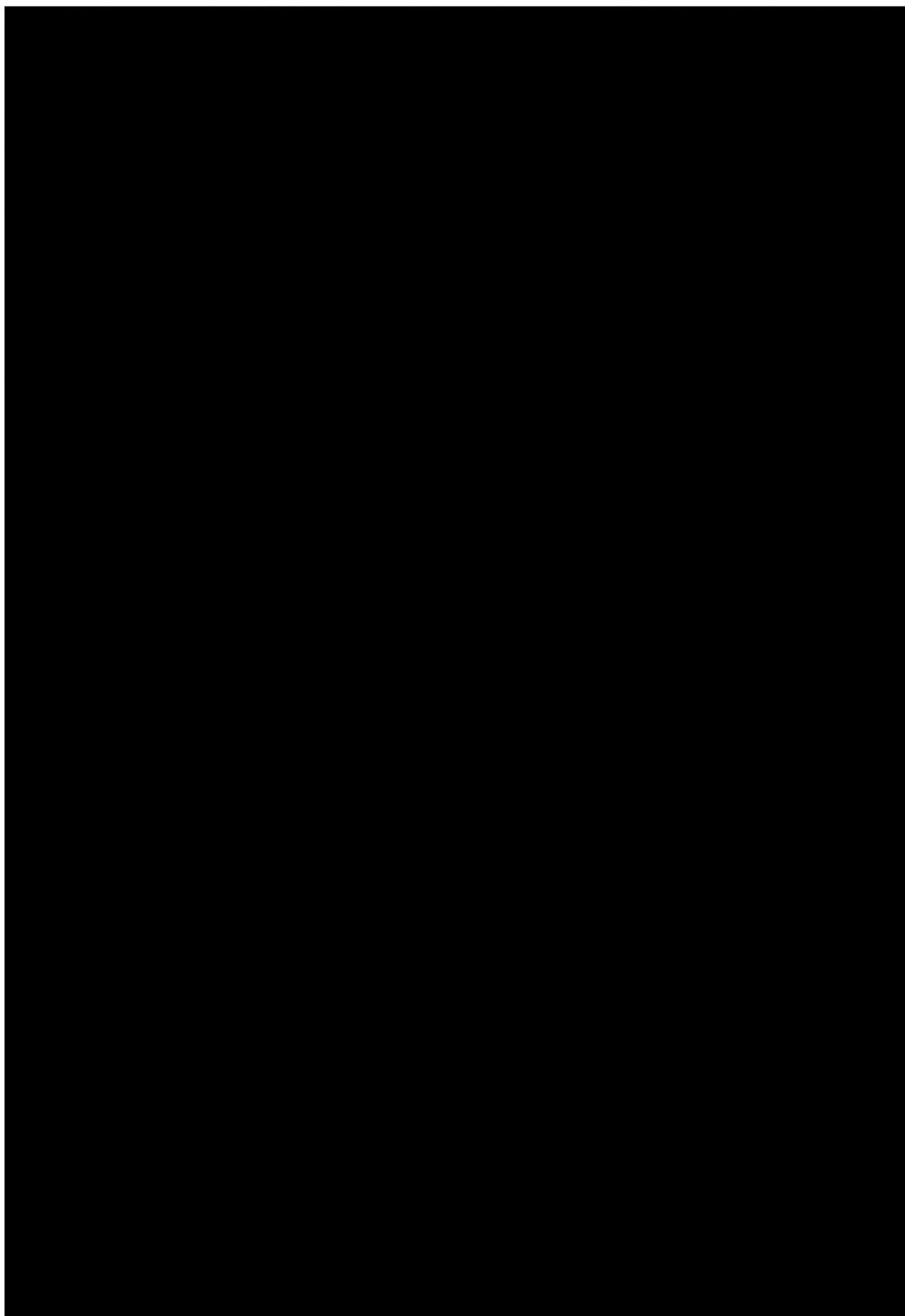














1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a very important document, as it contains the President's views on the state of the Union and the progress of the war.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. It contains a detailed account of the military operations of the Army during the year 1861.

3. The third part of the document is a report from the Secretary of the Navy Department, dated January 10, 1862. It contains a detailed account of the naval operations of the Navy during the year 1861.

4. The fourth part of the document is a report from the Secretary of the Department of the Interior, dated January 10, 1862. It contains a detailed account of the operations of the Department during the year 1861.

5. The fifth part of the document is a report from the Secretary of the Department of the Treasury, dated January 10, 1862. It contains a detailed account of the operations of the Department during the year 1861.

6. The sixth part of the document is a report from the Secretary of the Department of the State, dated January 10, 1862. It contains a detailed account of the operations of the Department during the year 1861.

7. The seventh part of the document is a report from the Secretary of the Department of the War, dated January 10, 1862. It contains a detailed account of the operations of the Department during the year 1861.

8. The eighth part of the document is a report from the Secretary of the Department of the Navy, dated January 10, 1862. It contains a detailed account of the operations of the Department during the year 1861.