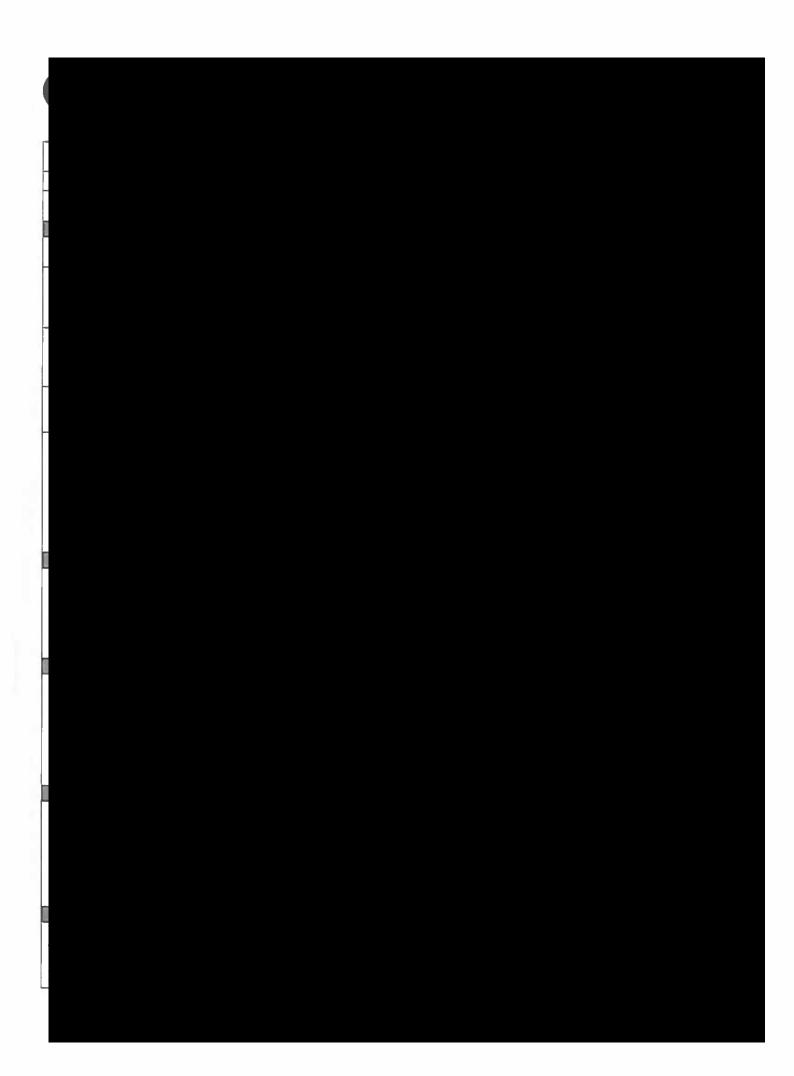


www.cqc.org.uk .

# Contract for the provisions of Services Recruitment Advertising Services

**Contract Reference: CQC PER 036** 

**April 2019** 





#### FORM OF CONTRACT

This contract is made on the 1st day of April 2019

#### **BETWEEN**

- (1) Care Quality Commission of 151 Buckingham Palace Road London SW1W 9SZ (the "Customer"); and
- (2) [TMP Ltd] whose registered office is 265 Tottenham Court Road whose company number is 05648039) (the "Service Provider")

WHEREAS the Customer wishes to have provided the following goods and/or services namely advertising solutions pursuant to the ESPO Framework Agreement (reference 3A\_16).

#### NOW IT IS AGREED THAT

- 1. The Service Provider will provide the goods and/or services in accordance with the terms of the call-off contract (reference number 3A\_16) and Contract Documents.
- 2. The Customer will pay the Service Provider the amount due in accordance with the terms of the call off agreement and the Contract Documents.
- 3. The following documents comprise the Contract Documents and shall be deemed to form and be read and construed as part of this agreement:
  - This Form of Contract
  - The Master Contract Schedule
  - The documents as listed in the Contract Document Schedule reference CQC PER 036

**IN WITNESS OF** the hands of the Parties or their duly authorised representatives:

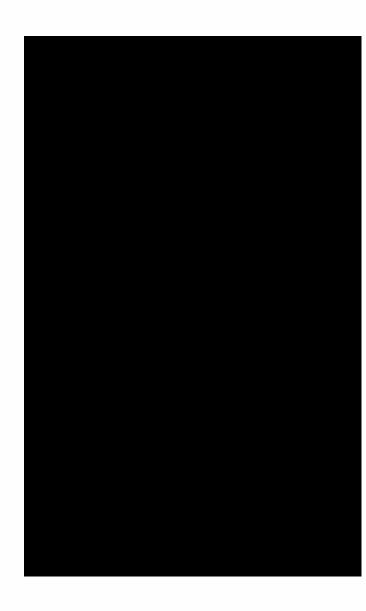
### Signed for and on behalf of

### **CARE QUALITY COMMISSION**

by an authorised officer

Signed by

TMP Worldwide Ltd.



#### This document relates to and forms part of the Call-Off Terms

#### (Document Reference 3A\_16)

#### **MASTER CONTRACT SCHEDULE**

(ESPO Framework Reference 3A\_16)

#### 1. TERM

#### **Commencement Date**

1st April 2019

**Expiry Date** 

31st March 2021

**Extension Period** 

12 months

**Cost Envelope** 

£90,000 to £105,000 inc.Vat annually

### 2. GOODS AND/OR SERVICES REQUIREMENTS

#### **Goods required**

**NOT USED** 

#### Services and Deliverables required

#### Statement of requirements

#### The Requirements

CQC are seeking to procure a recruitment advertising partner to support recruitment activity assisting in maintaining and strengthening the employer brand.

Supporting the development of innovative attraction strategies, including social media campaigns and other specialist strategies.

Deliver cost effective recruitment advertising across the organisation. Advertising. Campaigns will include (list not exhaustive);

Frontline inspection staff, usually inspectors and Inspection Managers often at volume and into regional teams (so geography and the regional availability of skills is a consideration)

Graduate campaigns including Graduate Analysts into our Intelligence Directorate and Assistant Inspectors into our Inspection Directorates.

Contact centre staff into our National Customer Service Centre in Newcastle. Analyst family roles across the country.

Professional roles including Finance and Commercial, HR, IT and Legal. Digital specialists.

To include the potential advertising of flexible workforce vacancies to include Bank Inspectors and Specialist Advisors

#### 2.1 Apprenticeship and Graduate Recruitment

The Government has issued its ALB's with a 2.3% rolling apprenticeship head-count target:

- CQC's target for 2017/18 was 78 apprentices (2.3%)
- CQC's target for 2018/19 is 79 new apprentices plus 49 (shortfall from last year)

So far, our apprenticeships numbers have come from internal colleagues, however given our targets over the coming years it will be important that we are able to externally recruit apprentices. Our recruitment advertising partner should work with us to create and deliver an attractive recruitment campaign for apprentices, to include the provision of specialist expertise in this area to ensure that campaigns are correctly targeted and delivering quality candidates.

CQC also operates two graduate schemes:

- Assistant Inspectors
- Data Analysts

Standard recruitment advertising requirements:

- Deliver an accurate, timely and cost-effective recruitment advertising service to CQC, including the drafting of advert copy, giving best advice on media options and pricing, booking advertising space, designing and placing adverts (online)
- Ensure value for money for advertising spend by providing discounts on rate cards and bulk buy options
- Provide advice on online media, based on knowledge of recruitment advertising markets and sound research on target audiences
- Provide accurate and timely management information, including monthly spend
- Proactively support CQC to deliver more diverse candidates, in particular where CQC is underrepresented (Namely BAME and disabled candidates)
- Proactively support us in reviewing the way that we recruit for diversity including the review of tests and assessment materials where needed, providing support on actions where disproportionate pass rates exist and adverse impact testing where necessary
- Provide a variety of labour market statistics and salary benchmarking information where requested

For harder to fill roles and in particular for inspector roles, we will run rolling 'always on' recruitment campaigns and will drive potential candidates to our campaign sites from a variety of sources. For these campaigns, we will look to our recruitment advertising partner to:

## Performance/Delivery Location/Premises

## **Key Performance Indicators**

Service Levels Indicator	Measured by		Review Date
Success of advertising a role effectiveness	Number of useable candidates applying/quality of candidates/conversion rates/whether the vacancy was filled		After each campaign
Success of hard to reach difficult to recruit roles	Number of useable candidates applying conversion rates and whether vacancy was filled or not		After each campaign
Achieve deadlines for service delivery	MI data provided at performance review meetings	_'	Monthly 3 days before performance review meetings
Financial Report	Provide a financial report showing actual costs to date and invoices to be submitted		Monthly 3 days before performance review meetings
			Monthly to the recruitment team for financial tracking

### Standards

## **Quality Standards**

NOT USED

### **Technical Standards**

NOT USED

## **Disaster Recovery and Business Continuity**

To be provided on request

### 3. SERVICE PROVIDER SOLUTION

- Advise on innovative and modern approaches to always on advertising so that we can continually modernise our approach to candidate attraction.
- Support research into strategies to understand the market and to attract in hard to recruit areas
  for example, it tends to be difficult to recruit quality Inspector candidates in the South East and
  Central regions for CQC. It is also difficult to recruit to Analyst family roles (our experience tells
  us that we are not an employer of choice for these types of role and that we are competing with
  private sector / banking sector for candidates). A new challenge for CQC is the attraction and
  retention of Digital specialists.
- Proactively support us to develop innovative recruitment campaigns for roles across the
  organisation including graduate and apprenticeship campaigns and potentially, moving
  forward, for the attraction of clinicians and specialist advisors to join our flexible workforce.
- Ensure that all our advertising is cost effective and appropriately targeted to avoid an overly time-consuming process.
- Seek to find ways of screening applicants when there is a high volume.
- Use market analysis information on the availability of talent and skills, and intelligence on what
  is working elsewhere to help us to continually review and improve our methods of attraction
  e.g. number of hits, conversion rates.
- Provide specialist advice on the use of social media e.g. twitter, LinkedIn.

#### Valuing diversity Requirement

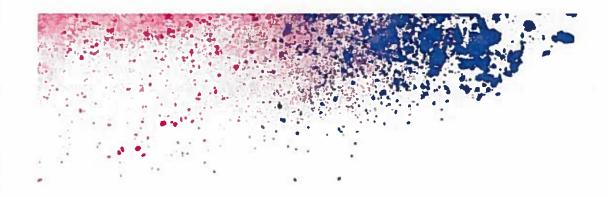
In CQC our objective is to create an inclusive organisation, where every employee's contribution is valued. We want to promote equality and inclusion in our work, employment practices, training and through our suppliers. Importantly, we aim to deliver attraction strategies that are inclusive, helping us to secure talented people from a diverse base and support individual's different needs and requirements where we can.

We are also looking to create opportunities for a variety of working patterns and make sure people's non-work time is respected. CQC would like its advertising partner to ensure that all recruitment information is made as accessible as possible and available in alternative formats to meet the needs of candidates with a variety of disabilities. CQC offers a Guaranteed Interview Scheme to candidates with disabilities and is signed up to the 'Two Ticks' scheme. Our successful advertising partner will also be able to provide examples of where they have successfully delivered attraction campaigns that have delivered more diverse candidates.

At CQC we know that we are significantly under-represented in two areas:

- Black Asian and Minority ethnic (BAME) colleagues
- Colleagues with a disability

We continue to address issues of inequality within CQC where we find them. Roger Kline has undertaken a piece of work to look at the experiences of black and minority ethnic colleagues as a result of the data in the 2017 Workforce Race Equality Standard. Roger has produced a report following a series of focus groups which contains a number of recommendations that CQC is now implementing. With the organisational focus on this work it is crucially important that our recruitment advertising partner has experience in recruiting for diversity



**CQC reference: CQC PER 036** 

CARE QUALITY COMMISSION ("CQC")

TENDER EXERCISE FOR:-

**RECRUITMENT ADVERTISING SERVICES** 

**FURTHER COMPETITION VIA LOT 1** 

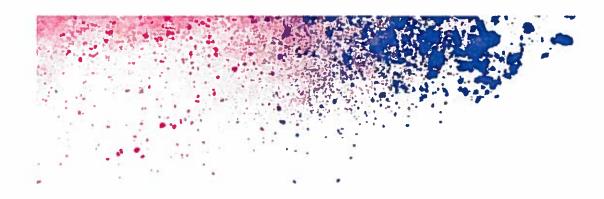
**ESPO FRAMEWORK 3S** 

**TENDERER RESPONSE DOC – TECHNICAL EVALUATION** 

**SUBMITTED BY: TMP WORLWIDE** 

Submission date: 4th January 2019





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TMP Worldwide is delighted to submit this Tender to Care Quality Commission for Recruitment Advertising Services.

In recent years, the health and social care sector has experienced unprecedented change and encountered significant new challenges and this has been highlighted by your new CEO, lan Trenholm.

It is further reflected in your 2016-2021 Shaping the Future Strategy which states that "Our overall budget will reduce by £32 million by 2019/20, so we need to deliver our purpose with fewer resources ... This means delivering a workforce strategy that ensures we have recruited, trained and retained the right level of skilled and expert staff".

We believe TMP Worldwide is ideally placed to support you and the following points summarise what we believe differentiates TMP in the marketplace:

- Both Entry Level Talent (Apprenticeships) and Equality & Diversity Sector Specialists to drive innovation and results, giving us unparalleled insight into the overarching culture, trends and challenges of the Entry Level Talent sector.
- Achieved savings for our Public Sector clients over the past three years exceeding £11 million.
- The largest provider of recruitment advertising services in the UK with an established regional network and part of a global communication group.
- Currently working with 23 different organisations, across public and private sectors, on their Entry Level Talent D&I and Recruitment strategies including: brand, comms, and candidate management.
- We provide cost effective and award-winning advertising that works including the categories for Employer Branding, Entry Level Talent, Innovation and Creativity and Assessment Services.
- Pioneers in Recruitment ROI and measurement with a dedicated team of media analysts tracking and optimising campaign effectiveness.
- We hold regular, free on-site Best Practice Workshops on topics such as 'Equality, Diversity & Inclusion', 'Employer Branding & Insight' and 'Entry Level Talent'.

At TMP, we believe we can provide the market insight and breadth of resources to help you stand out and attract the best and most diverse future talent whilst delivering real value for money.

#### **Delivery & Expertise**

There are a number of key points which demonstrates how TMP has the expertise and credibility to deliver to your requirements:

#### 1. An Experienced Account Team

To continue to deliver a true partnership-based approach, we recognise that the best recruitment marketing relationships are just that — relationships — and you need the right team focussed on delivering to your scope of requirements. Over the years, therefore, we have built a solid relationship with you and, to that end, Ian Bond and John Quirk will continue to work on your account as Client

Manager and Client Partner respectively. As part of the process of getting to know you, and being tuned in to your challenges and requirements for the next few years, we have already started to think about the core individuals who would be working alongside John and Ian to help deliver on these.

#### John Quirk - Client Partner

John joined the advertising industry over 14 years ago and has worked with a variety of clients throughout his career. John is responsible for the overall management of a diverse range of clients specifically within the public sector. John brings to bear his extensive experience to enhance the agency's strong focus on exceptional customer service, across the full range of TMP products and services, ensuring maximum ROI for clients. His knowledge of the Health and Public sector enables him to provide high level strategic advice, from initial employer brand and value proposition, through the advertising process to candidate management, offer and retention. John's recognised sector expertise means he is regularly invited to speak and present at conferences, most recently on Diversity and Inclusion.

We trust our submission addresses all the points in the tender, but if anything requires further clarification, please don't hesitate to get in touch.

#### Ian Bond - Client Manager

Ian has worked within the public sector arena for 15 years and has over ten years' experience in delivering strategic recruitment communication solutions across all sectors, with an emphasis on Central Government, Health and Higher Education. Ian is the focal point for his clients to access a range of TMP services — from Employment Marketing, Digital Solutions and Design for Communication, through to Assessment and Research. Ian has significant experience of researching, evaluating, creating and implementing short and long-term recruitment and public awareness advertising strategies. He is conversant with a wide variety of mediums from local, national and trade press through to digital, radio, and ambient advertising. He also has experience of directing the production of communication materials such as brochures and banner stands.

lan is adept in employing communication strategies to target differing audiences, from social network advertising to forging partnerships with community organisations, as a vehicle to promote employment opportunities to ethnic and diverse groups. Ian continues to take an innovative stance where appropriate, and relishes opportunities to explore creativity with clients in terms of design and approach.

#### Paula Simmons - Brand Insight and Diversity Director

Paula heads up the Brand Insight team at TMP Worldwide. Her role involves helping clients understand, articulate and measure what makes them unique places to work; and to better understand and engage hard-to-reach audiences. The team's focus is the delivery of actionable insight that equips clients with the knowledge of how best to invest in creative and channel planning strategies. Paula is also our Diversity specialist and has worked on a number of initiatives for our clients and provides consultancy in this matter – something we believe CQC will find very useful and, as such, we believe Paula will be an integral part of the team.

#### Rowena Bach - Entry Level Talent Director

Rowena is an Early Careers/Future Talent specialist leader with 15 years' experience of setting talent strategies (people and digital), consulting, leading change programmes and teams, delivering commercial value with high customer satisfaction. Prior to joining TMP to lead the Entry Level Talent thinking here, she was Head of Product Development with MyKindaFuture building services for clients to reach, engage, and recruit young people aged 12 – 24 yrs. She is deeply passionate about the value of young people to employers and regularly speaks at industry events or writes on the topic for trade press. In the last 18 months, she is proud to say that her work has been

recognised by the CIPD People Management awards for its innovation and relevance to young people today.

Her focus on this demographic, and with previous positions in HR & Talent leadership roles at Disney and BSkyB, means that she brings a strategic yet practical, 360 perspective to our clients. Her client experience spans both private and public sector, across industries from VW Automobiles through to Shell, or M&S through to Vodafone. Her current role involves helping clients get to know the evolving Gen Z landscape, understanding and utilising the Apprenticeship Levy, attracting and retaining diverse candidates in the recruitment process and ensuring that emerging talent pipelines match the needs of your business.

#### 2. A Robust and Proven process

In conjunction with an experienced number of individuals on your account, TMP has a dedicated Project Management team. The Team support all of our Client Partners and Client Managers with the delivery of all campaigns and projects and is headed up by a Delivery Director who reports directly into the Managing Director, Robert Peasnell, and sits on the Management Team.

Our Project Management team are dedicated to the day-today delivery of projects. Their focus will be on interfacing with all our internal functions and any 3rd party suppliers to co-ordinate and facilitate project delivery in line with deadlines, quality control and budgets. Our Project Managers are responsible for providing the initial scope of work documentation at the outset of any project, assimilating the associated budget and producing and managing the project plan.

During Project definition we will identify project dependencies and opportunities to engage with internal stakeholders at the outset. This will be formalised in a RACI Analysis to ensure the correct stakeholders are identified who are responsible, accountable, require consultation and need to be informed.

This will ensure that roles are clear from the start and support project progress throughout. We often find that this process flags up any related projects or planned work-streams where collaboration can be beneficial.

Our Project Management team are a vital part of our business, and of our projects, and as such have a senior and valued role within the business. Using key tools, such as detailed statement of works, project plans via MS Project (see example below), weekly highlight reports, RAID and sign-off documentation and change control processes, which are reviewed on a project-by-project basis. All the necessary tools would be shared as working documents with Frontline (project management system), with input from both parties for completion, to ensure mitigated risk and timely milestone and budget management.

Weekly project review meetings would be scheduled to review project performance and highlight any issues, before discussing next steps for the week ahead. Attended by key project stakeholders, these meetings would ensure that both parties are fully informed and allow for informative communication flow. Additional meetings would be arranged ahead of key review and decision-making milestones, for TMP to present to CQC, whether face-to-face or via telephone

Our experience tells us that a project runs to scope and on time when there is a defined point of contact within an organisation, depending on the project. This ensures all relevant information goes through one person at the client into the project team at TMP. This helps the process and ensures that projects can be kept on scope and timelines. Therefore, ahead of starting any project (and as part of the project definition stage) we will always agree a main point of contact and project owner on the client's side.



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#### 3. A focus on attracting suitable candidates, not just any candidate

We know that Diversity is a key focus for you. The majority of people from different parts of society search for jobs just like anyone else; some search, "Commercial Manager job, Project Manager jobs, Engineering jobs, jobs in Bristol" (or such like), others search for jobs like "Admin jobs for disabled, gay friendly employers, inclusive employers etc" and lastly some investigate the past behaviour of that organisation to see if it is an environment that will not discriminate against them, or even better, support them and give them the chance they know they deserve. The message here is there is not a one size fits all approach to job seeking. Diversity should be engrained within a business to the point where it no longer features as a standalone campaign; but to get to that stage, it's important to raise a client's profile. Utilising positive content across passive sites, for example, running advertorials across female-focused consumer sites, or choosing heavily diverse locations and targeting locally, would be a good start. Running a Search campaign through the Google Display Network focusing on diverse sites has also proved successful for our clients.

In order to ensure communications are suitable for a diverse audience, we focus on:

- 1. Briefing Where possible, take the brief from a diverse internal audience to ensure content is authentic. Where this is not possible, we at least seek to speak to whoever is actually in the role, rather than just the hiring manager
- 2. Internal training we take Diversity seriously at TMP and that means that our creative team take part in training to ensure they are writing for a diverse audience
- 3. Technology whether it is for job adverts or website builds, we champion the use of technology to ensure comms are inclusive. Three examples are: Funnelback (which we are plugging into the Sainsbury's recruitment website), Textio (that we use on an ad-hoc basis to benchmark job listings), and Gender Decoder
- 4. Testing To ensure that messages and creative resonate with the target audience, we recommend testing. Whether it is during the creative development, or when a campaign is live using A/B testing, this allows us to tweak and refine, ensuring your comms have maximum impact

#### 4. Expertise

TMP has produced a number of whitepapers, blogs and held various webinars which are offered to our clients - no doubt you have seen some of the invites! We have listed just a few of these below:

#### **Diversity and Inclusion webinar**

Although Diversity and Inclusion has been a hot topic for years, we know it's as relevant when planning recruitment campaigns today as it's always been. So, we're committed to help you with all your diversity challenges.

This webinar will discuss results from a recent survey we put together, explore new ways of developing context around your organisation's diversity challenge, and how you then go on to operationalise a more holistic approach to assessment that will work to achieve a candidate pool whose diversity profile matches the bespoke objectives of your organisation.

https://www.tmpw.co.uk/webinar/diversity-and-inclusion-webinar/

IMP & Bright Networks webinar – Female and BAME Finalists

In this webinar, we shared the findings from Bright Networks research on the perceptions and aspirations of University students and in particular female and BAME finalists

With an increased focus on recruiting a more diverse talent pipeline – we'll share insights on how to optimise your candidate experience to allow graduates to perform at their best through the recruitment process

https://www.tmpw.co.uk/webinar/webinar-bright-networks-research/

#### **RECRUITMENT CAMPAIGN PLANNING (APPRENTICES)**

TMP has over 15 years of experience of delivering a variety of graduate and apprentice campaigns (including those for senior hires) for our clients.

The following information seeks to summarise some learnings that will be applicable to your challenges, introduce your support and delivery network here at TMP, and provide examples of our work in tricky apprentice and graduate recruitment campaigns with other clients.

#### Learnings

In preparation for this submission, we brainstormed with our specialist teams to drill down on some key learnings that we feel are relevant to your situation. There were many; here are the top three:

- A 'Power-spot' is essential. We use this phrase to describe the overlap between a
  profoundly important operational need (efficiency, for example) and a strategic need
  (utilising the apprenticeship levy) that our clients have. When these two drivers combine,
  there is a strong likelihood that together we can implement campaigns that have long
  lasting, sustainable impact.
  - Start with the end in mind. Our experience, backed up by on the ground research, shows that it is crucial that the teams managing the apprentices are trained to relate to, coach, and retain the incoming Gen Z talent. Without this, there are costly problems down the line that can be avoided up front.
  - Employer Brand and EVP MUST be built with input from, and tested on, the desired audience. Without this, we have seen expensive campaigns fail to meet expectations and required reinvestment in subsequent years. Interviewing and conducting focus groups to learn the best way to translate the opportunities at CQC into format and messages that resonate with the reader are essential parts of the process.

#### Research and Insight

At the outset of any new campaign, especially within the Entry Level Talent (ELT) arena, we would recommend an element of research to place the CQC employer branding at the centre of all our work. The creation of the Employee Value Proposition (EVP) is the result of a tried and tested methodology that seeks to draw on the views of senior stakeholders, key job families, competitors, customers (apprentices) and other internal stakeholders and reference points – for example, vision, values and pulse surveys. We help clients define, develop, protect, and measure their employer brand, working with them to communicate the true value of their organisation and the opportunities they deliver to employees.

The candidates that you're seeking to attract will reflect typical Gen Z characteristics:

- Searching out security in terms of job longevity.
- Consumer grade candidate experience where they are respected, informed, and involved throughout the experience.
- The opportunity to be themselves, learn and grow through working with you.
- With a company they trust.

- Fun. Not to be mistaken for anything frivolous this is more about personality and freedom of self-expression.
- Impact and purpose where companies are doing good and, even more than this, they themselves are making a difference.

With these in mind, the elements of your brand that could appeal to this audience are:

- 1. You are all about the people behind the compliance.
- 2. Service and customer experience are everything.
- 3. Your staff are challenged and encouraged to tailor everything they do to their service users.

As mentioned, these are brief initial indications of the ways we predict your brand could be communicated to potential apprentices. Robust testing of this and more expansive 'brand discovery sessions' (the creative time to unlock a brand and interpret it into collateral) are, of course, part of how we would work with you.

Once decided, we will put your employer brand right at heart of the conversation with candidates, aligning our approach perfectly with your business objectives and requirements. This methodology reaches beyond active job seekers, as we would seek to engage passive and 'receptive' audiences as well. It finds the best people and it helps them find you. It humanises your brand, helping your messages become better understood and more potent.

The next step is the translation of your brand and EVP into creative execution. Each and every piece of creative communication we produce is founded on insights we have developed from years of indepth research and analysis of every aspect of very specific target audiences. Drawing on the insights from any research and data you may be able to provide us with, as well as our local information gathering and audience segmentation, we are able to tap into, and influence, individual motivations and behaviours, speaking directly to a target audience in a way that makes them not only sit up and listen, but act.

Working closely with your brand guidelines, we will develop a visual framework which will be designed to work across your markets and will underpin all your future attraction work and messaging. All our activities will be on brand, creating that 'personal connection' between you and your potential candidates.

We then take the research and insight and brief our creative team. Our industry leading in-house creative team is made up of Art Directors, Copywriters, Designers and Artworkers - in total, we have 15 full-time specialists to deliver your creative communications needs.

Between them, our four writers and four art directors have a collective experience of over 50 years producing employer communications - despite some of them having joined us from outside the industry in the last few years, which is a deliberate action to ensure we keep a fresh flow of ideas and ways of thinking coming into our work

Our work is about conveying honestly who you are and why a candidate should want to join you; we harness the ever-expanding channels available to engage great talent to apply to you. Fundamentally, the results and effectiveness of our work are what is most important to the team here - our primary aim is getting you the talent you need. But for those interested in industry awards, it is the broad spread of categories we have won over the last few years which makes us truly proud - categories including best print ad, best copywriting, best film, best website, best innovation and best candidate experience at recent CIPD and RAD awards. These awards demonstrate the breadth of our thinking and stand testament to our ability to craft the perfect solution whatever your brief may be.



In order to provide the CQC with a variety of creative concepts for any campaign, it is vital to understand the full picture. It will always be our aim to make your campaigns really stand out from others, in what is a highly competitive marketplace, and to appeal to your target audience. This process will start at the brief. From the detailed brief, we will scope out your requirements, which includes advising at the outset of the timescales and any potential additional costs (such as the use of non-royalty images, although we will always try to use royalty free where possible) in the shape of a full proposal and what you will receive as deliverables e.g. up to 3 fully mac'd up concepts with rationales and any other accompanying online media collateral, plus media recommendations.

Once the proposal is approved, we ensure we explore all the angles for the campaign in question and provide a well-considered brief from you to our creative team.

Once the creative concepts are approved, but before we get them media ready, we will go back to the original groups we spoke to in the research and insight phase and test the key messaging to ensure that it not only resonates externally but internally as well.

Finally, we'll deliver the final creative platform and materials that bring it all to life.

In this deployment stage, we will work with our media team to build a campaign that will target your audience that was defined at the outset of the campaign approach.

#### **Audience Targeting**

As you have found in working with us, everything we do for you is based on experience and insight – using our extensive knowledge of attraction techniques to ensure we target the individuals that are right for CQC.

Whilst your Client Service team are all steeped in media channel knowledge and able to discuss options, TMP has invested in a dedicated media planning buying teams with five specialists and a total of 75 years' experience.

We would utilise this experience to ensure every pound spent delivers for you from the media.

#### **Experience and Credibility**

As previously stated, TMP has a wealth of experience within the Graduate and Apprentice market place and has a specialist ELT team headed up by Rowena Bach. The best way to demonstrate our experience and credibility within this marketplace is to provide some of the work we have undertaken with other organisations. One such example is with HM Treasury. TMP tendered and won a contract with HM Treasury. The turnaround times for go live were tight (only around 6 weeks). TMP developed a new campaign marketing strategy and themes.

Ultimately, the campaign objective for HM Treasury was to improve the diversity of candidate applications - attracting graduates from a wider range of backgrounds (including second jobbers). The campaign proposition developed was: **We are policy makers** 

The messaging is bold and simple – mirroring the work graduates will do to convey complex messages in a clear and concise manner.

By highlighting specific case studies and the people (and their skills) behind the policies, we highlight the end result of the policies they have created and the immediate impact they have had on society.

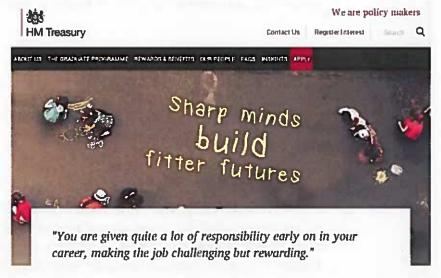
Website - www.hmtreasurycareers.com

A central requirement of the new campaign was for HM Treasury to have an entirely new, dedicated destination site

to reflect the reality of the role and bring it to life by including graduate profiles and the specifics of their day-to-day roles.

We needed to ensure we maintained the right level of attraction to hit the numbers. Google search enabled the campaign to capture relevant active users searching for opportunities — either separately or motivated by other activities run by this campaign.

Our range of selected target media enabled us to continue sourcing that base of applications, with the additional ability to target (via emails) female-focused, discipline-specific (not finance) and 2nd



jobber audiences. We also helped widen awareness of HM Treasury and attract interest from passive audiences by promoting editorial content to a wide student audience.

HMT were thrilled with the results. The campaign saw a rise in applications across all target audiences – particularly females (+5%), BAME (+7%) and state school audiences (+5%). 2016 also saw a broader range of degree subjects in applications and a 28% increase in applications overall.

The media strategy was responsible for generating 49% of all applications and generating a large amount of traffic to the website. Combined with this, our strategy also achieved a 34% decrease in cost-per-click and a 19% decrease in cost-per-submitted application.

All of this is proof of a campaign with wider promotion, engagement and reach as well as excellent cost-effectiveness and ROI.

The relationship had been developed so quickly and both parties were proud enough to support the AGR in writing an article on best Practice partnerships.

We do appreciate that every campaign that we run is different and each organisation has their very own USP that we need to go to market with. Our research and Entry Level Talent expertise means

that we can identify specialist media that will reach your desired apprentice target audience. At the same time, we are conscious of other influencers such as parents, guardians or career advisors who dramatically affect the decisions of young people. In response to this, we propose producing material that use channels both new and old which speak to the potential candidate as well as the network of influencer/supporters around them.

#### **DEVELOP & DELIVER CREATIVE SOLUTIONS (APPRENTICES)**

We will address this question/section in three parts. Woven in to each section, we will demonstrate our expertise, suitability and value as a partner to CQC in terms of:

- Enabling diverse & inclusive recruitment.
- Our ability to develop and deliver campaigns.
- With examples of our creativity and innovation.
- Experience handling of complex requirements.
- And leveraging a range of recruitment media.

#### 1. Spotlight on diversity

At TMP it is integral in our approach to ensure that candidates from all backgrounds can complete the recruitment and selection process without adverse impact or bias in any way. We work directly with clients using a top down and bottom up approach: from to monitoring and auditing recruitment strategies to provide coaching and positive action support to candidates from minority backgrounds.

Like many organisations in the field, CQC has a low representation of diverse groups at a senior level. This is a complex situation based on geography, legacy, brand and culture. Many organisations face the same complicated web of underlying drivers that mean attracting a diverse range of candidates is not easy. To your advantage, you have set a strategic agenda around this with a clear mission to secure applicants with a broader range of skills, backgrounds, and cultures.

In our experience, helping clients unpick and make progress, and by ensuring that our recruitment processes and communications are suitable for a diverse audience, we have found the following four principles are a recipe for success:

- 1. Establish a 'true' briefing consult with diverse internal audience to ensure our content ideas are authentic and resonate powerfully.
- 2. Equal knowledge and awareness our teams (e.g. creative and operations) take part in training to ensure they are writing for your diverse target audience.
- 3. Leverage technology Whether it is for job adverts or website builds, we champion the use of technology to ensure comms are inclusive.
- **4.** Test and learn this ensures that messages and creative reaches the heart of your target audience and evolves as we learn through the campaign.

An example of the work we have undertaken on a similar challenge to the one that you face can be seen with our work with the Independent Police Complaints Commission (IPCC). The IPCC was looking to appoint 100 Investigators, Lead Investigators and Trainee Investigators in four locations: Birmingham, Wakefield, London and Sale. The IPCC had not received a great response from the media over some critical situations in the last few years. This, alongside locations in diversity hotspots, meant they required our help to overhaul and reinvigorate their recruitment. Diversity was a major priority, not only in terms of ethnicity, but also in terms of background and experience.

The attraction results were exceptional – over two phases, we generated over 4,000 applications. Almost 70% came from non-policing backgrounds, increasing the diversity and skills going into the organisation. BME applications were also doubled from the previous campaign they had run through their previous provider.

# 2. Creativity and innovation make our work stand up to the challenge and stand out from the crowd

TMP employ the best copywriters, art directors and specialist web designers in their field because the business world is evolving and changing, as are the audiences we are attracting. These talented teams ensure your brand values are promoted through solutions that raise the bar in terms of innovation and attracting the best candidates.

This isn't confined to traditional advertising tactics; most recently the team have been involved in projects ranging from brand new social media strategies that inspire teachers to relocate across the country, to employer brand development to connect with experienced social workers and generate much needed applications.

As you have found, we provide exceptional levels of creativity, combined with an innovative approach to media, ensuring you fill your roles with the right candidate as cost-effectively as possible.

Over the last 3 years working with CQC, you have been working with a team that develop interesting and innovative work that achieves the goals of each brief whilst at the same time encouraging you to push the boundaries of creativity.

#### 3. Expert design and delivery of campaigns is our DNA

Whilst our results speak for themselves, it's the 'how' as well as the 'what' that makes the

difference. Through our work with you, we fully understand the need to save money and make best use of resources.

#### **Audience targeting**

As you have found in working with us, everything we do for you is based on experience and insight — using our extensive knowledge of attraction techniques to ensure we target the individuals that are right for CQC. This includes the attraction of hard to reach groups and skill sets such as senior management through to apprentices, as well as improving the diversity of your workforce at all levels.

Whilst there is still a role for traditional 'paid for media', increasingly we are harnessing 'non-recruitment' channels to directly engage with and source candidates. To this end, we have established a dedicated media planning buying team comprising of five subject matter experts who advise and execute each campaign and together bring 75 years' experience in the graduate and experienced hire space. They know that the key to Gen Z audience is building relationships,

establishing trust, showing what's to be gained by joining you in terms of career and personal development.

For CQC, this means having access to a depth of knowledge and understanding of what works and how to ensure every pound spent delivers for you. For example: Search Engine Marketing Over 85% of job searches start with Google, so it is essential you feature highly on all relevant searches. This channel works on a pay-per-click basis, allowing us to sponsor specific search terms and appear at the top of the page on any returns.

#### Advertisement visibility and effectiveness

Our dedicated Media Team advise on the best places to advertise to deliver maximum visibility and goal attainment based on experience and proven analytics. TMP has a separate Media Performance Team who proactively track a campaign's media performance that allows us to:

- · continually monitor the effectiveness against key objectives,
- optimise campaign performance and,
- most importantly, maximise the return on investment for clients.

We anticipate potential media savings to be a growing factor in overall efficiency strategies for all our clients, including yourselves.

We'll help you achieve 'more for less' across all areas and ensure you always receive value for money.

This is achieved through:

- A. Effective media buying discounts and contracts. We'll use our exceptional buying power to ensure you receive the best deals and discounts across all media channels. Securing additional, 'added value' services. Our knowledge, size and reputation afford the privilege of consistently pushing for additional media products as part of an overall media strategy for you. We regularly achieve more than 10% efficiencies through these means.
- **B.** Enhancing Media performance. Our campaign management process traces every candidate interaction with every piece of external digital media and follows the candidate through the entire application journey.
- C. Performance negotiation. Should any media fall short, we will be able to negotiate with them to obtain additional inventory free of charge. This has been recently evidenced in a campaign produced for University of Manchester, where we secured £15,000 of free inventory from the media over the course of three months.

Informed advertisement placement. We currently work in partnership with you, advising on where best to advertise your vacancies and providing advice on copy content. We will continue this partnership working with you should we be re-awarded the contract. However, we know that 'more for less' will be a continuing theme for this contract and, therefore, we would like to introduce our Client Portal as a potential solution to this budget pressure. This unique online portal has been developed for our clients and is offered free of charge. It will enable you to request work, receive proofs/creative for review and view all media schedules, associated invoices and correspondence in one place. The Client Portal (screen shot on the next page) in no way replaces the personal team service but allows additional control and accessibility to information. We look forward to sharing more on this powerful additional tool available to you.

In addition to our core Candidate Management services, we are also able to: Design and develop bespoke selection tools and validate the success of existing tools.

Project manage your assessment centre events.

- Creative candidate engaging work.
- Provide digital technology solutions to enhance the candidate experience.

An example of this creativity and award-winning work can be found in the work we undertook with Virgin Media on the link below:

https://www.tmpw.co.uk/case-study/virgin-money-worlds-creative-job-interview-2/





Laura Pope - Managing Partner



John Quirk - Client Partner



Ian Bond - Client Manager



Ross Stewart - Client Services Coordinator



Paula Simmons - Branding Insight Director



Rowena Bach – Entry Level Talent Director



Developing and delivering a campaign designed to attract a diverse workforce.













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# Our process for building holistic and inclusive employer brands





#### Define

fletine and map the work set up project governance and kick-off



#### Discover

Generale Insights, engage wider statenoiders and establish emerging EVP thernes



#### Develop

Devision the EVP prototype for internal and external use.



#### Optimise

Test messages with internal audiences and external focus groups



#### Deliver

Deliver creative and materials that bring the EVP to

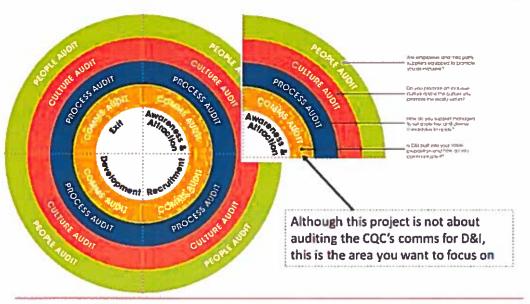


#### Deploy

Ensure the promise is the lived experience.

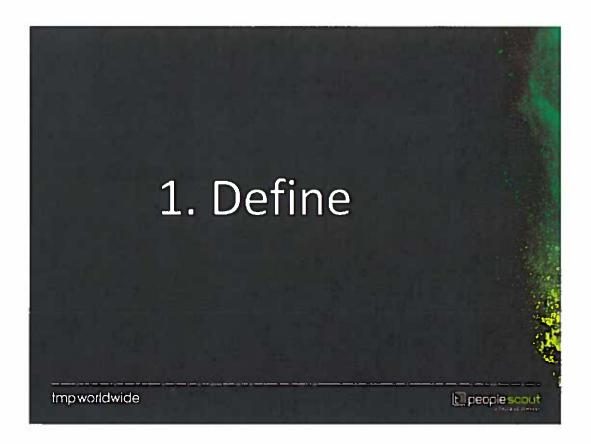
# Our approach to D&I





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# Defining the project



- Reconfirm project objectives
- · Define the scope of work
- · Project governance
- Project plan
- Discussing measures of success
- Key stakeholder engagement

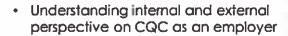
#### Spotlight on D&I

- Confirming target demographics and context
- Understanding current data and activity

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# Discover – identifying key message indicators



- Market intelligence on demographics with relevant skill sets in your localities – and key competitors
- Introducing an element of audit to recruitment comms and job specs

#### Spotlight on D&I

- Seeking to understand any difference in the perspective of BAME and disabled colleagues
- Insight into availability of target demographics
- Insight into whether your current comms detract from your employer brand

# 'Discover' - case study: Reading

#### The Challenge

- Workforce not representative of local community
- Attraction and progression of BAME people a particular challenge
- Wanted insight to inform strategy

#### **Our Approach**

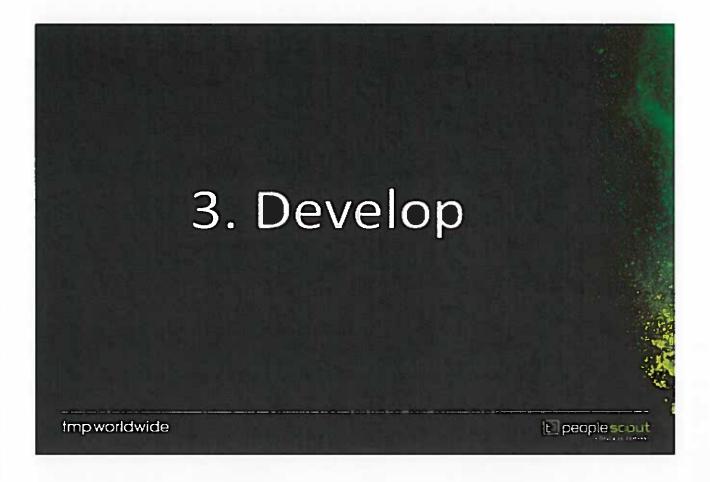
- Focus groups and interviews
- Focused on all demographics
- Particular attention paid to differences in perspective of BAME and non-BAME employees

#### **Our Recommendations**

- Review touchpoints across employee lifecycle for unconscious bias
- Increase employer brand profile as employer (as opposed to educator) locally

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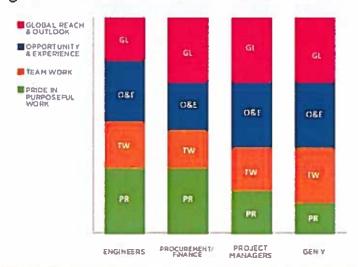
# Develop

About taking the insight from the Discover phase, identifying common themes and using them to build messaging pillars



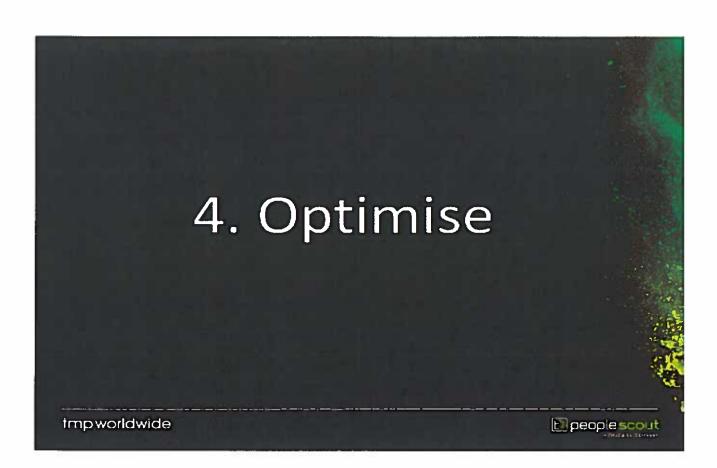
# Develop

Having the ability to dial the pillars up or down, depending on audience – in this case, including Generation Y



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# Optimise – making sure we're on the right track

- Validating the themes and pillars to ensure they are:
  - Authentic to the what CQC as a whole offers as an employer
  - Representative of any nuances for the BAME and disabled experience
  - Responsive to the information needs of external target recruitment audiences

#### Spotlight on D&I

- Using the outputs to finalise the themes and pillars
- Developing inclusive messaging
- Ability to shift channel strategy if needed

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# 'Deliver' - case study: Sainsbury's



#### **Be Inspired**



"If it wasn't for her, then I would never have believed in myself" [signed by storyteller]

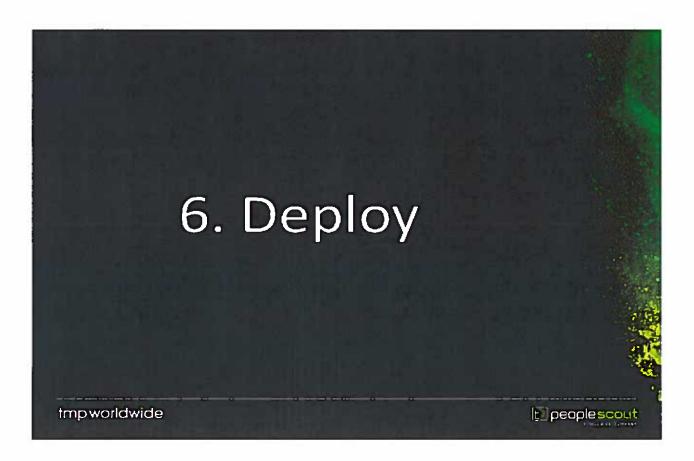
#### **Be Inspired**



"There are some people – you think they're not that important. But I keep coming to the lessons they taught me."

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# Deploy – activating the employer brand

- Developing comms materials to take the brand to market
- Aligning key touchpoints such as careers pages, campaign microsites
- Executing the brand through channels we feel will work
- Measuring impact based on agreed criteria

#### Spotlight on D&I

- Adjusting ad copy based on 'Discover' phase insight
- Potentially adding different channels to the strategy
- Reviewing base data to ensure benchmark for measurement

# 'Deploy' – case study HM Treasury



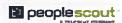








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#### Video



Surrey Police - https://www.tmpw.co.uk/case-study/surrey-police-video/

Royal College of Nursing - http://insights.to.pw.co.uk/past/192ecag/the-rebels-a-unique-lim-let-a-unique-organisation

HS2 - http://careers.hs2.org.uk/

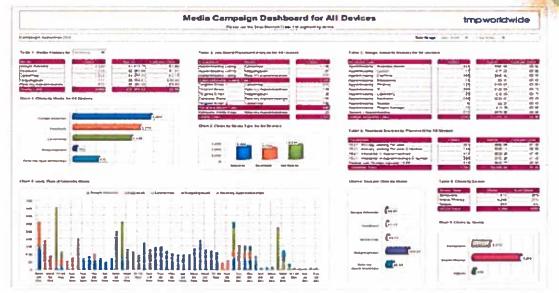
Arcadia - https://luturetalent.arcadiagroup.co.uk/

MEL - https://vimeo.com/278318549

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## Measurement

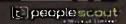


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# Added Value

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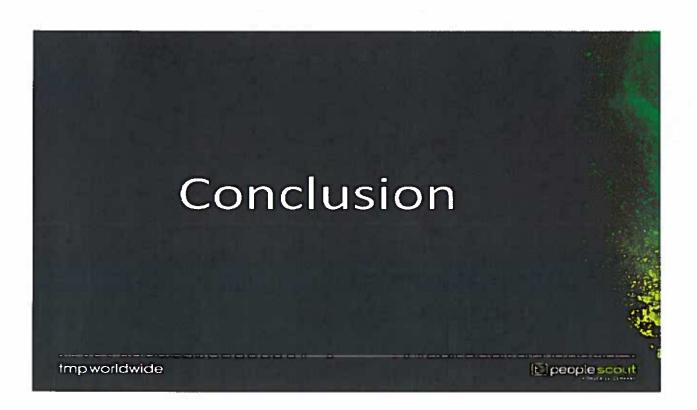


# Added Value

# Recruitment

- · Copy edit/copy write all adverts
- Proactive media advice inc. stats
- Social media workshops
- · Market mapping for difficult to fill roles
- End to end campaign reporting
- ELT Activity
- Industry insight reviews
- Monthly webinars Employer Brand
- Newsletters





# We believe in D&I





#### Define

Refine and map the work set up project governance and high-off



## Discover

Generale insights engage wider stokeholders and establish emerging EVP themes.



# Develop

Develop the EVP prototype for resmal and external use



### **Optimise**

Test messaget with infernal audiences and external facus groups



# Deliver

Deliver Cleative and materials that timing the EVP to



### Deploy

Ensure the promise is the fixed experience.

It's built in at each stage of our EB process...
But attraction is only the beginning when it comes to creating a representative workforce

1r)

Producer

#### Rate Card **Recruitment Advertising & Related Services** Total Cost Unit/ Category Reference Requirement Rate Hourly Account 1a) Management rate Hourly Account 1b) Administration rate Project Hourly 1c) Management rate Campaign Hourly 1d) management rate Web Hourly 1e) consultancy rate Social media Hourly 1f) consultancy rate **SEO** Hourly 1g) consultancy rate Media Hourly 1h) Negotiation rate In-depth Hourly 1i) Media rate Research Hourly Hourly 1 1j) Copywriting Rates rate Hourly 1k) **Typesetting** rate Digital Hourly 11) Artworking rate Hourly 1m) **Art Direction** rate Generalised digital Hourly 1n) development rate work Careers Hourly 10) Website rate Design & Build Microsite Hourly 1p) Design & Build rate Button/Banner Hourly 1q) Design & Build rate Digital Hourly

rate

	= ==	1w)	Specialist Proof Reading	Hourly rate	1
		1x)	Digital Creative	Hourly rate	
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	Discounts	2b)	Media Volume Discounts	% Retained by Custome r	
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		3b)	Typesetting	Per Ad	
		3c)	Copywriting	Per Ad	
		3d)	Production Rate	Per Ad	
	Print	3e)	Voucher copies	Each	
3	Advertising (Routine)	3f)	First amends	Per Ad	_
		<b>3</b> g)	Subsequent amends (per set)	Per Ad	
		3h)	Placement Fee	Per Ad	
		3i)	Subsequent Media Placement Fee	Per Ad	
		4a)	Art direction / creative concepts	Per Ad	
		4b)	Typesetting	Per Ad	
		4c)	Copywriting	Per Ad	
	Print	4d)	Production Rate	Per Ad	
4	Advertising (Creative)	4e)	Voucher copies	Each	
		4f)	First amends	Per Ad	
		4g)	Subsequent amends (per set)	Per Ad	
		4h)	Placement Fee	Per Ad	
		4i)	Subsequent Media Placement Fee	Per Ad	

	Digital	5a)	Placement of routine listing in Online Media /job- board	Per Ad	
5	Advertising	5b)	Placement of creative listing in Online Media /job- board	Per Ad	
		6a)	Radio Campaigns (Standard)	Per Campaig n	
6	Other Advertising	6b)	TV Campaigns (Standard)	Per Campaig n	
		6c)	Promotional Material (Standard)	Per Campaig n	
Gran d Total					

# Scenario 1 -Recruitment of a Head of Acute Policy - 70k, flexible location, -

# Recruitment Advertising & Related Services

ate lory	Referen ce	Requirement	Unit/ Rate	£	Numbe r of Units	Total Unit/Rate	Total VAT	Total Cost (VAT+Total Unit/Rate)	Notes
	1a)	Account Management	Hourly rate						
	1b)	Account Administration	Hourly rate						_
	1c)	Project Management	Hourly rate						
П	1d)	Campaign management	Hourly rate						
П	1e}	Web consultancy	Hourly rate				t		
		Social media					-		-
	1f)	consultancy	Hourly rate		+-				
П	1g)	SEO consultancy	Hourly rate		$\bot$				4
П	1h)	Media Negotiation	Hourly rate		J				
П	11)	In-depth Media Research	Hourly rate						
П	1j)	Copywriting	Hourly rate						
н	1k)	Typesetting	Hourly rate						
0	1()	Digital Artworking							
ur ly			Hourly rate						
R at	1m)	Art Direction	Hourly rate						
es	1n)	Generalised digital development work	Hourly rate						
П	10)	Careers Website De	Hourly rate						
П	1p)	Microsite Design & Build	Hourly rate						
П	1q)	Button/Banner	Hourly rate						
П	1r)	Design & Build Digital Producer	Hourly rate		1				
П		Digital Project			╂				
П	1s} 	Manager	Hourly rate		+-				
П	1t)	Digital Designer	Hourly rate		$\perp$				
П	1u)	Flash Developer	Hourly rate						
П	1v)	Web Developer	Hourly rate						
H	1w)	Specialist Proof Reading	Hourly rate						
Ш	1x)	Digital Creative	Hourly rate						
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Ā	4b)	Typesetting	Per Ad		+		-		
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Pr In	4a)	Art direction / creative concepts	Per Ad		·	
<u>:</u>  -	4b)	Typesetting	Per Ad			
	4c)	Copywriting	Per Ad			
Ϋ́	4d)	Production Rate	Per Ad			
er	4e)	Voucher copies	Each			
ti si	4f)	First amends	Per Ad			
n	4g)	Subsequent amends (per set)	Per Ad			
<b>#</b>	4h)	Placement Fee	Per Ad			
Cr	41)	Subsequent Media Placement Fee	Per Ad			
Di gi ta 1	5a)	Placement of routine listing in Online Media /job- board	Per Ad			
A d v er	5b)	Placement of creative listing in Online Media /job-board	Per Ad			
O th	6a)	Radio Campaigns (Standard)	Per Campaign			
er A	6b)	TV Campaigns (Standard)	Per Campaign			
d v er	6c)	Promotional Material (Standard)	Per Campaign			
rand	Total					

# Scenario 2 Recruitment of an Intelligence Programme Manager - 50k,

# **Recruitment Advertising & Related Services**

Category	Refer ence	Requirement	Unit/ Rate	£	Number of Units	Total Unit/Rate	Total VAT	Total Cost (VAT+Tot al	Notes
	1a)	Account Management	Hourly rate					-	
	1b)	Account Administration	Hourly rate				,		
	1c)	Project Management	Hourly rate						
	1d)	Campaign management	Hourly rate						
	1e)	Web consultancy	Hourly rate						
	1f)	Social media consultancy	Hourly rate						
	19)	SEO consultancy	Hourly rate						
	1h)	Media Negotiation	Hourly rate						
	11)	In-depth Media Research	Hourly rate						
	1j)	Copywriting	Hourly rate						
	1k)	Typesetting	Hourly rate						
	11)	Digital Artworking	Hourly rate						
1 Hourly Rate	1m)	Art Direction	Hourly rate						
	1n)	Generalised digital development work	Hourly rate						
	10)	Careers Website Design	Hourly						
	1p)	Microsite Design & Build	Hourly rate					,	
	1q)	Button/Banner Design & Build	Hourly rate						
	1r)	Digital Producer	Hourly rate						E
	15)	Digital Project Manager	Hourly						
	1t)	Digital Designer	Hourly rate						
	1u)	Flash Developer	Hourly rate						
	1v)	Web Developer	Hourly rate						
	1w)	Specialist Proof Reading	Hourly rate						
	1x)	Digital Creative	Hourly rate						
Media	,2a)	Spot Buying Discount	Retained						
2 Discounts	2b)	Media Volume Discounts	Retained						
	3a)	Art direction / creative	Per Ad						
	3b)	Typesetting	Per Ad						
4	3c)	Copywriting	Per Ad						
Print	3d)	Production Rate	Per Ad						
Advertising	3e)	Voucher copies	Each						
(Routine)		First amends	Per Ad						
	3g)	Subsequenciamenas	Per Ad						
	3h)	Placement Fee	Per Ad					A11001010101010101010101010101010101010	
	3i)	Subsequent Media Placement Fee	Per Ad						

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4c) Copywriting Per Ad  4d) Production Rate Per Ad  4e) Voucher copies Each  4f) First amends Per Ad  4g) Voucher amends Per Ad  4h) Placement Fee Per Ad  4l) Placement Fee Per Ad  Placement Fee Per Ad	
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(Creative)  4f) First amends Per Ad  4g) Subsequent amends Per Ad  4h) Placement Fee Per Ad  4l) Subsequent Media Placement Fee Placement of routine	
49) Placement Fee Per Ad  4i) Subsequent Media Placement Fee Per Ad  Placement Fee Per Ad  Placement Fee Per Ad	
4i) Subsequent Media Per Ad Placement Fee Par Ad Placement of routine Per Ad	
Placement Fee Per Ad	
Advertising 5b) listing in Online Media Per Ad	
6a) Radio Campaigns Per (Standard) Campaig	
6 Other 6b) TV Campaigns Per Campaig	
6c) Promotional Material Per (Standard) Campaig	
Grand Total	

# · Scenario 3 Recruitment of a Senior analysts, 30k,

#### **Recruitment Advertising & Related Services**

Cal	tegor	Ref	Requirement	tiple/ Date		Number	Total	Total MAT	Total Cost	Makes
j	y	nce		Unit/ Rate	2	of Units	Unit/Rate	Total VAT	(VAT+Tot	Notes
		1a)	Account Management Account	Hourly rate						
		1b)	Administratio	Hourly rate						
		1c)	Project Management	Hourly rate						
		1d)	Campaign management	Hourly rate						
		1e)	Web consultancy	Hourly rate	1		7			
		11)	Social media consultancy	Hourly rate		,				
		19)	SEO consultancy	Hourly rate						
		1h)	Media Negotiation	Hourly rate						,
		11)	m-depth Media	Hourly rate						
	П	1j)	Copywriting	Hourly rate						
		1k)	Typesetting	Hourly rate						
CONCRETE:	Hou rly	11)	Digital Artworking	Hourly rate						
1	Rat es	1m)	Art Direction	Hourly rate						
2000		1n)	<del>Generaliseu</del> digital	Hourly rate						
		10)	Careers Webs	Hourly rate						
		1p)	Careers Webs Microsite Design &	Hourly rate						
		1q)	Bulldon/Banne r Design &	Hourly rate	li ili o					-1170-1-1
		1r)	Digital Producer	Hourly rate						
١		1s)	Digital Project Manager	Hourly rate						
		1t)	Digital Designer	Hourly rate						
		1u)	Flash Developer	Hourly rate			-			
		1v)	Web Developer	Hourly rate						
		1w)	Specialist Proof Reading	Hourly rate						
		1x)	Digital Creative	Hourly rate						
	Med ia	2a)	Spot Buying Discount	% Retained by Customer						
2	Disc oun	2b)	Media Volume Discounts	% Retained by Customer						
		3a)	Art direction / creative concepts	Per Ad						
I			Typesetting	Per Ad						
	Prin		Copywriting Production	_ Per Ad						
6.5	t	3d)	Vationer	Per Ad				-		
	Adv	3e)	coninc	Each						
3	erti sing	3f)	First amends	Per Ad					$oxed{oxed}$	
	(Ro utin	3g)	Subsequent amends (per	Per Ad						
	e)	3h)	set) Placement	Per Ad						
			Subsequent Media							
		31)	Placement Fee	Per Ad						

			Art direction /		1		1	1	
			creative concepts	Per Ad				=	
			Typesetting	Per Ad					
	Prin		Copywriting Production	Per Ad					
	t Adv	4d)		Per Ad					=
	erti	4e)	Voticner copies	Each					
4	sing	4f)	First amends	Per Ad					
	(Cr eati ve)		Subsequent amends (per set)	Per Ad					<u>-</u>
	- 1	4h)	set) Placement	Per Ad		i e			
		41)	Subsequent Media Placement	Per Ad					
5	Digi tal Adv		Placement of routine listing In Online Media /job-	Per Ad					
_	erti sing		Placement of creative listing in Online Media	Per Ad					
	Oth er		Radio Campaigns (Standard)	Per Campaign					
6	Adv	6b)	TV Campaigns (Standard)	Per Campaign					
	sing	6c)	Promotional Material (Standard)	Per Campaign					
Gra	and 1	<b>Tota</b>	l .						

Key Personnel of the Service Provider to be involved in the provision of the Goods, Services and Deliverables

Ian Bond - Client Manager

John Quirk - Client Partner

Paula Simmons - Brand Insight and Diversity Director

Service Provider's inspection of the Premises and Infrastructure (where relevant)

NOT USED

4. PERFORMANCE OF THE GOODS AND/OR SERVICES AND DELIVERABLES

# Implementation Plan and Milestones or e.g. delivery schedule (including dates for completion and/or delivery)

Milestones  Description	Target Date	Action to Achieve Milestone	Review Date
Success of campaign	30 days after campaign	List of suitable candidates	
Success in filling post	3 months after campaign	Candidate in post	
Correct Invoicing Issued with supporting back ground MI	After campaign	Candidate in place	

# **Critical Service Failure**

- (i) In relation to the required Recruitment Advertising Services a Critical Service Failure shall include a delay in servicing the demand for Recruitment Advertising Services ordered by the Customer in excess of 24 hours more than once in any three (3) Month period or more than three times in any rolling twelve (12) month period.
- (ii) In relation to the Recruitment Advertising services a Critical Service Failure shall mean a loss of two (2) or more during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) for more than 24 hours accumulated in three (3) Month period, or 48 hours in any rolling twelve (12) month period.

The default period is three months if less than three months is required then an alternative period should be inserted above.

#### Monitoring

Service Levels Indicator	Measured by	Review Date
Success of advertising a role effectiveness	Number of useable candidates applying/ quality of candidates/ conversion rates/whether the vacancy was filled	After each campaign
Success of hard to reach difficult to recruit roles	Number of useable candidates applying conversion rates and whether vacancy was filled or not	After each campaign
Achieve deadlines for service delivery	MI data provided at performance review meetings	Monthly 3 days before performance review meetings
Financial Report	Provide a financial report showing actual costs to date and invoices to be submitted	Monthly 3 days before performance review meetings

Monthly to the recruitment team for financial tracking

## **Management Information**

Management Information to be provided in accordance with clause 7 of the Call-Off Terms on 1<sup>st</sup> working day of month as requested monthly invoicing report. MI data 3 days before agreed performance review meeting.

#### 5. CUSTOMER RESPONSIBILITIES

## **Customer's Responsibilities**

CQC will appoint a representative to manage the service during the period of the requirement delivery. The overall relationship will be managed by the Head of Recruitment and Talent or nominated deputy; with day to day workflow instructed by the recruitment team and contract arrangements managed by a member of the HR team. Contract management meetings to be held.

CQC will hold formal review meetings on a quarterly or six-monthly basis reviewing areas as outlined in the Contract Management section.

Monthly service meetings will also be required and the contents will be agreed prior to contract award.

# **Customer's equipment (where appropriate)**

NOT USED

## 6. CHARGES AND PAYMENT

Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS))

The Service provider should submit valid invoice for payment to the following address quoting the purchase order provided.

Care Quality Commission T70 Payables F175 Phoenix House, Topcliffe Lane Wakefield, West Yorkshire WF3 1WE

### 7. CONFIDENTIAL INFORMATION

Our pricing is offered to CQC at a discounted TMP rate. To share this with competitors could put us at a disadvantage in future bids. The following information shall be deemed Commercially Sensitive Information: During the period of the Contract.

#### 8. AGREED AMENDMENTS TO THE CALL-OFF TERMS

The following amendments shall be deemed to be made to the Call-Off Terms:

Not Used

# 9. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

The Service Provider shall comply with any further written instructions with respect to processing by the Customer.

Any such further instructions shall be incorporated into this section 9 of the Master Contract Schedule.

Description	Details
Subject matter of the processing	The supplier would not receive any personal data from CQC to fulfil the contract
Duration of the processing	1st April 2019 to 31st March 2022
Nature and purposes of the processing	N/A
Type of Personal Data	N/A
Categories of Data Subject	N/A
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.	N/A

# THE CUSTOMER

- and -

# THE SERVICE PROVIDER

**CALL-OFF TERMS** 

relating to

# **ADVERTISING SOLUTIONS**

(Recruitment Advertising & Other Advertising Services)

CONTRACT REF 3A\_16

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#### **CALL-OFF TERMS**

#### BETWEEN

- (1) The customer identified in the Form of Contract (the "Customer"); and
- (2) The company identified in the Form of Contract (the "Service Provider").

#### **WHEREAS**

- (A) The Eastern Shires Purchasing Organisation ("ESPO") selected framework providers, including the Service Provider, to provide Goods and/or Services;
- (B) the Service Provider undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 3A\_16 dated 05 July 2016 (the "Framework Agreement");
- (C) ESPO and the Service Provider have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Service Provider for the Service Provider to supply Goods and/or Services;
- (D) The Customer enters into this Contract on the terms hereinafter appearing.

#### 1. GENERAL PROVISIONS

#### 1.1 Definitions

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in the Master Contract Schedule and/or any other Contract Document;
"Call-off Terms"	means these terms and conditions in respect of the provision of the Goods and/or Services, together with the schedules hereto;

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#### "Change in Law"

means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-off Terms which comes into force after the Commencement Date;

# "Commencement Date"

means the date set out in the Master Contract Schedule and/or the Form of Contract Document;

# "Commercially Sensitive Information"

means the confidential information listed in set out at Schedule 9 of the Framework Agreement (if any) the Master Contract Schedule and/or a Contract Document comprising of commercially sensitive information relating to the Service Provider, its IPR or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss;

# "Confidential Information"

means the Customer's Confidential Information and/or the Service Provider's Confidential Information;

# "Continuous Improvement Plan"

means a plan for improving the provision of the Services and/or reducing the charges produced by the Service Provider pursuant to schedule 6 of the Framework Agreement;

# "Contract"

means the contract entered into by the Customer and the Service Provider pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement comprising of the Form of Contract Document, these Call-Off Terms, the schedules hereto, the Master Contract Schedule and any other Contract Document;

# "Contract Document"

means all documents listed in the Form of Contract Document and/or within a schedule referred to in the Form of Contract Document;

#### "Contract Period"

means the period from the Commencement Date to:

- a) the Expiry Date; or
- such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;

# "Contract Charges"

means the prices (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in the Master Contract Schedule and/or any other Contract Document, for the full and proper performance by the Service Provider of its obligations under the Contract less any Service Credits:

# "Contracting Authority"

means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer;

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#### "Control"

means control as defined in section 1124 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;

#### "Controller"

shall take the meaning given in the GDPR;

#### "Conviction"

means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);

# "Critical Service Failure"

shall have the meaning given in the Master Contract Schedule and/or any other Contract Document;

#### "Customer Data"

#### means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
- (i) are supplied to the Service Provider by or on behalf of the Customer; or
- (ii) the Service Provider is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Customer is the Data Controller:

# "Customer Pre-Existing IPR"

shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Service Provider of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

# "Customer's Premises"

the premises identified in the Master Contract Schedule and/or any other Contract Document and which are to be made available for use by the Service Provider for the provision of the Goods and/or Services on the terms set out in the Contract;

# "Customer Responsibilities"

means the responsibilities of the Customer set out in the Master Contract Schedule and/or any other Contract Document;

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"Customer Representative"

means the representative appointed by the Customer from time to time in relation to the Contract:

"Customer's Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Service Providers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Data Controller"

shall take the meaning given in the GDPR;

"Data Loss Event"

means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

"Data Processor"

shall take the meaning given in the GDPR;

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Officer" shall take the meaning given in the GDPR;

"Data Subject"

shall take the meaning given in the GDPR;

"Data Subject Access Request"

means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default"

means any breach of the obligations of the Service Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Service Provider or Service Provider's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Service Provider is liable to the Customer;

"Delay Payments"

means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule and/or any other Contract Document;

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"Deliverables" means those deliverables listed in the Master Contract Schedule

and/or any other Contract Document (if any);

"Delivery" means the time at which the Goods and/or Services have been

installed by the Service Provider and the Customer has issued the Service Provider with confirmation in respect thereof and

"Deliver" and "Delivered" shall be construed accordingly;

"Dispute Resolution Procedure"

means the dispute resolution procedure set out in clause 42.2;

"DPA 2018"

means Data Protection Act 2018;

relation to such regulations;

"Employment Checks"

means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record

checks and occupational health checks;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in

"Equality Legislation" means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;

"Equipment"

means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;

"ESPO"

means the Eastern Shires Purchasing Organisation of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES;

"Expiry Date"

means the date set out in the Master Contract Schedule and/or

any other Contract Document;

"Form of Contract"

means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Service

Provider and which lists all of the Contract Documents;

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#### "FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

### "Force Majeure"

means any event, occurrence or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:

- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- c) acts of government, local government or Regulatory Bodies;
- d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
  - any industrial dispute relating to the Service Provider, the Service Provider's Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and
  - any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

#### "GDPR"

means the General Data Protection Regulation (Regulation (EU) 2016/679;

# "Good Industry Practice"

means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

# "Goods and/or Services"

means the goods and/or services to be supplied as specified in the Form of Contract, Master Contract Schedule and/or any other Contract Document;

#### "Holding Company"

shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;

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"Implementation Plan"

means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated in accordance with Schedule 2;

"Information"

has the meaning given under section 84 of the FOIA;

"Initial Term"

the period commencing on the Commencement Date and ending on the Expiry Date;

"Intellectual Property Rights" or "IPRs"

#### means:

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;
- applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;

"ITT Response"

means the response submitted by the Service Provider to the Invitation to Tender issued by the Customer on xx

"Key Personnel"

means the individuals (if any) identified in the Master Contract Schedule and/or any other Contract Document;

"Know-How"

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of knowhow relating to the Goods and/or Services but excluding know-how already in the Service Provider's or the Customer's possession before the Commencement Date;

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"Law"

means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

"LED"

means Law Enforcement Directive (Directive (EU) 2016/680);

"Management Information"

means the management information specified in Framework Schedule 7 (Management Information Requirements);

"Master Contract Schedule"

means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement;

3 or the Framework Agreement;

"Milestone"

means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;

"Milestone Date"

means the date set against the relevant Milestone in the Implementation Plan;

"Month"

means calendar month and "monthly" shall be interpreted

accordingly;

"Parent Company"

means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider:

"Party"

means the Service Provider or the Customer and "Parties" shall mean both of them;

"Personal Data"

shall take the meaning given in the GDPR;

"Premises"

means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document;

"Process"

has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing), and "Process" and "Processed" shall be interpreted accordingly;

"Processor"

shall take the meaning given in the GDPR;

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### "Prohibited Act"

#### Means:

a)to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO a financial or other advantage to:

- i) induce that person to perform improperly a relevant function or activity; or
- ii) reward that person for improper performance of a relevant function or activity; or
- b) committing any offence:
  - i) under the Bribery Act 2010; or
  - ii) under legislation creating offences concerning fraudulent acts; or
  - iii) at common law concerning fraudulent acts relating to the Contract or any other contract with ESPO and/or Customer and/or any other Contracting Body; or
- c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer or any other Contracting Body

# "Project Specific IPRs"

#### means:

- (a) IPRs in the Services, Deliverables and/or Goods provided by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or
- (b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Service Provider (or by a third party on behalf of the Service Provider) under the Contract,

#### "Property"

means the property, other than real property and IPR, issued or made available to the Service Provider by the Customer in connection with the Contract;

## "Protective Measures"

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

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# "Public Contracts Directive"

means Directive 2014/24/EU of the European Parliament and of the Council;

# "Quality Standards"

means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance;

# "Regulated Activity"

means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;

### "Regulatory Bodies"

means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;

# "Related Service Provider"

means any person who provides services to the Customer which are related to the Services from time to time;

# "Replacement Service Provider"

any third party Service Provider of Replacement Services appointed by the Customer from time to time;

# "Replacement Service"

any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Customer internally and/or by any third party;

# "Request for Information"

means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

#### "Service Credits"

means the sums referred to or sums calculated in accordance with Schedule 2 being payable by the Service Provider in respect of any failure by the Service Provider to meet one or more Service Levels;

#### "Service Levels"

means any service levels applicable to the provision of the Services as referred to Schedule 2;

"Service Provider"

means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;

"Service Provider Personnel" means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;

"Service Provider Pre-Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Service Provider's Representative"

means the representative appointed by the Service Provider from time to time in relation to the Contract;

"Service Provider Solution"

means the Service Provider's solution for the provision of the Goods and/or Services as referred to in the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;

"Service Provider's Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

"Services"

means the services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents;

"Sites"

means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services;

"Specification"

means the specification at Schedule 1 as amended by the Customer as set out in the Master Contract Schedule or any other Contract Document;

"Staff"

means all persons employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Contract;

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"Sub-Contra	ict"
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means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or any part thereof;

# "Sub-Contractor"

means the third party with whom the Service Provider enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

#### "Sub-Processor"

means any third party appointed to process Personal Data on behalf of the Service Provider related to this Contract;

# "Technical Standards"

means the technical standards set out in the Framework Agreement and if applicable the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract;

### "Tender"

means the tender submitted by the Service Provider to the Customer in response to the Customer's invitation to Service Providers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;

# "Term"

the period of the Initial Term as may be varied by:

- (a) any extensions to this Contract which are agreed pursuant to clause 3; or
- (b) the earlier termination of this Contract in accordance with its terms;

#### "TFEU"

means the Treaty on the Functioning of the European Union (OJ No. C 115);

means the Treaty of the European Union (OJ No. C 115) and TFEU;

### "Transferring Goods"

means Goods, title to which transfers between the Parties in accordance with clause 4.6.1;

# "Treaties"

# "Undelivered Goods"

shall have the meaning given in clause 4.5.7;

#### "Variation"

has the meaning given to it in clause 33;

# "Variation Procedure"

means the procedure set out in clause 33;

#### "VAT"

means value added tax in accordance with the provisions of the Value Added Tax Act 1994;

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"Working Day"

means any day other than a Saturday or Sunday or public holiday in England and Wales.

# 1.2 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 the schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;
- 1.2.6 references 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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "clauses" and "schedules" are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;

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- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- in the event of and only to the extent of any conflict between the Master Contract Schedule, these Call-Off Terms, any other Contract Document any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.2.11.1 the Framework Agreement;
  - 1.2.11.2 these Call-Off Terms;
  - 1.2.11.3 the Master Contract Schedule; and
  - 1.2.11.4 any other Contract Document or document referred to in these Call-Off Terms.

#### 2. DUE DILIGENCE

- 2.1 The Service Provider acknowledges that it:
  - 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
  - 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
  - 2.1.3 has entered into this Contract in reliance on its own due diligence alone.
- 2.2 The Customer hereby confirms that it has all requisite authority to enter into the Contract.

#### 3. CONTRACT PERIOD

- 3.1 This Contract shall take effect on the Commencement Date and shall continue for the Term.
- 3.2 The Customer may extend this Contract beyond the Initial Term by a further period or periods as stated in the Master Contract Schedule (Extension Period). If the Customer wishes to extend this Contract, it shall give the Supplier three (3) months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.3 If the Customer gives such notice then the Term shall be extended by the period set out in the notice.
- 3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 20 shall apply.

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# 4. SUPPLY OF GOODS AND/OR SERVICES

### 4.1 Supply of the Goods and/or Services

- 4.1.1 The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan.
- 4.1.2 The Service Provider shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract including but without limitation to the Specification in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Service Provider supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.
- 4.1.3 If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Goods and/or Services does not meet the requirements of the Contract or differs in any way from those requirements, the Service Provider shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 4.1.4 The Service Provider accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:
  - 4.1.4.1 the same is notified in writing to the Service Provider within three (3) Working Days of receipt of the Ordered Goods by the Customer; and
  - 4.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Service Provider's instructions.
- 4.1.5 Where the Service Provider accepts responsibility under clause 4.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Service Provider's reasonable satisfaction, to have been lost or damaged in transit.
- 4.1.6 The Service Provider agrees that the Customer relies on the skill and judgment of the Service Provider in the supply of the Goods and/or Services and the performance of its obligations under the Contract.

### 4.2 **Provision and Removal of Equipment**

- 4.2.1 Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Service Provider shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 4.2.2 The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.

- 4.2.3 All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Service Provider shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Service Provider's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Service Provider.
- 4.2.4 The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5 The Service Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
  - 4.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
  - 4.2.5.2 replace such item with a suitable substitute item of Equipment.
- 4.2.6 Upon termination or expiry of the Contract, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or Service Provider's Staff.

#### 4.3 Quality

- 4.3.1 The Service Provider shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and/or Services must be provided has not been specified in the Contract, the Service Provider shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the supply of the Goods and/or Services commencing and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 4.3.2 The Service Provider shall ensure that the Staff shall at all times during the Contract Period:
  - 4.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and/or Services:

- 4.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and
- 4.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 4.3.3 The Service Provider shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.
- 4.3.4 The Service Provider shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any) (as a minimum), the Master Contract Schedule and/or any other Contract Document and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.
- 4.3.5 The Service Provider shall at all times during the Contract Period ensure that:
  - 4.3.5.1 the Goods and/or Services conform in all respects with the specifications set out in the Master Contract Schedule and/or any other Contract Document and/or where applicable the Framework Agreement;
  - 4.3.5.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Master Contract Schedule and/or any other Contract Document;
  - 4.3.5.3 the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
  - 4.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Service Provider by the Customer; and
  - 4.3.5.5 the Goods and/or Services are supplied in accordance with the Service Provider Solution.

### 4.4 Delivery (Goods only)

4.4.1 Without prejudice to the content of clause 4.5 (Delivery) the Service Provider shall make delivery of the Goods specified in the Master Contract Schedule and/or any other Contract Document at the times and in the manner stated therein and as a minimum meet the requirements stated in the Response to the ITT. Delivery shall be at no cost to the Customer and shall be at the sole risk of the Service Provider.

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- 4.4.2 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to the order.
- 4.4.3 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

# 4.5 **Delivery**

- 4.5.1 The Service Provider shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.
- 4.5.2 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.
- 4.5.3 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Service Provider fails to deliver the Goods and/or Services within the time specified in accordance with clause 4.1.1 and/or the Master Contract Schedule and/or any other Contract Document and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 4.5.4 Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-Contractors at such place or places as set out in the Master Contract Schedule and/or any other Contract Document.
- 4.5.5 Where the Goods are delivered by the Service Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 4.5.6 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Service Provider's Service Providers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 4.5.7 In the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("Undelivered Goods and/or Services") then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and/or Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and/or Services are Delivered.

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4.5.8 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in the Master Contract Schedule and/or any other Contract Document. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Service Provider to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Service Provider for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Service Provider.

#### 4.6 **Ownership and Risk**

- 4.6.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to the order.
- 4.6.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.

#### 4.7 Guarantee

The Service Provider hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Service Provider of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

#### 5. ASSISTANCE ON EXPIRY OR TERMINATION

5.1 In the event that the Contract expires or is terminated the Service Provider shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Service Provider.

### 6. DISASTER RECOVERY AND BUSINESS CONTINUITY

6.1 The Service Provider will maintain in place throughout the Contract Period business continuity arrangements and will review those arrangements at appropriate intervals and if necessary update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Service Provider's organisation, delivery of the Goods and/or Services to the Customer is subject to a minimum of disruption.

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## 7. MONITORING OF CONTRACT PERFORMANCE

- 7.1 The Service Provider shall comply with the monitoring arrangements referred to in the Master Contract Schedule and/or any other Contract Document including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.
- 7.2 Where requested by the Customer, the Service Provider shall supply the Management Information to the Customer in the form and periodically as specified in the Master Contract Schedule.

### 8. DISRUPTION

- 8.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 8.2 The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Service Provider's own employees or others, which affects or might affect the Service Provider's ability at any time to perform its obligations under the Contract.
- 8.3 In the event of industrial action by the Staff, the Service Provider shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.
- 8.4 If the Service Provider's proposals referred to in clause 8.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.5 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

# 9. SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS

- 9.1 The Service Provider shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of schedule 1 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Service Provider.
- 9.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

- 9.3 Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or Services are not supplied in accordance with, or the Service Provider fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:
  - 9.3.1 at the Customer's option, give the Service Provider the opportunity at the Service Provider's expense to either remedy any defect in the Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
  - 9.3.2 reject the Goods (in whole or in part) and require the Service Provider to remove the Goods (in whole or in part) at the risk and cost of the Service Provider on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Service Provider;
  - 9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;
  - 9.3.4 if the Master Contract Schedule and/or any other Contract Documents provide for the payment of Delay Payments, then the Service Provider shall pay such amounts (calculated in accordance with the Master Contract Schedule and/or any other Contract Document) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is met;
  - 9.3.5 carry out at the Service Provider's expense any work necessary to make the Goods and/or Services comply with the Contract;
  - 9.3.6 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;
  - 9.3.7 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services; and/or
  - 9.3.8 charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any

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part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

# 9.4 In the event that the Service Provider:

- 9.4.1 fails to comply with clause 9.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- 9.4.2 persistently fails to comply with clause 9.3 above,

the Customer may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

## 10. PREMISES

10.1 NOT USED

### 11. PAYMENT AND CONTRACT CHARGES

# 11.1 Contract Charges

- 11.1.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).
- 11.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 11.1.3 If at any time during the Contract Period the Service Provider reduces its rates of Charges for any Goods and/or Services which is provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Service Provider shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.
- 11.1.4 The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement which is specifically commissioned from the Service Provider by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods

and/or Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.

11.1.5 The Parties acknowledge that the Service Provider is required to pay to ESPO a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

## 11.2 Payment and VAT

- 11.2.1 Where the Service Provider submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.
- 11.2.2 The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 11.2.3 The Customer shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 11.2.4 Where the Customer fails to comply with clause 11.2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.2.2 after a reasonable time has passed.
- 11.2.5 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:
  - (a) provisions having the same effect as clauses 11.2.1 11.2.3 of this Framework Agreement; and
  - (b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 11.1.1 11.1.4 of this Framework Agreement.

For the purposes of this sub clause 11.2.4 "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or part of this Framework Agreement.

11.2.6 The Service Provider shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause 11 shall be paid by the Service Provider

- to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 11.2.7 The Service Provider shall not suspend the supply of the Services and/or Goods (as applicable) unless the Service Provider is entitled to terminate the Contract under clause 26 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

# 11.3 Recovery of Sums Due

- 11.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Service Provider under the Contract or under any other agreement or contract with the Customer.
- 11.3.2 Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 11.3.3 The Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.
- 11.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## 11.4 Euro

- 11.4.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Service Provider free of charge to the Customer.
- 11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Service Provider.

#### 12. KEY PERSONNEL

12.1 The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.

- 12.2 The Service Provider shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.
- 12.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Service Provider or Sub-Contractor.
- 12.4 The Service Provider acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and/or Services to the Customer. The Service Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 12.5 The Customer may also require the Service Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

### 13. SERVICE PROVIDER'S STAFF

- 13.1 The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
  - 13.1.1 any member of the Staff; or
  - 13.1.2 any person employed or engaged by any member of the Staff,
  - whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 13.2 At the Customer's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 13.3 Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 13.4 If the Service Provider fails to comply with clause 13.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 13.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider and Staff have failed to comply with clause 13.2 shall be final and conclusive.

## Children and Vulnerable Adults

- 13.6 Where the provision of the Goods and/or Services requires any of the Service Provider's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Service Provider will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Children's Barred List relating to the protection of children.
- 13.7 The Service Provider will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.
- 13.8 The Service Provider will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.
- 13.9 The Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups and will notify ESPO immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Customer.
- 13.10 Where the provision of the Goods and/or Services does not require any of the Service Provider's employees or volunteers to work in a Regulated Activity but where the Service Provider's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider will in respect of such employees and volunteers:
  - a) carry out Employment Checks; and
  - b) carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Contract Period.
- 13.11 Where the principle obligation of the Service Provider is to effect delivery of goods to a site and does not require any element of on-site working including installation and commissioning of Goods in a private dwelling, neither the Service Provider nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Service Provider shall ensure that those engaged in undertaking the duties under this contract, including employees, servants, agents and others are of suitable standing and good character and provide them with copies of the Specification and secure their written acknowledgement of receipt and understanding.

### 14. TUPE NOT USED

### 15. STAFFING SECURITY

- 15.1 The Service Provider shall comply with the Customer's staff vetting procedures (where provided to the Service Provider) in respect of all Service Provider Staff employed or engaged in the provision of the Goods and/or Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Customer's staff vetting procedures.
- 15.2 The Service Provider shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and/or Services to ensure compliance with the Customer's staff vetting procedures.

## 16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 16.2 The Service Provider shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Service Provider's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 16.3 With respect to the Service Providers obligations under the Contract, the Service Provider warrants and represents that:
  - 16.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract:
  - it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form) owned by or under the control of, or used by the Customer;
- 16.4 The Service Provider shall during and after the Contract Period of the Contract indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
  - 16.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and

Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

- 16.4.2 performance of the Service Provider's responsibilities and obligations hereunder.
- 16.5 The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Service Provider's responsibilities and obligations hereunder.
- 16.6 If a claim or demand is made or action brought to which clause 16.3 and/or 16.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:
  - 16.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services; or
  - 16.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and
  - in relation to the performance of the Service Provider's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

#### 16.7 Customer Data

- 16.7.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 16.7.2 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise expressly Approved by the Customer.
- 16.7.3 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 16.7.4 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

- 16.7.5 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.
- 16.7.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer may:
  - 16.7.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
  - 16.7.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.
- 16.7.7 If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.

# 16.8 Protection of Personal Data

- 16.8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, where the Customer has completed the second column of the table in section 9 of the Master Contract Schedule to specify the processing of Personal Data it requires the Service Provider to perform, the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be determined by the Service Provider.
- 16.8.2 The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 16.8.3 The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, 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 Goods and/or 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.
- 16.8.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - (a) process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Service Provider is required to do otherwise by Law. If it is so required, the Service Provider shall promptly notify the Customer 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 Customer 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 Service Provider Personnel do not process Personal Data except in accordance with this Contract (and in particular section 9 of the Master Contract Schedule);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Service Provider Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Service Provider's duties under this clause;
      - (B) are subject to appropriate confidentiality undertakings with the Service Provider or any Subprocessor;
      - (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 Customer or as otherwise permitted by this Contract; 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 Customer has been obtained and the following conditions are fulfilled:
  - the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Service Provider 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 Customer in meeting its obligations); and
  - (iv) the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of this Contract unless the Service Provider is required by Law to retain the Personal Data.
- 16.8.5 Subject to clause 16.8.6, the Service Provider shall notify the Customer 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 Contract;
  - (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.
- 16.8.6 The Service Provider's obligation to notify under clause [17.8].5 shall include the provision of further information to the Customer in phases, as details become available.
- 16.8.7 Taking into account the nature of all processing, the Service Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause [17.8].5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - (a) the Customer with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Customer following any Data Loss Event:
  - (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 16.8.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:
  - (a) the Customer determines that the processing is not occasional;
  - (b) the Customer 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 Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 16.8.9 The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 16.8.10 The Service Provider shall designate a data protection officer if required by the Data Protection Legislation.

- 16.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:
  - (a) notify the Customer in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Customer;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause [17.8] such that they apply to the Sub-processor; and
  - (d) provide the Customer with such information regarding the Subprocessor as the Customer may reasonably require.
- 16.8.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 16.8.13 The Customer 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 Contract).
- 16.8.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Service Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

# 16.9 Security of Premises

- 16.9.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all Staff comply with such requirements.
- 16.9.2 The Customer shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

## 16.10 **Confidentiality**

- 16.10.1 Except to the extent set out in this clause 16.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
  - 16.10.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

- 16.10.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 16.10.2 Clause 16.10.1 shall not apply to the extent that:
  - 16.10.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 19.11 (Freedom of Information);
  - 16.10.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 16.10.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 16.10.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 16.10.2.5 it is independently developed without access to the other Party's Confidential Information.
- 16.10.3 The Service Provider may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 16.10.4 The Service Provider shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 16.10.5 At the written request of the Customer, the Service Provider shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 16.10.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Service Provider is taking appropriate steps to comply with this

- clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 16.10.7 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider's Confidential Information (including the Management Information obtained under clause 7.2):
  - 16.10.7.1 to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority;
  - 16.10.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
  - 16.10.7.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 16.10.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 16.10.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 16.10.7 is made aware of the Customer's obligations of confidentiality.
- 16.10.9 Nothing in this clause 16.10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 16.10.10 In the event that the Service Provider fails to comply with clause 16.6.1 to clause 16.6.6, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.
- 16.10.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

### 16.11 Freedom of Information

- 16.11.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 16.11.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
  - 16.11.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 16.11.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - 16.11.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 16.11.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 16.11.4 In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 16.11.5 The Service Provider acknowledges that (notwithstanding the provisions of clause 16.10) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and Services:
  - 16.11.5.1 in certain circumstances without consulting the Service Provider; or
  - 16.11.5.2 following consultation with the Service Provider and having taken their views into account,

provided always that where clause 16.11.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable

- steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 16.11.6 The Service Provider shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 16.11.7 The Service Provider acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 16.11.5.

# 16.12 Transparency

- 16.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 16.12.2 Notwithstanding any other term of the Contract, the Service Provider hereby gives his consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Agreement, to the general public.
- 16.12.3 The Customer may consult with the Service Provider to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 16.12.4 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

## 17. WARRANTIES AND REPRESENTATIONS

- 17.1 The Service Provider warrants, represents and undertakes to the Customer that:
- 17.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 17.1.2 the Contract is executed by a duly authorised representative of the Service Provider;
- 17.1.3 in entering the Contract it has not committed any Fraud;

- 17.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 17.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
- 17.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- 17.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 17.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;
- 17.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;
  - 17.2 The Service Provider warrants represents and undertakes to the Customer that:
- 17.2.1 the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 17.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and/or Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
- 17.2.3 the Goods and/or Services are and will continue to be during the Contract Period:

- 17.2.3.1 of satisfactory quality; and
- 17.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer's specifications and documentation;
- 17.2.4 in the three (3) Years prior to the Commencement Date:
  - 17.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - 17.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
  - 17.2.4.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract; and
  - 17.2.4.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.
- 17.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Service Provider.
  - 17.4 The Service Provider acknowledges and agrees that:
  - 17.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and
  - 17.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

# 18. LIABILITIES

## 18.1 Liability

- 18.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
  - 18.1.1.1 death or personal injury caused by its negligence or that of its Staff;

- 18.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
- 18.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- 18.1.1.4 any claim under clause 17.1;
- 18.1.1.5 any claim under the indemnity in clauses 11.2.5, [14], 16.4, in respect of a breach of clause 16.10; or
- 18.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 18.1.2 Subject to clause 18.1.4 and clause 18.1.5 the Service Provider shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non-supply, of the Goods and/or Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly by any act or omission of the Service Provider.
- 18.1.3 The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 18.1.4 Subject always to clause 18.1.1 and clause 18.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
  - 18.1.4.1 all defaults resulting in direct loss to the property of the other Party shall in no event exceed [ten million pounds (£10,000,000)]; and
  - in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed [ten million pounds sterling (£10,000,000)].
- 18.1.5 Subject to clause 18.1.1, in no event shall either Party be liable to the other for any:
  - 18.1.5.1 loss of profits;

- 18.1.5.2 loss of business;
- 18.1.5.3 loss of revenue;
- 18.1.5.4 loss of or damage to goodwill;
- 18.1.5.5 loss of savings (whether anticipated or otherwise); and/or
- 18.1.5.6 any indirect, special or consequential loss or damage.
- 18.1.6 The provisions of 18.1.1 shall not be taken as limiting the right of the Customer to recover as a direct loss:
  - 18.1.6.1 any additional operational and/or administrative expenses arising from the Service Provider's Default;
  - 18.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default;
  - 18.1.6.3 the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider; and
  - 18.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Service Provider.
- 18.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

### 18.2 Insurance

18.2.1 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the Contract Period.

- 18.2.2 The Service Provider shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.
- 18.2.3 The Service Provider shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.
- 18.2.4 The Service Provider shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of two million pounds sterling (£2,000,000) for each individual claim, or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period.
- 18.2.5 The Service Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 18.2.6 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 18.2.7 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause 18.
- 18.2.8 The Service Provider shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

# 18.3 Taxation, National Insurance and Employment Liability

18.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

## 19. TERMINATION

## 19.1 Termination on insolvency

- 19.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Service Provider where the Service Provider is a company and in respect of the Service Provider:
  - 19.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 19.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 19.1.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
  - 19.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 19.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 19.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or

- 19.1.1.7 being a "small company" within the meaning of section 82(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 19.1.1.8 any event similar to those listed in clause 19.1.1.1 to 19.1.1.7 occurs under the law of any other jurisdiction.
- 19.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
  - 19.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or
  - 19.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or
  - 19.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - 19.1.2.4 the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
  - 19.1.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days; or
  - 19.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
  - 19.1.2.7 the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

# 19.2 Termination on Change of Control

19.2.1 The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("Change of Control") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may

terminate the Contract by notice in writing with immediate effect within six months of:

- 19.2.1.1 being notified that a Change of Control has occurred or is planned or in contemplation; or
- 19.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

For the purposes of clause 19.2.1 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

### 19.3 Termination on Default

- 19.3.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Service Provider if the Service Provider commits a Default and if:
  - 19.3.1.1 the Service Provider has not remedied the Default to the satisfaction of the Customer within thirty (30) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - 19.3.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or
  - 19.3.1.3 the Default is a material breach of the Contract.
- 19.3.2 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Service Provider.
- 19.3.3 If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the period specified in clause 11.2, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 11.3 (Recovery of Sums Due).

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# 19.4 Termination of Framework Agreement

The Customer may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Framework Agreement is fully or partly terminated for any reason whatsoever.

# 19.5 **Termination on Financial Standing**

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider (as measured from the Commencement Date) which:

- 19.5.1 adversely impacts on the Service Provider's ability to supply the Goods and/or Services under this Contract; or
- 19.5.2 could reasonably be expected to have an adverse impact on the Service Providers ability to supply the Goods and/or Services under this Contract.

### 19.6 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Service Provider commits a Default of clauses 26.1 to 26.5 or clause 26.7 (Records and Audit Access).

## 19.7 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Continuous Improvement and Benchmarking).

### 19.8 Partial Termination

If the Customer is entitled to terminate this Contract pursuant to this clause 19, it may (at is sole discretion) terminate all or part of this Contract.

# 19.9 Termination in compliance with Public Contracts Regulations 2015

The Customer may terminate Contracts where:

- 19.9.1 the Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;
- the Service Provider has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or

19.9.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

### 19.10 Termination without Cause

Subject to the content of clause 20.2 the Customer shall have the right to terminate the Contract at any time by giving not less than twelve (12) months written notice to the Service Provider.

# 20. CONSEQUENCES OF EXPIRY OR TERMINATION

- 20.1 Where the Customer terminates the Contract under clauses 19.3 (Termination on Default), 19.6 (Financial Standing), 19.7 (Audit), 19.8 (Benchmarking) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 19.3, 19.6, 19.7 and 19.8., no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.
- 20.2 [Subject to clause 20 where the Customer terminates the Contract under clause 19.10 (Termination without Cause), the Customer shall indemnify the Service Provider against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under clause 19.10 (Termination without Cause).
  - 20.3 The Customer shall not be liable under clause 20.2 to pay any sum which:
  - 20.3.1 was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
  - 20.3.2 when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated prior to the expiry of the Contract Period.]

- 20.4 On the termination of the Contract for any reason, the Service Provider shall:
- 20.4.1 immediately return to the Customer all Confidential Information,
  Personal Data and Customer's Pre-Existing IPRs and the Project
  Specific IPRs in its possession or in the possession or under the control
  of any permitted Service Providers or Sub-Contractors, which was
  obtained or produced in the course of providing the Goods and/or
  Services;
- 20.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Service Provider with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Service Provider;
- 20.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
- immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 4.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
- 20.4.5 transfer to the Customer and/or the Replacement Service Provider (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Service Provider and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Service Provider in respect of such Licensed Goods and/or contracts and/or any other items of relevance;
- 20.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or provide all such assistance and co-operation as the Customer may reasonably require;
- 20.4.7 return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and
- 20.4.8 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.

- 20.5 If the Service Provider fails to comply with clause 20.4.1 and 20.4.8, the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted agents or Sub-Contractors where any such items may be held.
- 20.6 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under clause 20.4.5 and 20.4.8 free of charge. Otherwise, the Customer shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.
- 20.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause **Error! Reference source not found.** shall automatically terminate without the need to serve notice.
  - 20.8 Save as otherwise expressly provided in the Contract:
  - 20.8.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
  - 20.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 16 (Intellectual Property Rights), Error! Reference source not found. (Protection of Personal Data), 16.10 (Confidentiality), 16.11 (Freedom of Information), 18 (Liabilities), 20 (Consequences of Expiry or Termination), 25 (Prevention of Bribery and Corruption), 26 (Records and Audit Access), 27 (Prevention of Fraud), 31 (Cumulative Remedies), 37 (Conflicts of Interest), 39 (The Contracts (Rights of Third parties) Act 1999) and 42.1 (Governing Law and Jurisdiction).

# 21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 21.1 The Service Provider shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, Service Providers, professional advisors and consultants comply with this clause 21. Any such press announcements or publicity proposed under this clause 21.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 21.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

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21.3 The Service Provider shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

### 22. ANTI-DISCRIMINATION

- 22.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 22.2 The Service Provider shall take all reasonable steps to secure the observance of clause 23.1 by all Staff employed in performance of this Contract.
- 22.3 The Service Provider shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other law, enactment, order or regulation.
- 22.4 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider's performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Service Provider's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider's Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 22.5 Where any investigation is conducted or proceedings are brought under Equality Legislation or any other law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Service Provider, its agents or Sub-Contractors, or the Service Provider's Staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.
- 22.6 The Service Provider must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 22.7 The Service Provider acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Service Provider shall provide all necessary assistance and information to the Customer as may be required in relation to the

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performance of an impact analysis by the Customer. The Service Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

### 23. HEALTH AND SAFETY

- 23.1 The Service Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 23.2 While on the Customer's Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 23.3 The Service Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 23.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.
- 23.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Customer on request.

## 24. ENVIRONMENTAL REQUIREMENTS N/A

24.1 The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy (where provided), which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## 25. PREVENTION OF BRIBERY AND CORRUPTION

- 25.1 The Service Provider shall not:
- 25.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

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- engage in and shall procure that all Service Provider's Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and
- 25.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.
  - 25.2 The Service Provider warrants, represents and undertakes that it has not:
- 25.2.1 paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and
- 25.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Contract;
  - 25.3 The Service Provider shall:
- 25.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;
- 25.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 25;
- 25.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 25 and the Service Provider shall co-operate with any investigation and allow the Customer to audit Service Provider's books, records and any other relevant documentation in connection with the breach;
- 25.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Service Provider and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause 25. The Service Provider shall provide such supporting evidence of compliance as the Customer may reasonably request;
- 25.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Service Provider's behalf from committing a Prohibited Act and shall enforce it where appropriate.

- 25.4 If the Service Provider, its Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:
  - 25.4.1 this clause 25; or
  - 25.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

- 25.5 Without prejudice to its other rights and remedies under this clause 25, the Customer shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from and against:
  - 25.5.1 the amount of value of any such gift, consideration or commission; and
  - 25.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 25.

### 26. RECORDS AND AUDIT ACCESS

- 26.1 The Service Provider shall keep and maintain for six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and/or Services provided under it, and the amounts paid by the Customer.
- 26.2 The Service Provider shall keep the records and accounts referred to in clause 26.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 26.3 The Service Provider shall afford the Customer and the Auditors access to the records and accounts referred to in clause 26.2 at the Service Provider's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
  - 26.3.1 to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Service Provider (including Sub-Contractors) of the Services;
  - 26.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Service Provider;

- 26.3.3 to review the Service Provider's compliance with the DPA in accordance with this Contract and any other Laws;
- 26.3.4 to review the Service Provider's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;
- 26.3.5 to review the Service Provider's compliance with its security obligations set out in clause 16;
- 26.3.6 to review any books of account kept by the Service Provider in connection with the provision of the Service;
- 26.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
- 26.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
- 26.3.9 to ensure that the Service Provider is complying with its obligations under this Contract.
- 26.4 The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 26.5 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) on request during the Contract Period and for a period of six (6) Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.
- 26.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services or supply of Goods save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 26.7 Subject to the Service Provider's rights in respect of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable cooperation and assistance in relation to each audit, including:
  - 26.7.1 all reasonable information requested by the Customer within the scope of the audit;
  - reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Goods and/or Services; and
  - 26.7.3 access to the Staff.

26.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

### 27. PREVENTION OF FRAUD

- 27.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 27.2 The Service Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Service Provider or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 27.3 If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
  - 27.3.1 terminate the Contract with immediate effect by giving the Service Provider notice in writing; and/or
  - 27.3.2 recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 27 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

### 28. TRANSFER AND SUB-CONTRACTING

- 28.1 The Service Provider shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval.
- 28.2 The Service Provider shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this clause 28, the Service Provider shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

### 29. FORCE MAJEURE

29.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such

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Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

- 29.2 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Service Provider shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Service Provider is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 29.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 29.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 29.4 If an event of Force Majeure event affects the Services, the Customer may direct the Service Provider to procure those Goods and/or Services from a third party Service Provider in which case the Service Provider will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 29.5 The Service Provider will not have the right to any payment from the Customer under this Contract where the Service Provider is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Service Provider to use a replacement Service Provider pursuant to sub-clause 29.4, then the Customer will pay the Service Provider (a) the Contract Price; and (b) the difference between the Contract Price and the new Service Provider's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Service Provider's costs are greater than the Contract Price.

### 30. WAIVER

- 30.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 30.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 40 (Notices).
- 30.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

# 31. CUMULATIVE REMEDIES

31.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised 3A-16-Terms of Agreement -Issue-2-17.08.18

concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

# 32. FURTHER ASSURANCES

32.1 Each Party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

#### 33. VARIATION

33.1 No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

# 34. SEVERABILITY

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

### 35. MISTAKES IN INFORMATION

35.1 The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Service Provider in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

# 36. SERVICE PROVIDER'S STATUS

36.1 At all times during the Contract Period the Service Provider shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

## 37. CONFLICTS OF INTEREST

37.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.

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- 37.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 37.1 above arises or is reasonably foreseeable.
- 37.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the either party.
- 37.4 This clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

#### 38. ENTIRE AGREEMENT

- 38.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 38.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.
- 38.3 The Service Provider acknowledges that it has:
  - 38.3.1 entered into the Contract in reliance on its own due diligence alone;
  - 38.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.
- 38.4 Nothing in clauses 38.1 and 38.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 38.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# 39. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 A person who is not a Party to the Contract except ESPO in relation to its right to claim retrospective rebate from the Service Provider under the payment clause has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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39.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more clauses of it.

### 40. NOTICES

- 40.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 40.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 40.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
  - 40.3 For the purposes of clause 40.2, the address, email address of each Party shall be the address and email address set out in the Master Contract Schedule and/or any other Contract Document.
- 40.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## 41. LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

- 41.1 The Service Provider shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a general change in law.
- 41.2 The Parties acknowledge that during the Term of this Contract the local government structure in the Customer's administrative areas may be subject to change. These administrative changes may give rise to the need for the Customer to terminate this Contract and/or seek its potential variation with any successor or assignee of the Customer. The Customer shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.

#### 42. DISPUTES AND LAW

# 42.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

# 42.2 **Dispute Resolution**

- 42.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of the Customer's Representative and the Service Provider's Representative.
- 42.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 42.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 42.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 42.2.5 unless:
  - 42.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
  - 42.2.3.2 the Service Provider does not agree to mediation.
- 42.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 42.2.5 The procedure for mediation is as follows:
  - 42.2.5.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;
  - 42.2.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider appointed by CEDR to provide quidance on a suitable procedure;

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- 42.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 42.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 42.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 42.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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#### **SCHEDULE 1**

# **SERVICE LEVELS AND SERVICE CREDITS (where appropriate)**

### 1. SCOPE

This schedule 1 sets out the Service Levels which the Service Provider is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Service Provider's performance of the Services by the Service Provider will be monitored. This schedule comprises:

Part A: Service Levels;

Appendix to Part A - Service Levels and Service Credits; and

Part B: Performance Monitoring.

### **PART A**

### **SERVICE LEVELS**

## 2. PRINCIPAL POINTS

- 2.1 The objectives of the Service Levels and Service Credits are to:
  - 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
  - 2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Service Provider's failure to deliver the level of Service for which it has contracted to deliver; and
  - 2.1.3 incentivise the Service Provider to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

### 3. SERVICE LEVELS

- 3.1 The Appendix to this Part A of this schedule sets out Service Levels the performance of which the Parties have agreed to measure.
- 3.2 The Service Provider shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of part B of this schedule 1.
- 3.3 If the level of performance of the Service Provider of any element of the Services during Contract Period:
  - 3.3.1 fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Contract Charges in accordance with Appendix A to this schedule 1; or

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3.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 19.3

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## **APPENDIX TO PART A**

## SERVICE LEVELS AND SEVERITY LEVELS

Service Levels Indicator	Measured by	Reference Point or Target	Review Date
Provision of media advice and schedules, to include recommendations and pricing –	Quality of candidates attracted from media source(s)	Within 48 hours	Prior to publication of attraction material
Copy writing services  – turnaround time for creative work, including pricing –	Quality of advert approved with minimal	48 hours	Prior to publication of attraction material
Turnaround time for uploading vacancies to online job boards –	Quality of service	48 hours	Prior to publication
Production of labour market demographics / market intelligence –	Quality of MI data	72 hours	Monthly 3 days before Performance review meetings
Target time for dealing with escalations, problems or issues –	Quality of MI data	24 hours	Monthly 3 days before Performance Review meetings

The Service Credits shall be calculated on the basis of the following formula and worked example:

Formula - 100% - % of Service Level achieved

x% of the Contract Charges to be deducted from the next invoice payable by the Customer.

Worked example - 100% (e.g. Service = Level requirement for data accuracy) - 75% (e.g. accuracy of data)

25% of the Contract Charges to deducted from the next invoice payable by the Customer

#### **PART B**

#### PERFORMANCE MONITORING

## 1. PRINCIPAL POINTS

- 1.1 This Part B provides the methodology for monitoring the Services:
  - 1.1.1 to ensure that the Service Provider is complying with the Service Levels; and
  - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Service Provider and/or delivery of the Services ("Performance Monitoring System").
- 1.2 Within 20 Working Days of the Commencement Date the Service Provider shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

# 2. REPORTING OF SERVICE FAILURES

2.1 The Customer shall report all failures to achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

### 3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Service Provider shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
  - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
  - a summary of all failures to achieve Service Levels that occurred during that period;
  - 3.1.3 any Critical Service Failures and details in relation thereto;
  - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
  - 3.1.6 such other details as the Customer may reasonably require from time to time.

- 3.2 The Parties shall attend meetings to discuss Service Level reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Service Provider and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
  - 3.2.1 take place within one (1) week of the reports being issued by the Service Provider;
  - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
  - 3.2.3 be attended by the Service Provider's Representative and the Customer's Representative; and
  - be fully minuted by the Service Provider. The prepared minutes will be circulated by the Service Provider to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Service Provider's representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Service Provider shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Service Provider and the calculations of the amount of Service Credits for any specified period.

### 4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Service Provider, the Customer may undertake satisfaction surveys in respect of the Service Provider's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Service Provider of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Contract.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to clause 8.

#### **SCHEDULE 2**

# **IMPLEMENTATION PLAN AND MILESTONES**

## 1. IMPLEMENTATION PLAN

- 1.1 The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan that it submitted to the Customer prior to the Commencement Date which shall be incorporated into the Master Contract Schedule and/or any other Contract Document.
- 1.2 If so required by the Customer, the Service Provider shall produce a further version of the Implementation Plan (based on the plan specified in the Master Contract Schedule or any other Contract Document) in such further detail as the Customer may reasonably require. The Service Provider shall ensure that each version of the Implementation Plan is subject to Approval. The Service Provider shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.
- 1.3 The Customer shall have the right to require the Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.

## 2. MILESTONES

- 2.1 The Service Provider shall perform its obligations so as to meet each Milestone by the Milestone Date.
- 2.2 Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Service Provider shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Service Provider's ability to achieve a Milestone by the relevant Milestone Date).
- 2.3 If a Milestone has not been achieved by the relevant Milestone Date, the Service Provider shall pay to the Customer Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Customer provides the Service Provider with confirmation in writing of its satisfaction that the Milestone has been met.
- 2.4 No payment or concession to the Service Provider by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer's rights to claim Delay Payments.