



Crown  
Commercial  
Service



Government  
Communication  
Service

**CALL OFF CONTRACT**  
**FROM FRAMEWORK RM3796, LOT 8**

**BETWEEN**

**THE SECRETARY OF STATE FOR THE DEPARTMENT FOR INTERNATIONAL TRADE**

**AND**

**TULLO MARSHALL WARREN LTD**

**AUTOMATED CONTENT MARKETING SERVICES**

**DN386933**

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## Call-Off Contract –Call-Off Terms

This Call-Off Contract is made on the 12th day of March 2019 between:

The Secretary of State for the Department for International Trade with offices at 3 Whitehall Place (“the **Client**”);

and

Tullo Marshall Warren Ltd a company registered in England and Wales under Company Number 01332638 whose registered office is at Unlimited House, 10 Great Pulteney Street (“the **Agency**”),

Both the Client and the Agency can be referred to as a “**Party**” or together the “**Parties**”.

### INTRODUCTION

- (1) The Agency is one of a number of agencies appointed by the Crown Commercial Service (**CCS**) to the Framework Agreement and is therefore able to enter into this Call-Off Contract to provide the Services to the Client.
- (2) This Call-Off Contract, made between the Client and the Agency, sets out the terms of the Agency’s appointment as a provider of the Services to the Client. The Services will be delivered according to the terms of this Call-Off Contract, any agreed Statement of Work, and the Framework Agreement.
- (3) The Agency’s appointment has been confirmed in the Letter of Appointment.
- (4) The Parties agree that the Services and associated Deliverables shall be supplied in accordance with the terms of the Framework Agreement and this Call-Off Contract.
- (5) Following the successful completion of a Further Competition Procedure, the Letter of Appointment, these Call-Off Terms and any Statement of Work will become binding.

### IT IS AGREED:

#### 1 APPOINTMENT & STATEMENTS OF WORK

- 1.1 Throughout the Term of this Call-Off Contract, the Agency will perform the Services and (where relevant) supply the Deliverables to the Client in accordance with this Call-Off Contract and any one or more agreed Statements of Work.
- 1.2 Subject to the terms of the Letter of Appointment and Clause 1.4 the Parties may agree new Projects to be delivered under this Call-Off Contract by agreeing a new Statement of Work. This must be done in writing and using the form set out at Schedule 2. Once both Parties have signed a Statement of Work, it automatically forms part of this Call-Off Contract.
- 1.3 Any schedule attached to a Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. Where the Parties agree in the Letter of Appointment that there may be more than one Statement of Work, a schedule attached to a Statement of Work only applies to the relevant Project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Services as a whole.

- 1.4 Where a Statement of Work would result in:
- (a) a variation of the Services procured under this Call-Off Contract;
  - (b) an increase in the Charges agreed under this Call-Off Contract; or
  - (c) a change in the economic balance between the Parties to the detriment of the Client that is not provided for in this Call-Off Contract,
- the relevant term(s) will be dealt with as a proposed Variation to this Call-Off Contract in accordance with the Variation procedure set out in Clause 9.

## **2 TERM**

- 2.1 This Call-Off Contract starts on the **Effective Date** and ends on the **Expiry Date**, as stated in the Letter of Appointment. The Expiry Date may be changed in accordance with Clause 2.2 or Clause 23.
- 2.2 The Client may extend this Call-Off Contract for any period up to the Extension Expiry Date by giving the Agency notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Letter of Appointment.
- 2.3 The revised date the contract will end (the **New Expiry Date**) will be set out in the notice given under Clause 2.2 above.
- 2.4 The terms and conditions of this Call-Off Contract will apply throughout any extended period.
- 2.5 Each Project starts on the Project Commencement Date and ends on the Project Completion Date, unless it is terminated earlier in accordance with Clause 23.

## **3 CALL OFF GUARANTEE**

- 3.1 Where the Client has stated in the Letter of Appointment that this Call-Off Contract is conditional on receipt of a Guarantee, then, on or prior to the Effective Date (or on any other date specified by the Client), the Agency must provide:
- an executed Guarantee from a Guarantor; and
  - a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
- 3.2 The Client may at any time agree to waive compliance with the requirement in Clause 3.1 by giving the Agency notice in writing.

## **4 CLIENT'S OBLIGATIONS**

- 4.1 The Client will give the Agency instructions as to its requirements for the Services and Deliverables. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Services and Deliverables.

## **5 SERVICE DELIVERY, DELAY AND RECTIFICATION**

### ***Service Delivery***

- 5.1 The Agency will give the Client full and clear instructions as to any Client Materials it reasonably requires to perform the Services and provide the Deliverables.

5.2 The Agency will:

- comply with all Law;
- use all reasonable and proper skill and care in its performance of the Services and provision of the Deliverables;
- comply with all reasonable Client instructions regarding the Services and Deliverables, as long as these instructions do not materially amend the Statement of Work (unless the amendment has been agreed in accordance with Clause 9.1);
- keep Client Materials under its control safe and secure and in accordance with any security policy provided by the Client; and
- provide all Deliverables by any dates set out in the applicable Statement of Work or any other date(s) agreed by the parties in writing.

***Delay***

5.3 If the Client materially breaches its obligations in connection with this Call-Off Contract (including its payment obligations), and consequently delays or prevents the Agency from performing any of the agreed Services or providing any of the agreed Deliverables this will be a “**Client Cause**”. In the event of a Client Cause, without prejudice to any other rights or remedies the Agency may have the Agency will be granted an appropriate extension of time (to be approved by the Client, acting reasonably) to perform the agreed Services or provide the agreed Deliverables. The Agency will not be liable for any Losses incurred by the Client as a result of Client Cause, provided the Agency complies with its obligations set out at Clause 5.4.

5.4 The Agency must notify the Client within 2 Working Days of the Agency becoming aware that the Client has breached, or is likely to breach, its obligations in connection with this Call-Off Contract. This notice must detail:

- (a) the Client Cause and its actual or potential effect on the Agency's ability to meet its obligations under this Call-Off Contract, and
- (b) any steps which the Client can take to eliminate or mitigate the consequences and impact of such Client Cause.

5.5 The Agency must use reasonable endeavours to eliminate or mitigate the consequences and impact of a Client Cause. The Agency must try to mitigate against any Losses that the Client or the Agency may incur, and the duration and consequences of any delay or anticipated delay.

5.6 If at any time the Agency becomes aware that it may not be able to perform the Services or provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), this will constitute a Default and the Agency will immediately notify the Client of the Default and the reasons for the Default.

5.7 If the Default described in Clause 5.6 above is, in the Client's opinion capable of remedy, the Client may, up to 10 Working Days from being notified of the Default, instruct the Agency to comply with the Rectification Plan Process.

***Rectification Plan Process***

5.8 If instructed to comply with the Rectification Plan Process by the Client under Clause 5.7 above, the Agency will submit a draft Rectification Plan to the Client to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed

between the Parties) from being instructed to do so. The Agency shall submit a draft Rectification Plan even if the Agency does not agree that the Default is capable of remedy.

- 5.9 the draft Rectification Plan shall set out:
- (a) full details of the Default that has occurred, including the underlying reasons for it;
  - (b) the actual or anticipated effect of the Default; and
  - (c) the steps which the Agency proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
- 5.10 The Agency shall promptly provide to the Client any further documentation that the Client requires to assess the Agency's reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with paragraph 5 of Schedule 4 (Dispute Resolution Procedure).
- 5.11 The Client may reject the draft Rectification Plan by notice to the Agency if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
- (a) is insufficiently detailed to be capable of proper evaluation;
  - (b) will take too long to complete;
  - (c) will not prevent reoccurrence of the Default;
  - (d) will rectify the Default but in a manner which is unacceptable to the Client; or
  - (e) will not rectify the Default.
- 5.12 The Client will tell the Agency as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.
- 5.13 If the Client rejects the draft Rectification Plan, the Client will give reasons for its decision in its rejection notice. The Agency must take these reasons into account in the preparation of a revised Rectification Plan. The Agency shall submit a revised draft of the Rectification Plan to the Client for review within 5 Working Days (or such other period as agreed between the Parties) of the Client's rejection notice.
- 5.14 If the Client agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Agency shall immediately start work on the actions set out in the Rectification Plan.

## **6 AGENCY: OTHER APPOINTMENTS**

- 6.1 Adverse public perception could have a detrimental impact on the Client's desired outcomes for the Project. To minimise this risk, the Agency must not, without the Client's written consent, provide communication or campaign services to a third party during the Term of this Call-Off Contract where the provision of such services (in the reasonable opinion of the Client):
- has the potential to adversely affect the Client's desired outcome of the Project or diminish the trust that the public places in the Client; or
  - is likely to cause embarrassment to the Client or bring the Client into disrepute or may result in a conflict of interest for the Client.

- 6.2 The only exception to this is if the Agency provides communication services to an existing client, which the Client had been informed about before entering into this Call-Off Contract.
- 6.3 If the Agency becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Agency must notify the Client immediately, providing full details of the nature of the breach and the likely impact on any Projects.
- 6.4 If the Agency breaches Clause 6.1, the Client may terminate this Call-Off Contract, a Project, or any part of a Project with immediate effect in accordance with Clause 23.3.

## **7 CLIENT: OTHER APPOINTMENTS**

- 7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Client is entitled to appoint any other agency to perform services and produce deliverables which are the same or similar to the Services or Deliverables.

## **8 PERSONNEL**

- 8.1 The Agency must ensure that Agency personnel who provide the Services:
- (a) are appropriately experienced, qualified and trained to provide the Services in accordance with this Call-Off Contract
  - (b) apply all reasonable skill, care and diligence in providing the Services
  - (c) obey all lawful instructions and reasonable directions of the Client and provide the Services to the reasonable satisfaction of the Client, and
  - (d) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements of the Client and the Standards
- 8.2 The Agency will be liable for all acts or omissions of the Agency personnel. Any act or omission of a member of any Agency personnel which results in a breach of this Call-Off Contract is a breach by the Agency.
- 8.3 The Client acknowledges and agrees that it may be necessary for the Agency to replace the personnel providing the Services with alternative personnel with similar levels of seniority and experience.
- 8.4 The Agency will seek to ensure that any Key Individual responsible for the provision of the Services will remain involved in the provision of the Services. If any Key Individual leaves the Agency, or ceases to be involved in the provision of the Services for any reason (for example, if they are promoted to a different role within the Agency), the Agency will consult with the Client and, subject to the Client's prior Approval not to be unreasonably withheld or delayed, appoint a suitable replacement.
- 8.5 If the Client reasonably believes that any of the Agency personnel undertaking work on this Call-Off Contract:
- (a) do not meet the requirements of Clause 8.1; or
  - (b) may cause embarrassment to the Client or bring the Client into disrepute or may result in a conflict of interest for the Client,
- it will notify the Agency who will then end the person's involvement in providing the Services.

## 9 VARIATIONS AND CANCELLATIONS

- 9.1 Either Party may request a change to this Call-Off Contract, a Project or a Statement of Work. Any requested change must not amount to a material change of this Call-Off Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
- 9.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
- 9.3 Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The time limits shall be reasonable and ultimately at the discretion of the Client, having regard to the nature of the Services and the proposed Variation.
- 9.4 If either Party requests a Variation, the Client can ask the Agency to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
- the impact of the proposed Variation on the Services and Agency's ability to meet its other obligations under this Call-Off Contract (including in relation to other Statements of Work);
  - the initial cost of implementing the proposed Variation and any ongoing costs post-implementation;
  - any increase or decrease in the Contract Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
  - a timetable for the implementation, together with any proposals for the testing of the Variation; and
  - any other information the Client reasonably asks for in response to the Variation request.
- 9.5 The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
- 9.6 If the Parties agree the Variation, the Agency will implement it, and the Parties will be bound by it as if it was part of this Call-Off Contract.
- 9.7 Until a Variation is agreed, the Agency must continue to perform and be paid for the Services as originally agreed.
- 9.8 Subject to Clauses 9.9 and 23.1 the Client can ask the Agency to suspend or cancel any Project or Statement of Work, or any part of a Project, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Client Approver in writing. The Agency will take all reasonable steps to comply with any such request.
- 9.9 In the event of any cancellation under Clause 9.8, the Client will pay the Agency all Contract Charges reasonably and properly incurred by the Agency during the Project Notice Period, provided that the Agency uses all reasonable endeavours to mitigate any charges or expenses.

## **10 APPROVALS AND AUTHORITY**

- 10.1 For the purposes of this Call-Off Contract, any reference to Client Approval means written approval in one of the following ways:
- the Client issuing a purchase order bearing the signature of an Authorised Client Approver, or
  - e-mail from the individual business e-mail address of an Authorised Client Approver, or
  - the signature of an Authorised Client Approver on the Agency's documentation
- 10.2 Any reference to Agency Approval means written approval in one of the following ways:
- e-mail from the individual business e-mail address of an Authorised Agency Approver, or
  - the signature of an Authorised Agency Approver on the Client's documentation
- 10.3 The Agency will seek the Client's prior Approval of:
- any estimates or quotations for any costs to be paid by the Client that are not agreed in a Statement of Work; and
  - any creative treatments, including but not limited to scripts, messaging, storyboards, copy, layouts, design, artwork, or proposed marketing activity
- 10.4 The Agency will seek the Client's prior Approval of any draft Deliverables. The Client's Approval will be the Agency's authority to proceed with the use of the relevant Deliverables.
- 10.5 If the Client does not approve of any matter requiring Approval, it must notify the Agency of its reasons for disapproval within 14 days of the Agency's request.
- 10.6 If the Client delays approving or notifying the Agency as to its disapproval, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

## **11 PROJECT MANAGEMENT**

- 11.1 During the Term of this Call-Off Contract, the Agency will:
- keep the Client fully informed as to the progress and status of all Services and Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties
  - promptly inform the Client of any actual or anticipated problems relating to provision of the Deliverables
- 11.2 During the Term, the Parties' respective project managers will arrange and attend meetings to review the status and progress of the Services, Deliverables and the Project(s), and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.
- 11.3 Unless otherwise agreed in the Statement of Work, the Agency will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within 3 Working Days of such discussions. If the Client does not question any of the subject matter of a contact report within 7 Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

## **12 FEES AND INVOICING**

- 12.1 The Contract Charges for the Services will be the full and exclusive remuneration of the Agency for supplying the Services. Unless expressly agreed in writing by the Client in the Statements of Work, the Contract Charges will include every cost and expense of the Agency directly or indirectly incurred in connection with the performance of the Services.
- 12.2 All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Client shall, following the receipt of a valid VAT invoice, pay to the Agency a sum equal to the VAT chargeable in respect of the Services.
- 12.3 The Agency will invoice the Client in accordance with the payment profile agreed in the Statements of Work. Each invoice will include all supporting information required by the Client to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 12.4 Unless otherwise agreed in a Statement of Work the Client will pay the Agency the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Client may, without prejudice to any other rights and remedies under this Call-Off Contract, withhold or reduce payments in the event of a Default by the Agency.
- 12.5 If the Client does not pay an undisputed amount properly invoiced by the due date, the Agency has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.6 If at any time during the Term the Agency reduces its Framework Prices for Services provided in accordance with the terms of the Framework Agreement, the Agency shall immediately reduce the Contract Charges for the Services under this Call-Off Contract by the same amount. This obligation applies whether or not the Services are offered in a catalogue provided under the Framework Agreement.
- 12.7 The Client is entitled to deduct from any sum due any money that the Agency owes the Client. This includes any sum which the Agency is liable to pay to the Client in respect of breach of this Call-Off Contract. In these circumstances, the Agency may not assert any credit, set-off or counterclaim against the Client.
- 12.8 The Agency will indemnify the Client on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Client at any time in respect of the Agency's failure to account for or to pay any VAT on payments made to the Agency under this Call-Off Contract. Any amounts due under Clause 12.2 will be paid by the Agency to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 12.9 If there is a dispute between the Parties about an amount invoiced, the Client will pay the undisputed amount by the due date. The Agency will not suspend the supply of the Services in any Project, unless the Agency is entitled to terminate that Project for a failure to pay undisputed sums in accordance with Clause 23.8.

## **13 THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING**

### **Assignment and Sub-Contracting**

- 13.1 Other than where a Sub-Contractor is agreed in the Letter of Appointment or a Statement of Work, the Agency will not, without the prior Approval of the Client, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Call-Off Contract or any part of it.

- 13.2 In requesting Approval to sub-contract, the Agency will:
- (a) use reasonable care and skill in the selection of proposed Sub-Contractors;
  - (b) if the Client requests, the Agency will obtain more than one quote for a particular sub-contracted service; and
  - (c) provide the Client with a business case for sub-contracting all or part of the Services, identifying why it is advantageous for the Agency to sub-contract to its proposed sub-contractor. The Client may reject the Agency's request to appoint a proposed sub-contractor if it considers the proposed sub-contractor does not provide value for money.
- 13.3 If the Client consents to the Agency's proposed sub-contractor, it shall be a Sub-Contractor as the term is defined in Schedule 1 (Definitions).
- 13.4 In granting consent to any assignment, novation sub-contracting or disposal, the Client may set additional terms and conditions it considers necessary.
- 13.5 The Agency shall ensure that its Sub-Contractor does not further sub-contract all or part of the Services or Deliverables.
- 13.6 Any contracts the Agency enters into with third party suppliers for Services and Deliverables ("**Sub-Contracts**") must be on terms that are in line with the Agency's standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Call-Off Contract.
- 13.7 Provided that the Agency has notified the Client of any significant restrictions or contract terms contained in any Sub-Contracts, the Client hereby acknowledges that:
- its right to use or otherwise benefit from any Services or Deliverables acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
  - it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Agency is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Client or its Affiliates
- 13.8 The Agency will promptly provide the Client with a copy of any Sub-Contract if requested to do so.
- 13.9 The Agency will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 13.10 The Agency will obtain the Client's Approval before commissioning services from any Agency Affiliate.

### **Supply Chain Protection**

- 13.11 The Agency will ensure that all Sub-Contracts contain provisions:
- (a) requiring the Agency to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a Valid Invoice;
  - (b) requiring the Agency to verify any invoices submitted by a Sub-Contractor in a timely manner;
  - (c) giving the Client the right to publish the Agency's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
  - (d) giving the Agency a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and

- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.

## 14 DISCOUNTS AND REBATES

- 14.1 The Agency will disclose to the Client any commission, discount or rebate earned by the Agency arising in respect of third party costs directly related to the Projects. The Client will receive the full benefit of such commission, discount or rebate.

## 15 CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION

### CONFIDENTIALITY

- 15.1 For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a “**Recipient**”. A Party which discloses or makes available Confidential Information is a “**Disclosing Party**”.
- 15.2 Unless a Recipient has express permission to disclose Confidential Information, it must:
- treat the Disclosing Party's Confidential Information as confidential and store it securely
  - not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call-Off Contract or with the owner's prior written consent
  - use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call-Off Contract, and
  - immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information
- 15.3 The Recipient is entitled to disclose Confidential Information if:
- It is required to so by Law (though in such cases, Clause 15.15 (Freedom of Information) applies to disclosures required under the FOIA or the EIRs)
  - the need for such disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the Client regarding this Call-Off Contract
    - (ii) the examination and certification of the Client's accounts (provided that the disclosure is made on a confidential basis) or for any examination under Section 6(1) of the National Audit Act 1983, or
    - (iii) a Central Government Body review in respect of this Call-Off Contract or
  - the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010. Such disclosure can only be made to the Serious Fraud Office.
- 15.4 If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
- 15.5 Subject to Clauses 15.3 and 15.4, the Agency may disclose Confidential Information, on a confidential basis, to:

- Agency personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance under this Call-Off Contract, and
  - its professional advisers for the purposes of obtaining advice in relation to this Call-Off Contract.
- 15.6 Where the Agency discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Call-Off Contract.
- 15.7 The Client may disclose the Confidential Information of the Agency:
- to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies
  - to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
  - if disclosure is necessary or appropriate in the course of carrying out its public functions
  - on a confidential basis to a professional adviser, consultant, supplier or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Contract
  - on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract, or
  - to a proposed successor in title (transferee, assignee or novatee) to the Client.
- 15.8 Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this Clause 15.
- 15.9 Nothing in this Clause 15 will prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Call-Off Contract in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.10 If the Agency fails to comply with this Clause 15, the Client can terminate this Call-Off Contract.

#### **TRANSPARENCY**

- 15.11 Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Contract (and any Transparency Reports submitted by the Agency under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15 [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein.
- 15.12 The Client will determine whether any of the content of this Call-Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Client may consult with the Agency to inform its decision regarding any redactions but will have absolute discretion over the final decision.

- 15.13 Notwithstanding any other provision of this Call-Off Contract, the Agency consents to the Client publishing this Call-Off Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted).
- 15.14 The Agency will cooperate with the Client to enable publication of this Call-Off Contract.

#### **FREEDOM OF INFORMATION**

- 15.15 The Client is subject to the requirements of the FOIA and the EIRs. The Agency will:
- provide all necessary assistance to the Client to enable it to comply with its Information disclosure obligations.
  - send all Requests for Information it receives relating to this Call-Off Contract to the Client as soon as practicable and within a maximum of 2 Working Days from receipt.
  - provide the Client with a copy of all Information belonging to the Client requested in the Request for Information which is in its possession or control in the form that the Client requires within 5 Working Days of the Client's request.
- 15.16 The Agency must not respond directly to a Request for Information without the Client's prior Approval.
- 15.17 The Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Agency. The Client will take reasonable steps to notify the Agency of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Client will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **16 AGENCY WARRANTIES**

- 16.1 The Agency warrants that:
- (a) it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party;
  - (b) the personnel who perform the Services are competent and suitable do so;
- 16.2 The Agency undertakes that:
- (a) the use of the Deliverables by the Client in accordance with this Call-Off Contract and for the purposes set out in the Statement of Work will not infringe the IPR of any third party; and
  - (b) as at the date they are delivered, the Deliverables of this Call-Off Contract may be used for the purposes set out in the Statement of Work and comply with all Advertising Regulations.
- 16.3 Subject to Clause 16.4, the Agency hereby indemnifies the Client against any Losses incurred by the Client as a result of breach by the Agency of its warranty and undertaking in Clauses 16.1 and 16.2.
- 16.4 The Agency shall not be liable for any breach by the Agency of its warranty or undertaking in Clauses 16.1 and 16.2 where the Agency had previously notified the Client of the specific risk in writing, the Client has confirmed it understands the risk and Approved the use of such Deliverables

## **17 CLIENT WARRANTIES**

17.1 The Client warrants that:

- (a) it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party;
- (b) the Client Materials will not, when used in accordance with this Call-Off Contract and any written instructions given by the Client, infringe third party IPR; and
- (c) to the best of its knowledge and belief, the Client Materials are accurate and will comply with all applicable Laws

## **18 LIABILITY**

18.1 Nothing in this Call-Off Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.

18.2 The Agency does not limit its liability in respect of the indemnity in Clause 20.14 (IPR).

18.3 Subject always to Clauses 18.1, 18.2 and 18.4, the maximum amount the Agency can be liable for in respect of all Defaults shall in no event exceed:

- (a) in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges estimated by the Client for the first Contract Year;
- (b) in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Agency under this Call-Off Contract in the previous Contract Year; and
- (c) in relation to any Defaults occurring in each Contract Year that commences after the end of the Initial Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Agency under this Call-Off Contract in the last Contract Year commencing during the Term;

18.4 Subject to Clause 18.1 and except for any claims arising under Clause 20.14, neither Party will be liable to the other in any situation for any:

- loss of profits
- loss of goodwill or reputation
- loss of revenue
- loss of savings whether anticipated or otherwise; or
- indirect or consequential loss or damage of any kind

18.5 Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Client's total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.

## **19 INSURANCE**

19.1 The Agency will hold insurance policies to the value sufficient to meet its liabilities in connection with this Call-Off Contract (including any specific insurance requirements as are set out in the Statements of Work). The Agency will provide the Client with evidence that such insurance is in place at the Client's request.

- 19.2 The Agency will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
- 19.3 If, for whatever reason, the Agency fails to comply with the provisions of this Clause 19 the Client may make alternative arrangements to protect its interests. If the Client does so, it may recover the premium and other costs of such arrangements as a debt due from the Agency.
- 19.4 Any insurance effected by the Agency will not relieve it of any liability under this Call-Off Contract. It is the Agency's responsibility to determine the amount of insurance cover that will be adequate to enable the Agency to satisfy any liability in relation to the performance of its obligations under this Call-Off Contract.
- 19.5 The Agency must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Agency will use all reasonable endeavours to notify the Client (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **20 INTELLECTUAL PROPERTY RIGHTS**

- 20.1 The Agency acknowledges that the Client retains ownership of Client Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Client Materials produced by the Agency in the course of providing the Services and Deliverables. The Client hereby grants to the Agency a non-exclusive licence to use the Client Materials during the applicable Project Term solely for the purposes of providing the Services and Deliverables.
- 20.2 The Agency hereby:
- 20.3 assigns to the Client all of the Intellectual Property Rights other than copyright and database rights in the Agency Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Agency Materials; and
- 20.4 assigns to the Crown all of the copyright and database rights in the Agency Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Agency Materials
- 20.5 All Intellectual Property Rights in the Agency Proprietary Materials remain the property of the Agency. The Agency grants to the Client a non-exclusive, royalty-free licence to use any Agency Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work.
- 20.6 Prior to delivery of the Deliverables to the Client, the Agency will obtain all licences or consents in respect of Third Party Materials that are required so the Client can use these Third Party Materials for the purposes set out in the Statement of Work. The Agency will notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials and the Client shall comply with such restrictions as are notified to it by the Agency.
- 20.7 The Agency agrees:

- at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Agency Materials and Deliverables; and
  - neither to do nor fail to do any act which would or might prejudice the Client's rights under this Clause 20.
- 20.8 To the extent permitted by law, the Agency shall ensure that all Moral Rights in the Agency Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the Agency Materials.
- 20.9 The Agency will use its reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Agency will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials). If the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Agency will notify the Client and will obtain the Client's Approval prior to incorporating such Third Party Materials into the Deliverables
- 20.10 Subject to obtaining the Approval of the Client, the Agency will be able during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches and in its showreel.
- 20.11 During the Term, if the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this Clause 20, the Agency will retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process. If the Agency is successful in such pitch and the Parties agree that such Materials will be used in a Project the Agency will assign all such Intellectual Property Rights to the Client.
- 20.12 The Agency is not liable in connection with this Call-Off Contract for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf after the Agency has handed them over. The Agency is also not liable if any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client or its Associates.
- 20.13 The terms of and obligations imposed by this Clause 20 continue after the termination of this Call-Off Contract.
- 20.14 The Agency will indemnify the Client in full against all costs, expenses, damages and losses (whether direct or indirect in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights in connection with the supply or use of the Services, if the claim is attributable to the acts or omission of the Agency or any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client.

## **21 AUDIT**

- 21.1 The Agency will keep and maintain full and accurate records and accounts of the operation of this Call-Off Contract, the Services provided under it, any Sub-Contracts and the amounts paid by the Client for at least 7 years after the Expiry Date or New Expiry Date, or such longer period as the Parties agree.
- 21.2 The Agency will:

- (a) keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law, and
- (b) afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Agency's premises and/or provide records and accounts (including copies of the Agency's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Agency and/or its Sub-Contractors with the Agency's obligations under this Call-Off Contract, and in particular to:
- verify the accuracy of the Contract Charges and any other amounts payable by the Client under this Call-Off Contract (and proposed or actual variations to them in accordance with this Call-Off Contract);
  - verify the costs of the Agency (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
  - verify the Agency's and each Sub-Contractor's compliance with the applicable Laws;
  - identify or investigate an actual or suspected act of fraud or bribery, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances, the Client is not obliged to inform the Agency of the purpose or objective of its investigations;
  - identify or investigate any circumstances which may impact upon the financial stability of the Agency or any Sub-Contractors or their ability to perform the Services;
  - obtain such information as is necessary to fulfil the Client's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes, including the supply of information to the Comptroller and Auditor General;
  - review any books of account and the internal contract management accounts kept by the Agency in connection with this Call-Off Contract;
  - carry out the Client's internal and statutory audits and to prepare, examine and/or certify the Client's annual and interim reports and accounts
  - enable the National Audit Office to carry out an examination under Section 6(1) of the National Audit Act 1983;
  - review any records relating to the Agency's performance of the provision of the Services and to verify that these reflect the Agency's own internal reports and records;
  - verify the accuracy and completeness of any information delivered or required by this Call-Off Contract;
  - inspect the Client Materials, including the Client's IPRs, equipment and facilities, for the purposes of ensuring that the Client Materials are secure; and
  - review the integrity, confidentiality and security of any Client data.

21.3 The Client will use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Agency or delay the provision of the Services (although the Agency accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Client.)

21.4 Subject to the Agency's rights in respect of Confidential Information, the Agency will, on demand, provide the Auditor(s) with all reasonable co-operation and assistance in providing:

- all reasonable information requested by the Client within the scope of the audit;
- reasonable access to sites controlled by the Agency and to any equipment used in the provision of the Services; and
- access to the Agency personnel.

21.5 The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, unless the Audit reveals a default by the Agency, whereby the Agency will reimburse the Client for the Client's reasonable costs incurred in relation to the Audit.

21.6 If an Audit reveals that the Client has been overcharged, the Agency will reimburse to the Client the amount of the overcharge within 30 days. If an Audit reveals the Agency has been underpaid, the Client shall pay to the Agency the amount of the underpayment within 30 days.

## **22 ADVERTISING STANDARDS**

22.1 Both parties acknowledge that they have a responsibility to comply with all relevant Advertising Regulations.

22.2 The parties will co-operate with each other to ensure satisfaction of the requirements of any applicable Advertising Regulation.

## **23 TERMINATION**

### ***Client Rights to Terminate***

23.1 The Client may, by giving not less than 3 month's written notice to the Agency, terminate this Call-Off Contract without cause.

23.2 The Client may terminate or cancel a Project at any time subject to Clause 9 and payment of all Contract Charges specifically set out at Clause 9.9.

23.3 The Client may terminate this Call-Off Contract or a Project by written notice to the Agency with immediate effect if the Agency:

- commits a material Default which cannot be remedied;
- repeatedly breaches any of the terms and conditions of this Call-Off Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
- commits a Default, including a material Default, which in the opinion of the Client is remediable but has not remedied such Default to the satisfaction of the Client within 30 days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
- breaches any of the provisions of Clauses 6.1 (Agency: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 32 (Prevention of Fraud and Bribery);
- is subject to an Insolvency Event; or
- fails to comply with legal obligations.

- 23.4 The Agency must notify the Client as soon as practicable of any Change of Control or any potential Change of Control.
- 23.5 The Client may terminate this Call-Off Contract with immediate effect by written notice to the Agency within 6 Months of:
- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
  - (b) where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 23.6 The Client may terminate this Call-Off Contract or a Project by giving the Agency at least 14 days' notice if:
- (a) the Framework Agreement is terminated for any reason;
  - (b) the Parties fail to agree a Variation under Clause 9; or
  - (c) the Agency fails to implement an agreed Variation.
- 23.7 Where this Call-Off Contract is conditional upon the Agency procuring a Guarantee pursuant to Clause 3 (Call Off Guarantee), the Client may terminate this Call Off Contract by issuing a notice of termination Notice to the Agency where:
- (a) the Guarantor withdraws the Guarantee for any reason;
  - (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
  - (c) an Insolvency Event occurs in respect of the Guarantor; or
  - (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever,
- and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Client; or
- (e) the Agency fails to provide the documentation required by Clause 3.1 by the date so specified by the Client.

### ***Agency Rights to Terminate***

- 23.8 The Agency may terminate a Project and any Statement of Work in respect of that Project by written notice to the Client if:
- (a) the Client has not paid any undisputed amounts falling due under that Project, and
  - (b) the undisputed sum due remains outstanding for 40 Working Days after the Client has received a written notice of non-payment from the Agency specifying:
    - the Client's failure to pay;
    - the correct overdue and undisputed sum;
    - the reasons why the undisputed sum is due; and
    - the requirement on the Client to remedy the failure to pay

This right of termination does not apply where the failure to pay is due to the Client exercising its rights under this Call-Off Contract (including the right to set off under Clause 30).

## **24 CONSEQUENCES OF TERMINATION**

- 24.1 Termination of a Project (and any Statement of Work in respect of that Project) in accordance with the terms of this Call-Off Contract by either Party shall not serve to terminate this Call-Off Contract, which will continue in full force and effect.
- 24.2 If this Call-Off Contract is terminated, all ongoing and outstanding Projects (and any Statements of Work in respect of those Projects) will also terminate on the same date as this Call-Off Contract.
- 24.3 Upon termination of this Call-Off Contract or a Project for any reason:
- the Expiry Date or New Expiry Date shall be the date this Call-Off Contract terminates;
  - the Client will pay the Agency all Contract Charges falling properly due and payable to the Agency prior to the date of termination (in accordance with Clause 9 where relevant);
  - each Party will, following a reasonable request by the other Party, promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects. On the request of the other Party, each will certify in writing that the same has been done; and
  - the agency and its staff will vacate any premises of the Client occupied for any purpose of providing the Services or Deliverables.
- 24.4 Any provisions of this Call-Off Contract which are to continue after termination will remain in full force and effect after this Call-Off Contract is terminated. Such provisions may include (but are not limited to):
- (a) Clause 15 (Confidentiality)
  - (b) Clause 16 (Agency warranties)
  - (c) Clause 17 (Client warranties)
  - (d) Clause 18 (Liability)
  - (e) Clause 19 (Insurance)
  - (f) Clause 20 (Intellectual Property Rights)
  - (g) Clause 21 (Audit)
  - (h) Clause 24 (Consequences of Termination)
  - (i) Clause 25 (Notices)
  - (j) Clause 27 (Staff Transfer)
  - (k) Clause 33 (General) and
  - (l) Clause 34 (Governing law and jurisdiction)

## **25 FORCE MAJEURE**

- 25.1 Neither Party will have any liability under or be in breach of this Call-Off Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a **Force Majeure Event** and the **Affected Party**).
- 25.2 Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for 60 consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this Framework Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.
- 25.3 If a Force Majeure event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Call-Off Contract as far as is possible. Where the Agency is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## 26 NOTICES

- 26.1 Any notices sent under this Call-Off Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

Notice delivered	Deemed time of delivery	Proof of service
In person	At the time of delivery	Proof that delivery was made (e.g. a signature is obtained)
By first class post, special delivery or other recorded delivery	2 Working Days from the date of posting	Proof that the envelope was addressed and delivered into the custody of the postal authorities
Email	09:00 hours on the first Working Day after sending	Dispatched in an emailed pdf to the correct email address without any error message

- 26.2 The address and email address of each Party will be:

- (i) Agency:
- (b) Client:

- 26.3 For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

## 27 STAFF TRANSFER

- 27.1 The Parties agree that

- (a) if providing the Services means staff must be transferred from the Client to the Agency, where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 3 (Staff Transfer) will apply as follows:
  - (i) where the Relevant Transfer involves the transfer of Transferring Client Employees, Part A of Schedule 3 (Staff Transfer) will apply

- (ii) where the Relevant Transfer involves the transfer of Transferring Former Agency Employees, Part B of Schedule 3 (Staff Transfer) will apply
  - (iii) where the Relevant Transfer involves the transfer of Transferring Client Employees and Transferring Former Agency Employees, Parts A and B of Schedule 3 (Staff Transfer) will apply, and
  - (iv) Part C of Schedule 3 (Staff Transfer) will not apply
- 27.2 Where providing the Services does not result in a Relevant Transfer, Part C of Schedule 3 (Staff Transfer) will apply and Parts A and B of Schedule 3 (Staff Transfer) shall not apply; and
- 27.3 Part D of Schedule 3 (Staff Transfer) will apply on the expiry or termination of the Services or any part of the Services.
- 27.4 Both during and after the Term, the Agency will indemnify the Client against all Employee Liabilities that may arise as a result of any claims brought against the Client due to any act or omission of the Agency or any Agency personnel.

## **28 THIRD PARTY RIGHTS**

- 28.1 Except for CCS and the persons that the provisions of Schedule 3 of this Call-Off Contract confer benefits on, a person who is not a Party to this Call-Off Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

## **29 DATA PROTECTION, SECURITY AND PUBLICITY**

- 29.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Agency is the Processor. The only processing that the Agency is authorised to do is listed in Schedule 8 (Authorised Processing Template) by the Client and may not be determined by the Agency.
- 29.2 The Agency shall notify the Client immediately if it considers that any of the Client instructions infringe the Data Protection Legislation.
- 29.3 The Agency shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 29.4 The Agency shall, in relation to any Personal Data processed in connection with its obligations under this Call Off Contract:
- (a) process that Personal Data only in accordance with Schedule 8 (Authorised Processing Template), unless the Agency is required to do otherwise by Law. If it is so required the Agency shall promptly notify the Client before processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures which have been reviewed and approved by the Client 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 Agency Personnel do not process Personal Data except in accordance with this Call Off Contract (and in particular Schedule 8 (Authorised Processing Template));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Agency Personnel who have access to the Personal Data and ensure that they:
    - (iii) are aware of and comply with the Agency's duties under this Clause;
    - (iv) are subject to appropriate confidentiality undertakings with the Agency or any Sub-processor;
    - (v) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Call Off Contract; and
  - (vi) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - (i) the Client or the Agency has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Client;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Agency complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and
  - (iv) the Agency complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of the Call Off Contract unless the Agency is required by Law to retain the Personal Data.

29.5 Subject to Clause 29.7, the Agency shall notify the Client 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 Call Off 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.
- 29.6 The Agency's obligation to notify under Clause 29.5 shall include the provision of further information to the Client in phases, as details become available.
- 29.7 Taking into account the nature of the processing, the Agency shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 29.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- (a) the Client with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Client following any Data Loss Event;
  - (e) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 29.8 The Agency shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Agency employs fewer than 250 staff, unless:
- (a) the Client determines that the processing is not occasional;
  - (b) the Client determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Client determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 29.9 The Agency shall allow for audits of its Data Processing activity by the Client or the Client designated auditor.
- 29.10 The Agency shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 29.11 Before allowing any Sub-processor to process any Personal Data related to this Call Off Contract, the Agency must:
- (a) notify the Client in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Client;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 29.11 such that they apply to the Sub-processor; and
  - (d) provide the with such information regarding the Sub-processor as the Client may reasonably require.

- 29.12 The Agency shall remain fully liable for all acts or omissions of any Sub-processor.
- 29.13 The Agency 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 Call Off Contract).
- 29.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Agency amend this Call Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **Publicity and Branding**

- 29.15 The Agency may not make any press announcements or publicise this Call-Off Contract or use the Client's name or brand in any promotion or marketing or announcement of orders without Approval from the Client.
- 29.16 The Agency will seek the Client's prior Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

## **30 RETENTION AND SET OFF**

- 30.1 If the Agency owes the Client any money, the Client may retain or set off this money against any amount owed to the Agency under this Call-Off Contract or any other agreement between the Agency and the Client. In order to exercise this right, the Client will, within 30 days of receipt of the relevant invoice, notify the Agency of its reasons for retaining or setting off the relevant Contract Charges.
- 30.2 The Agency will make any payments due to the Client without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Agency has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Client.

## **31 INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

- 31.1 Where the Agency or any Agency personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call-Off Contract, the Agency will:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, and
  - (b) indemnify the Client against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Agency or any Agency Personnel.
- 31.2 If any of the Agency Personnel is a Worker as defined in Call-Off Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 31.1, the Agency must ensure that its contract with the Worker contains the following requirements:
- (a) that the Client may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause

31.1, or why those requirements do not apply to it. In such case, the Client may specify the information which the Worker must provide and the period within which that information must be provided

- (b) that the Worker's contract may be terminated at the Client's request if:
  - (i) the Worker fails to provide the information requested by the Client within the time specified by the Client under Clause 31.2(a). and/or
  - (ii) the Worker provides information which the Client considers is inadequate to demonstrate how the Worker complies with Clause 31.2(a), or confirms that the Worker is not complying with those requirements
- (c) that the Client may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **32 PREVENTION OF FRAUD AND BRIBERY**

32.1 The Agency represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

32.2 The Agency must not:

- (a) commit a Prohibited Act; or
- (b) do or suffer anything to be done which would cause the Client or any of the Client's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

32.3 The Agency shall during the Term:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) keep appropriate records of its compliance with its obligations under 32.3 (a) and make such records available to the Client on request;
- (c) if so required by the Client, within 20 Working Days of the Effective Date, and annually thereafter, certify to the Client in writing that the Agency and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call-Off Contract are compliant with the Relevant Requirements. The Agency shall provide such supporting evidence of compliance as the Client may reasonably request; and

32.4 have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Agency staff or Sub-Contractors or any person acting on the Agency's behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Client on request.

32.5 The Agency shall immediately notify the Client in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Agency staff or Sub-Contractors have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call-Off Contract; or
  - (d) otherwise suspects that any person or Party directly or indirectly connected with this Call-Off Contract has committed or attempted to commit a Prohibited Act.
- 32.6 If the Agency makes a notification to the Client under to Clause 32.5, the Agency shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
- 32.7 If the Agency breaches Clause 32.5, the Client may by notice:
- (a) require the Agency to remove any Agency Personnel whose acts or omissions have caused the Agency's breach from any Project; or
  - (b) immediately terminate this Call-Off Contract for material Default.
- 32.8 Any notice served by the Client under Clause 32.5 shall set out:
- the nature of the Prohibited Act;
  - the identity of the Party who the Client believes has committed the Prohibited Act;
  - the action that the Client has elected to take; and
  - if relevant, the date on which this Call-Off Contract shall terminate.

### **33 GENERAL**

- 33.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Call-Off Contract, and that this Call-Off Contract is executed by its duly authorised representative.
- 33.2 This Call-Off Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Call-Off Contract on the basis of any representation that is not expressly incorporated into this Call-Off Contract.
- 33.3 Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
- 33.4 Any entire or partial waiver or relaxation of any of the terms and conditions of this Call-Off Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular breach of this Call-Off Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Call-Off Contract.
- 33.5 This Call-Off Contract does not constitute or imply any partnership, joint venture, agency, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Call-Off Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party's behalf.

- 33.6 Unless expressly stated in this Call-Off Contract, all remedies available to either Party for breach of this Call-Off Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
- 33.7 If any provision of this Call-Off Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Call-Off Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Call-Off Contract.

#### **34 DISPUTE RESOLUTION**

- 34.1 The Parties shall resolve Disputes in accordance with the Dispute Resolution Procedure.
- 34.2 The Agency shall continue to provide the Services in accordance with the terms of this Call-Off Contract until a Dispute has been resolved.

#### **35 GOVERNING LAW AND JURISDICTION**

- 35.1 This Agreement will be governed by the laws of England and Wales.
- 35.2 Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all disputes shall be conducted within England and Wales.

## SCHEDULE 1

### Definitions and Interpretation

#### 1 INTERPRETATION

1.1 In this Call-Off Contract, any references to numbered Clauses and schedules refer to those within this Call-Off Contract unless specifically stated otherwise. If there is any conflict between this Call-Off Contract, the Letter of Appointment, the provisions of the Framework Agreement and the Statements of Work(s), the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Framework Agreement, except Framework Schedule 9 (Tender)
- (b) the Letter of Appointment (except the Agency Proposal)
- (c) the Call-Off Contract Terms
- (d) the Statement of Work
- (e) the Agency Proposal, and
- (f) Framework Schedule 9 (Tender)

1.2 The definitions and interpretations used in this Call-Off Contract are set out in this Schedule 1.

1.3 Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.

1.4 Unless the context otherwise requires:

- words importing the singular meaning include where the context so admits the plural meaning and vice versa
- words importing the masculine include the feminine and the neuter and vice versa
- the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them
- references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
- references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
- headings are included in this Call-Off Contract for ease of reference only and will not affect the interpretation or construction of this Call-Off Contract
- If a capitalised expression does not have an interpretation in Call-Off Schedule 1 (Definitions) or relevant Call-Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall be interpreted in accordance with the relevant market sector/industry. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.5 In this Call-Off Contract, the following terms have the following meanings:

**“Advertising Regulations”**

Any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority

(including any applicable modification, extension or replacement thereof), together with other UK laws, statutes and regulations which are directly applicable to the Services.

**“Agency Affiliate”**

Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Agency, including as a subsidiary, parent or holding company.

**“Agency Confidential Information”**

Any information that the Agency gives to Clients that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however it is conveyed, that relates to the Agency’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all IPRs.

**“Agency Materials”**

Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Agency for the purposes of a Project, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Client Materials).

**“Agency Proprietary Materials”**

Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Agency and which:

- were in existence prior to the date on which it is intended to use them for a Project, or
- are created by or for the Agency outside of a Project and which are intended to be reused across its business

**“Agency Proposal”**

The Agency’s solution in response to the Client’s Brief, as set out in the Letter of Appointment.

**“Approval”**

Formal Approval from one Party to another, given in accordance with Clause 10.1 or 10.2.

**“Associates”**

A Party’s employees, officers, agents, sub-contractors or authorised representatives.

**“Authorised Agency Approver”**

Any personnel of the Agency who have the authority to contractually bind the Agency in all matters relating to this Call-Off Contract. They must be named in the applicable Statement of Work, and the Client must be notified if they change.

**“Authorised Client Approver”**

Any personnel of the Client who have the authority to contractually bind the Client in all matters relating to this Call-Off Contract. They must be named in the applicable Statement of Work, and the Agency must be notified if they change.

**“Call-Off Contract”**

This contract between the Client and the Agency (entered into under the provisions of the Framework Agreement), which consists of the terms set out in the Letter of Appointment, the Call Off Terms, the Schedules and any Statement of Work.

### **“Call Off Terms”**

The terms and conditions set out in this Call-Off Contract including this Schedule 1 but not including any other Schedules or Statement of Work.

### **“Central Government Body”**

A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- Government Department;
- Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- Non-Ministerial Department; or
- Executive Agency

### **“Change of Control”**

Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988.

### **“Client Affiliates”**

Any organisation associated with the Client that will directly receive the benefit of the Services. Client Affiliates must be named in a Statement of Work, or subsequently notified to the Agency.

### **“Client Brief”**

The document containing the Client’s requirements issued as part of the Call Off Process set out in Section 3 of the Framework Agreement.

### **“Client Cause”**

A situation where the Client does not fulfil its obligations in connection with this Call-Off Contract (including its payment obligations), and as a consequence the Agency is prevented from performing any of the agreed Services and/or providing any of the agreed Deliverables.

### **“Client Confidential Information”**

All Client Data and any information that the Client or CCS gives to Agencies that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Client’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers.

### **“Client Data”**

Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Client’s Confidential Information, supplied to the Agency by or on behalf of the Client, or which the Agency is required to generate, process, store or transmit in connection this Call-Off Contract, and any Personal Data for which the Client is the Data Controller.

### **“Client Materials”**

Any Client Data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to the Agency or its Associates by or on behalf of the Client.

**“Confidential Information”**

The Client’s Confidential Information and/or the Agency Confidential Information.

**“Contract Charges”**

All charges payable by the Client for the Services provided under this Call-Off Contract calculated in accordance with Framework Schedule 3 (Charges Structure) and the Letter of Appointment including all Approved costs properly incurred by the Client including but not limited to all Expenses, disbursement, taxes, sub-contractor or third party costs, and fees.

**“Contracting Body”**

CCS, the Client and any other bodies listed in the OJEU Notice.

**“Contract Year”**

A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof.

**“Controller”**

Has the meaning given in the GDPR.

**“Data Protection Legislation”**

- the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- the DPA to the extent that it relates to processing of personal data and privacy;
- all applicable Law about the processing of personal data and privacy;

**“Data Protection Officer”**

Has the meaning given in the GDPR

**“Data Subject”**

Has 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"**

Any breach of the obligations of the Agency (including but not limited failing to provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), and abandonment of this Call-Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Agency, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Call-Off Contract and in respect of which the Agency is liable to the Client

**“Deliverables”**

The advertising, creative and other materials which are to be provided by the Agency as specified in a Statement of Work.

**"Dispute"**

Any dispute, difference or question of interpretation arising out of or in connection with this Call-Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Call-Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.

**"Dispute Resolution Procedure"**

The dispute resolution procedure set out in Call-Off Schedule 4 (Dispute Resolution Procedure).

**"DPA"**

Means the Data Protection Act 2018 as amended from time to time;

**"Effective Date"**

The date this Call-Off Contract starts, as set out in the Letter of Appointment.

**"EIRs"**

The Environmental Information Regulations 2004 together with any guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

**"Expenses"**

Reasonable travelling, hotel, subsistence and other expenses incurred by the Agency in connection with the supply of Services and Deliverables, provided that such Expenses have either received the Client's prior Approval or are in accordance with any expenses policies which have been supplied to the Agency and set out in the agreed Statement of Work.

**"Expiry Date"**

The date this Call-Off Contract ends, as set out in the Letter of Appointment.

**"Extension Expiry Date"**

The latest date this Call-Off Contract can end, as set out in the Letter of Appointment.

**"Framework Agreement"**

The framework agreement between Crown Commercial Services and the Agency reference number: RM3796 referred to in the Letter of Appointment.

**"Framework Prices"**

The maximum charges the Agency may charge as set out in Schedule 3 to the Framework Agreement.

**"Force Majeure"**

means:

- 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
- fire, flood, any disaster and any failure or shortage of power or fuel
- an industrial dispute affecting a third party for which a substitute third party is not reasonably available

but does not mean

- any industrial dispute relating to the Agency, its staff, or any other failure in the Agency's (or a subcontractor's) supply chain
- 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, and
- any failure of delay caused by a lack of funds

**“FOIA”**

The Freedom of Information Act 2000 as amended from time to time 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.

**“Further Competition Procedure”**

The process of a Client issuing a Brief and the Agency submitting a proposal in response to such Brief, as set out in Framework Clause 3.10.

**“GDPR”**

Means the General Data Protection Regulation (Regulation (EU) 2016/679).

**“Good Industry Practice”**

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.

**“Guarantee”**

A deed of guarantee that may be required under this Call Off Contract in favour of the Client in the form set out in Framework Schedule 9 (Guarantee) granted pursuant to Clause 3 (Call Off Guarantee).

**“Guarantor”**

The person, in the event that a Guarantee is required under this Call Off Contract, acceptable to the Client to give a Guarantee.

**“Impact Assessment”**

The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4.

**“Information”**

The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time.

**“Insolvency Event”**

In respect of the Agency, where:

- a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or
- a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- a petition is presented for its winding up (which is not dismissed within fourteen (14) Working 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
- a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 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
- it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- where the Agency is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or
- any event analogous to these listed in this definition occurs under the law of any other jurisdiction

#### **“Intellectual Property Rights” or “IPRs”**

The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:

- any patents or patent applications
- any trade marks (whether or not registered)
- inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration
- copyright or design rights (whether registered or unregistered)
- database rights
- performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world
- any goodwill in any trade or service name, trading style or get-up and
- any and all other intellectual or proprietary rights

#### **“Key Individuals”**

Individuals named by the Agency in the Letter or Appointment or Statement of Work as having a major responsibility for delivering the Services.

#### **"Law"**

Any law, subordinate legislation, bye-law, enforceable right, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Agency has to comply.

#### **“LED”**

Means the Law Enforcement Directive (Directive (EU) 2016/680)

#### **"Letter of Appointment"**

The Letter of Appointment, substantially in the form set out in Framework Schedule 4, signed by both Parties and dated on the Effective Date.

**“Losses”**

Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.3.

**“Malicious Software”**

Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

**“Materials”**

Any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, software, or any other material protected by Intellectual Property Rights.

**“Moral Rights”**

All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world.

**“New Expiry Date”**

Has the meaning given to it in Clause 2.3

**“Personal Data”**

Has the meaning given in the GDPR.

**“Personal Data Breach”**

Has the meaning given in the GDPR.

**“Processor”**

Has the meaning given in the GDPR

**“Prohibited Act”**

means any of the following:

- to directly or indirectly offer, promise or give any person working for or engaged by the Client and/or CCS or any other public body a financial or other advantage to:
- induce that person to perform improperly a relevant function or activity; or
- reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- committing any offence:
  - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
  - under legislation or common law concerning fraudulent acts; or

- defrauding, attempting to defraud or conspiring to defraud the Client; or
- any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

**“Project”**

Any project(s) agreed between the Parties from time to time by which the Agency is to perform the Services which are the subject of this Call-Off Contract and supply Deliverables to the Client as more fully described in the applicable Statement of Work.

**“Project Commencement Date”**

The date a Project will start, as set out in the relevant Statement of Work.

**“Project Completion Date”**

The date by which a Project is to be completed, as set out in the relevant Statement of Work.

**“Project Notice Period”**

The period of notice for cancellation of a Project as set out in the Statement of Work.

**“Project Term”**

The period during which the Services for each Project will be provided as specified in the applicable Statement of Work.

**“Purchase Order Number”**

The order number set out in the Letter of Appointment.

**“Rate Card”**

The Agency’s rate card set out in Framework Schedule 3.

**“Records”**

The accounts and information maintained by the Agency related to the operation and delivery of this Call-Off Contract, including all expenditure which is reimbursable by the Client, as are necessary for the provision of management information and to enable the Client to conduct an audit as set out in Clause 21.

**“Rectification Plan”**

The rectification plan pursuant to the Rectification Plan Process.

**“Rectification Plan Process”**

The process set out in Clauses 5.8 to 5.14.

**“Regulations”**

Has the meaning given to it in Framework Schedule 1 (Definitions)

**“Relevant Requirements”**

All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

**“Request for Information”**

A request for information or an apparent request relating to this Call-Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs.

**“Schedule”**

Any Schedule attached to this Call-Off Contract.

**“Services”**

The Services to be supplied by the Agency under this Call-Off Contract and in accordance with Framework Section 2, and as may be more particularly set out in the relevant Statement of Work. This includes the provision of Deliverables.

**“Special Terms”**

Any terms specifically designated as varying these Call Off Terms or the terms of any schedule, as set out in the applicable Statement of Work.

**“Standards”**

Any:

- standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Agency would reasonably and ordinarily be expected to comply with;
- standards detailed in the specification in Framework Section 2 (Services and Key Performance Indicators);
- standards detailed by the Client in the Letter of Appointment and any Statement of Work or agreed between the Parties from time to time;
- relevant Government codes of practice and guidance applicable from time to time.

**“Statement of Work”**

One or more documents (including the schedules attached) describing the relevant Project(s) as agreed and signed by the parties either as part of the Letter of Appointment or as a separate document under Clause 1.

**“Sub-Contract”**

A contract entered into between the Agency and a Sub-Contractor.

**“Sub-Contractor”**

Any person or agency appointed by the Agency to provide elements of the Services on behalf of the Agency to the Client.

**“Tender”**

The tender submitted by the Agency in response to the Invitation to Tender and set out at Framework Schedule 10 (Call Off Tender);

**“Term”**

The period from the Effective Date to the earlier of:

- (a) the Expiry Date or New Expiry Date; and
- (b) any date of termination

**“Territory”**

The United Kingdom, unless specified otherwise in the applicable Statement of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide.

**“Third Party Materials”**

Any Materials used in the Deliverables which are either commissioned by the Agency from third parties or which have already been created by a third party and the Agency proposes to use. Excludes software which is owned or licensed by a third party.

**“Transparency Principles”**

The principles set out at <https://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public> (and as may be amended from time to time) detailing the requirement for the proactive release of information under the Government’s transparency commitment to publish contract information

**“Transparency Reports”**

The information relating to the Services and performance of this Call-Off Contract which the Agency is required to provide to the CCS in accordance with its reporting requirements.

**“Variation”**

A change in this Call-Off Contract that is formally agreed by both Parties, as detailed in Clause 10.2.

**“Variation Form”**

The template form to process and record variations to this Call-Off Contract as set out at Schedule 5.

**“Worker”**

Any Agency personnel to whom the Client considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies

See <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>

**“Working Day”**

Any day other than a Saturday, Sunday or public holiday in the UK.

## SCHEDULE 2

### Specification of Services, Contract Management & Performance Management Framework

As per Annex A and B of the Letter of Appointment.

#### Part A: Client Brief

##### 1. Background

- 1.1 The Communication and Marketing (C&M) Directorate in the Department for International Trade (DIT), the "Client", is responsible for all the marketing activity undertaken by the various teams across the Department, including that which is centralised within the Directorate itself and those marketing responsibilities devolved to the wider organisation.
- 1.2 The Client has the ambition to be the best marketing department across Whitehall and the best Trade Promotion Agency (TPA) globally. To facilitate this, the Client is looking to revolutionise the ways of working and the way marketing is approached.
- 1.3 Specifically, the Client is looking to enhance its Customer Relationship Management (CRM) programme by engaging and managing relationships with specific domestic and global audiences using an automated, content driven marketing approach, including the use of existing Client data and data supplied by third parties through related and unrelated campaign activity.
- 1.4 The Client requires an Agency that is data driven and able to provide an automated communication programme as part of the Client's wider marketing activities.
- 1.5 This is a new way of working for the Client, and as such this Call-Off Contract will act as a pilot programme. The Agency is asked to devise a strategy for a set number of campaigns, deploy the automated content marketing, report on its success and develop a set of key performance indicators to manage such a service. The outcomes of this Call-Off Contract will feed into a follow up procurement for a longer-term service, should it prove effective.
- 1.6 The Agency has a unique opportunity to work with a business facing Government Department to revolutionise marketing effectiveness in the public sector.

##### 2. The Challenge

- 2.1 The Client wishes to swiftly demonstrate the capabilities and value in automation of content marketing through a scalable pilot in order to prove the concept that it can revolutionise its marketing, promotion and service delivery through integrated digital marketing campaigns.
- 2.2 The Client has, over the past few years, been endeavouring to evolve the way in which it communicates with businesses both domestically and internationally, across a trade and invest agenda.
- 2.3 The Client's C&M Team have been running three (3) core campaigns which expressly align to three core departmental objectives:
  - 2.3.1 Domestically, the Client wishes to inspire, encourage and support companies to start exporting and to export more;
  - 2.3.2 Internationally on trade, the Client wishes to drive demand for UK-supplied goods and services; and
  - 2.3.4 Internationally on investment, the Client wishes to encourage potential new investors (primarily organisations) to choose the UK as a first-choice destination to grow.

- 2.4 The campaigns, since inception, have delivered strong, broad levels of awareness and attraction across the various audience segments.
- 2.5 However, when dealing with generating hand raisers, leads and enquiries, the current model is underperforming against the Client's expectations.
- 2.6 The Client has been unable to individually offer a more bespoke programme of engagement with individual contacts, nor follow them through their journey or even to be able to attribute any outcomes to marketing involvement, engagement or intervention. Much of this problem stems from lack of access to a CRM system.
- 2.7 The Client is looking to push for change and evolution and to support wider digital transformation.
- 2.8 The Client is now in possession of a single repository for organisational data called "Data Hub", with which the C&M Team and the Agency will have access to, or the ability to request information from.
- 2.9 The Client is also committed to develop a Content Marketing System (CMS) to support future needs and developments to the existing DIT website to make it more customer centric and more marketing campaign friendly.
- 2.10 The Client is now ready to move to the stage of development where automation meets tailored content which is then delivered to the target audiences through the appropriate channels in order to enthuse them, engage them and motivate them to act.
- 2.11 In order for marketing to take this next step and deliver a more tailored and solution orientated customer approach, the Agency must have the ability to apply insight and to have an analytical and data centric approach to offer audience relevant and timely content across of range of channels that are fit for purpose for suspects, prospects and customers.
- 2.12 The Agency will be a specialist in this area of marketing with proven data driven content marketing experience to support the Client in strategic, innovative thinking and input, as well as possessing strong technical capabilities with effortless programme management to deliver this new way of working to meet the challenge.
- 2.13 The Agency will be appointed to deliver a six (6) month pilot programme to validate the principle of applying a content marking approach using data, insight and automation technology. This will follow a short period of strategic planning for the pilot (maximum of three (3) months).

### 3. Mandatory Constraints & Services Required

- 3.1 The Agency will need to be able to think strategically and to tailor an agreed model of activation using technologies that will deliver tangible and measurable results.
- 3.2 There are three (3) main areas of delivery (deliverables): Strategy Development; Content Marketing Automation; and Insight & Analytics, which are explained in the following points.

#### **3.3 Strategic Development**

This is development of the strategy for the rollout of the automated content marketing across the campaigns. The respective campaigns this programme will support will require a high degree of integration with existing objectives. Acting as a "swimlane" of activity, this planned activity will need to help define the evolution of thinking of future activity with regards to lead generation and acquisition as well as setting the gold standard for undertaking and managing nurture programmes to increase conversion rates.

Proceeding to the next stage (3.4) is dependent on approval of the strategy by the Client.

The Client's Campaign Teams for both of the campaigns will approve any devised strategy. Following this approval, the Client's Deputy Director of Marketing will approve the strategy. Only upon written approval will this deliverable be considered complete.

Should the Client not approve the Agency's strategy, the Agency will endeavour to make any suggested improvements within five (5) working days for resubmission to the Client.

The Client will not accept any Agency invoice until there is written confirmation from the Client of Client Approval at both the levels stated above.

### 3.4 **Content Marketing Automation**

This will be execution of an approved strategy. The Agency will have access to a central data repository, an online CMS and a website being enhanced to offer a more customer centric experience. The Agency will need to deliver communications through a robust and technically innovative and flexible marketing platform using a data driven evidence-based approach.

### 3.5 **Insight & Analytics**

The Agency will need to evidence the rationale for any activity and its subsequent outcomes and use this data to establish clear performance measures to monitor the success of the content marketing automation. Furthermore, the Agency will need to use the insight and analytics gained to exploit unknowns and where the Client's usual focus isn't and demonstrate how this data can be used going forward.

3.6 Further to the three (3) main areas of delivery, the Agency may also be requested to support in the delivery of channel agnostic content design and direct marketing.

3.7 The two (2) campaigns that the services will be applied to are:

3.7.1 Exporting is Great (EiG): a domestic campaign focused on potential and existing exporters; and

3.7.2 Invest in GREAT Britain (IiGB): an international facing campaign focused on potential Investors to the UK

3.8 The services will also be applied to a sub-campaign within EiG: E-Exporting which focusses on UK businesses selling online.

## 4. Constraints that may preclude the Agency from accepting this brief

4.1 An Agency may be precluded from accepting this brief if they have:

4.1.1 Limited experience of content and marketing automation practices;

4.1.2 Limited experience with CRM and CMS systems;

4.1.3 Limited experience in selecting and managing marketing platforms; and

4.1.4 Conflicts of Interest

## 5. Budget and timescales

5.1 The budget for this Call-Off Contract is £800,000 (excluding VAT), which includes all costs associated with the deliverables 3.3, 3.4 and 3.5 and may include some additional services as per 3.6. This includes fees, provision and activation of all necessary digital platforms alongside resources to integrate all necessary relevant technical systems to those across the Client's network.

- 5.2 The Client and Agency have agreed the following pricing (exclusive of VAT):
- 5.2.1 £117,420 - for Strategy Development (and to include any system provision and system integrations);
  - 5.2.2. £465,254.40 - for Automated Content Marketing Deployment (and to include any asset development);
  - 5.2.3 £78,318 - for Insight & Analytics (and to include any system development and integration); and
  - 5.2.4 The remaining £139,007.60 of the budget left available is for additional services to be called off according to a Schedule of Rates if required and the Client is not committed spending any value of this.

5.3 Travel and subsistence (expenses) will not be paid.

5.4 The work will begin in March 2019 and the pilot run from April – September 2019.

## 6. Outcome Goals of the Project

- 6.1 The objective for the Client is to implement and evidence the value and success of a new way of working in respect of marketing.
- 6.2 Initially supporting two (2) campaign teams, the programme devised and rolled out by the Agency needs to demonstrate how much more efficient, effective and successful a data driven, automated, content marketing programme is when compared to the current operating model.
- 6.3 The programme devised and implemented needs to offer a new set of solutions to lead generation and then the ability to efficiently nurture these leads to tangible and measurable outcomes against agreed targets.
- 6.4 The Agency needs to make use of data held with the Client's internal database, secured from partner organisations and generated from any large-scale event that offers data capture opportunities within scope of this work.
- 6.5 The Agency will also be required to develop a set of Key Performance Indicators (KPIs) to help measure and establish what success looks like in respect of the Content Marketing Automation.
- 6.6 Secondary to the above points, further goals include:
  - 6.6.1 support campaigns to achieve or exceed their individual domestic and global targets;
  - 6.6.2 offer an evolved operating model for campaigns addressing the issues around engagement, perceptions, motivations and action;
  - 6.6.3 develop a substantive evidence backed solution to overarching strategic approach of each campaign on programme outcomes with a practical global roll out plan for consideration

## 7. Business Objectives

- 7.1 The services provide here will help to support the UK Government's digital-first approach, which seeks to optimise the impact of available budgets as well as offering an economical model to encourage self-service where possible.

- 7.2 The Client believes that delivering a data driven automated content marketing programme through what would be an omni-channel model using technology should mean the Client is able to support this overarching agenda.
- 7.3 The Agency will need to draw data from and connect their marketing platform to the following range of owned channels and consider the following when devising a strategy to roll out the content marketing programme:
- 7.3.1 **Website** – the main channel here is great.gov.uk, and there is an impending upgrade to the content and functionality of this site.
  - 7.3.2 **Social Media** – teams are likely to be operating specific social media accounts. Consideration needs to be taken on how to evolve the value, impact and use of these going forward as part of the integrated model delivering content marketing through automated processes.
  - 7.3.3 **LinkedIn** – similar consideration needs to be taken here as per the other social media platforms.
  - 7.3.4 **Email** – there is a standalone email marketing platform currently in operation (Cheetah Mail), and it is expected for the Agency's marketing platform that is used to have integrated email functionality, however the Agency must explore how the current email platform can be used to add value
  - 7.3.5 **Events** – the Client runs circa 2,400 global events per year. Data from these events must be used by the Agency to take advantage of opportunities to generate a specific spike in engagement through automated content marketing
  - 7.3.6 **Events Management Platform** – the Client has an Events Management Platform which will enable the Tenderer to exploit access to prospective and active event attendees
- 7.4 There is a heavy focus on digital integration, which the Client believes is imperative for the Agency to successfully prove that data driven automate content marketing is effective.
8. Brand Objectives and arrangements
- 8.1 The programme will use the appropriate GREAT Campaign branding which supports the overarching propositions.
  - 8.2 If and where asset creation is required, both campaigns (EiG and liGB) will need to use the consistency of GREAT Branding. The Client's Brand Teams will offer appropriate guidance and approval where necessary.
  - 8.3 Compliance with the GREAT Branding is a KPI of the Call-Off Contract.
9. Policy Objectives to be achieved
- 9.1 By implementing this new model of marketing, it is expected the Agency appointed will support the Client in achieving the following policy objectives:
    - 9.1.1 Perceptions of the UK;
    - 9.1.2 Propensity to trade with and invest in the UK;
    - 9.1.3 Intent to export and invest;
    - 9.1.4 Conversion ratios;

- 9.1.5 Engagement levels;
- 9.1.6 Operating efficiencies;
- 9.1.7 Budget spends;
- 9.1.8 Customer satisfaction;
- 9.1.9 Leaner, more effective customer journeys; and
- 9.1.10 Increased income to the UK

9.2 In reference to clause 6.5 of this Schedule 1 (Specification of Requirements), prior to the commencement of the go-live of the automated content marketing on the campaigns, the Agency and Client will outline KPIs that can monitor the performance and achievement levels in respect of the policy objectives in 9.1.

## 10. Current Data and Research

- 10.1 As well as accessing the various data sets in possession by the Client, the Agency will be required to perform its own desk research to draw out useful insight for the programme to supplement what is already offered.
- 10.2 The Agency has been provided with relevant research and information materials as part of the further competition processes used to award this Call-Off Contract.

## 11. Audiences

11.1 The primary audiences for the EiG campaign are:

- 11.1.1 New/Occasional/Regular;
- 11.1.2 New/Lapsed/Existing; and
- 11.1.3 UK Business Population

Audiences for the liGB Campaign have been provided to the Agency in the procurement documentation.

- 11.4 The successful Agency is required to offer initial insight on these audience data sets and how they could be refined, adapted, or reconsidered.
- 11.5 The successful Agency will refine audience cells as the programme evolves to ensure the appropriate data matrix is defined, managed and evolved as part of the lead generation and nurture activity.

## 12. Audience Insight, Stakeholders and Influencers

- 12.1 Significant audience insights have been developed during the course of current campaign activity, and this would supplement that available from commissioned research and intelligence determined by the Client's data teams.
- 12.2 The following tables provide some insight into the Trade (Exporting) and Investment Campaigns:

<b>TRADE</b>	
<b>New Exporters</b>	
1	The biggest export barrier for this audience is not practical it is a problem of perception. 55% of this audience simply do not believe their products are suitable for exporting. (Source: TNS)

2	Misunderstanding of what exporting can be. They have decided incorrectly that their business cannot export due to size or business type. (Source: FSB)
3	Businesses number one request, 74%, is to be put in touch with potential customers. (Source: TNS)
<b>Occasional / Existing Exporters</b>	
1	Exporters are almost three times more likely to export owing to a direct approach. It can be assumed the same is true for occasional exporters, but they are unaware how to make more of these direct approaches happen. (Source: FSB)
2	Access to more customers is the most common benefit of exporting cited for exporters. (Source: FSB)
3	Exporters also express a desire to be made aware of opportunities. (Source: NSRB)
<b>INVEST</b>	
<b>Market Seeking</b>	
1	Investors want access to larger numbers of customers: <ul style="list-style-type: none"> <li>• 81% of investors are Market Seeking</li> <li>• Marketing Seeking Investors are looking to get closer to existing customers, closer to new markets, establish presence in a key market, compete effectively (e.g. following a competitor into a market).</li> <li>• The UK makes the shortlist more often than any other country</li> </ul>
<b>Efficiency Seeking</b>	
1	Investors want to make their business more competitive
<b>Resource Seeking</b>	
1	Investors want access to natural of human capital

12.3 The domestic trade and investment campaigns will have their respective range of stakeholders and investors that will need to be considered when designing the strategy for the automated content marketing.

12.4 These stakeholders include external suppliers; DIT Sector Teams (industry specific experts); DIT overseas marketing staff; and the DIT policy team.

**13. Targets for Audience Reaction (Think/Feel/Do)**

13.1 As a result of the rollout of the automated content marketing, the Client expects that the audiences for the two (2) campaigns will react in a more positive way and take appropriate action that will meet the Client’s strategic objectives.

13.2 The following table indicates what the audiences under each campaign should think (react to the improved marketing) and what they should do in response to it:

<b>DOMESTIC: Exporting</b>	<b>INTERNATIONAL: Investment</b>
UK businesses to be enthused by the potential of beginning their export journey as well as expanding their current path of exporting including their appetite to sell online overseas through marketplaces	Investors to feel inspired about the UK and the investment opportunities
Businesses to reach out to DIT so that DIT can help support kick-start their exporting readiness as well as add value to any expansion plans	Investors to feel supported by DIT services along their investment journey
Utilise the resources and services made available by DIT and partners	Investors to think the UK is open for business and bubbling with opportunity

Businesses to feel supported by DIT during their export journey	For Investors to contact DIT to be supported
Businesses actively seek and explore new export deals and with support from DIT, land new business	Investment Enquirers to be constantly assured they are making the right decision about considering the UK as an investment destination
	Investment Considerers to commit in greater numbers to cementing their intent to invest in the UK

13.3 Robust KPIs will need to be developed by the Agency to help the Client monitor the success of the audience reactions to the automated content marketing.

14. Strategic Alignment with the Campaigns

14.1 The Client will make available to the Agency the existing campaign strategies.

14.2 These strategies are actively working to meet their respective objectives. The Agency is required to deliver the services as to add value in the following areas:

14.2.1 Lead Generation: supporting the motivation of businesses to act by way of visiting the website and reaching out to DIT through a form fill; and

14.2.2 Lead Nurture: providing a nudge programme of activity to hand raisers guiding them along the various stages of the pipeline towards and end result.

14.3 The Agency is required to determine the overarching strategic demands of the EiG and the liGB campaigns, how this translates into activity plans with proposals produced (within the strategy for marketing automation) on how lead generation and nurturing programmes for each campaign can be woven into the wider programme without conflict and duplication.

15. Profile of the required Agency

15.1 The requirements of the Agency are complex and multi-faceted. The requirements preclude that an Agency is required that thinks and works in a specific way.

15.2 The Client requires an Agency that:

15.2.1 champions the respective propositions developed for each of the two campaigns in its outward positioning of the contact strategies that are to be developed to address lead generation and lead nurture programmes;

15.2.2 can build from the bottom up a best in class omni channel marketing infrastructure;

15.2.3 is capable of utilising the Client's existing technical infrastructure including CMS and the website, and bringing with it all necessary world class digital systems to realise the ambition;

15.2.4 is skilled in working with these technologies and have access to the appropriate developer/technical resources to ensure initial integrations and future developments;

15.2.5 is results orientated, target driven, evidence focussed and above all agile and ambitious enough to take advantage of the opportunity to help building this new way of working;

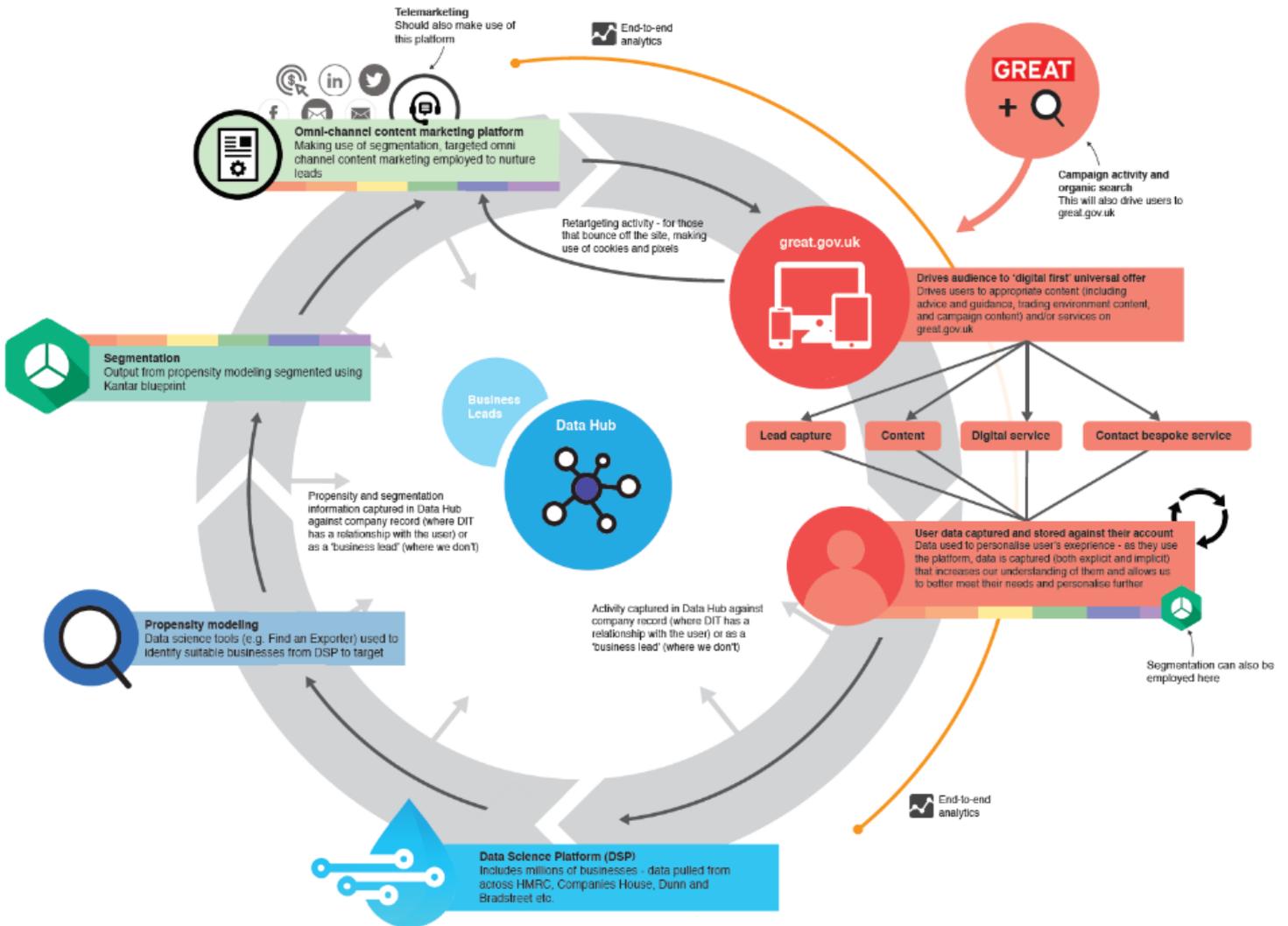
15.2.6 will ease into the space around 'omni-channel content marketing' which is visualised in figure 1 in Appendix 1 to this Annex A of the Letter of Appointment; and

15.2.7 is compliant with the provisions for the General Data Protection Regulations (GDPR) 2018 in all its marketing activities and associated services.

15.3 The Agency is required to deliver results through intelligently marrying content, with automation across a range of channels to deliver actual, tangible and attributable outcomes

15.4 The Agency is required to work collaboratively with the Client's C&M Team.

15.5 The Agency will provide a team of resources to work with the Client, however there will be single point of contact via a Client Lead.



**Part B: Contract Management**

1. Overall contract management of this contract will be delivered by Ayyaz Mir of the Marketing Team, with Will Medici of DIT Commercial providing contract management support and advice on invoicing. The Agency's Client Lead, as detailed in the Letter of Appointment, will attend all meetings.

<b>Governance Details</b>			
<b>Meeting/report</b>	<b>Content</b>	<b>Frequency</b>	<b>Format</b>
Implementation	Working Group calls daily to understand progress	Weekly and daily as required	Teleconference and Dashboard
Implementation Agreement	Following the strategy development by the awarded Agency, it will need to be presented for agreement by the Client	Once	Face to Face presentation
Programme Delivery	Reviewing the progress of the rollout of the marketing automation	Weekly and Monthly	Weekly – campaign and performance update  Monthly – Face to Face
Reporting	Daily reports on marketing activity	Daily	Digital Dashboard
Contract Management	Review the contract performance, discuss any changes and timelines	Monthly and then Weekly leading to exit	Face to Face or Teleconference

## Part C: Performance Management Framework (PMF)

### 1. Management of the PMF

- 1.1. The Agency shall detail performance against the Key Performance Indicators (KPIs) in the Monthly meetings
- 1.2. KPIs shall be monitored on a regular basis and shall form part of the contract performance review. Performance of KPIs will be reported monthly and at contract end.
- 1.3. Any performance issues highlighted in the monthly meetings will be addressed by the Agency, within three (3) working days of the missed KPI being identified.
- 1.4. Key Performance Indicators (KPIs) are essential in order to align Agency's performance with the requirements of the Client and to do so in a fair and practical way. KPIs have to be realistic and achievable; they also have to be met otherwise indicating that the service is failing to deliver.
- 1.5. These KPIs relate to the performance of this contract and are not related to the KPIs to be developed by the Agency in respect of Automated Content Marketing as a service, which is part of the Specification of Requirements.

### 2. Key Performance Indicators

- 2.1. KPIs are to be agreed and finalised following contract award and will be confirmed before contract signature.
- 2.2. The Client proposes the following KPIs:

Metric	KPI No.	KPI Description	What information is required to measure this KPI?	How will the KPI be measured?	Red	Amber	Green
Delivery	1	Integration with DIT system and great.gov.uk website.	The correct functionality of integration of the Agency's platform with DIT Data technical architecture.	Reports from Digital and outcome of testing.	92% integration with all channels of DIT Data	95% integration with all channels of DIT Data	100% integration with all channels of DIT Data
	2	Asset Portfolio.	Assets available (by channel) for scheduled communications in line with planned workflow.	Delivery to audiences of content for each interaction planned, through seeds included in data.	96% delivery	98% delivery	100% delivery
	3	Automated Marketing Strategy	Alignment to meeting the objectives of the core campaigns.	Ratification through reporting from DIT campaign leads on correct outcomes.	90% alignment	95% alignment	100% alignment

Quality	4	Key Success Indicators for Automated Marketing	Development and agreement of KPIs between DIT campaign teams, DIT Insight and Evaluation team and agency.	Campaign reporting from programme activity through dashboards.	96% validated outcomes	98% validated outcomes	100% validated outcomes
	5	Branding	All content used/produced to be GREAT branded.	Percentage of assets/content being on brand.	98% compliance	99% compliance	100% compliance
Contract Management	6	Reporting	KPI Reports to be submitted before monthly meetings	KPI report to be submitted five (5) working days prior to monthly meeting	Report not submitted or submitted after meeting	Report submitted between 2-3 (two-three) working days before meeting	Report submitted five (5) working days or more before meeting

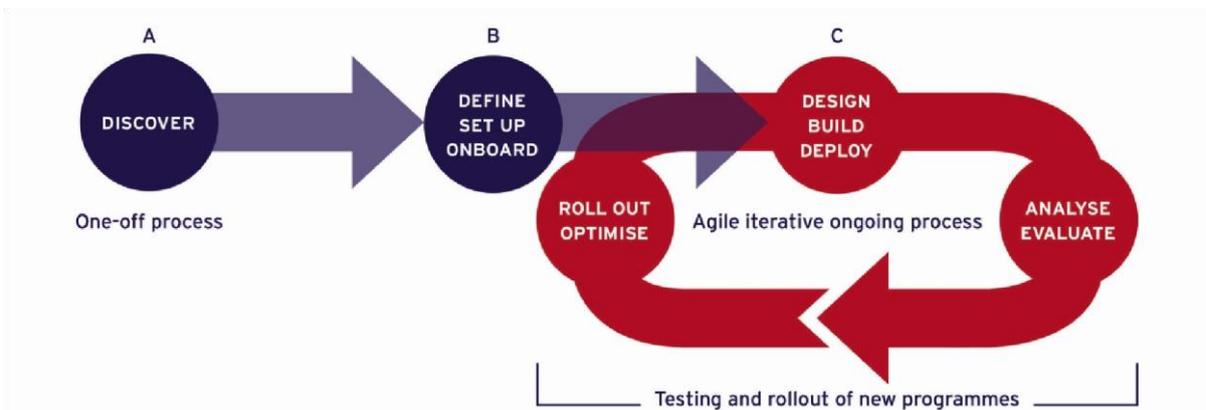
## Part D: Agency's Technical Proposal

### A01: Methodology

Our ambition for the pilot programme is to *Elevate DIT CRM to GREAT*. This means taking the best aspects of existing platforms and insights and building in a new, world-class approach to lead generation and the nurturing of prospects. Underpinned by the six DIT success factors we outline in A02: *Specialism*, we will adopt a simple and proven approach that combines insight, rigour and agile processes to ensure our solution is fit for purpose. This also enables us to generate learnings and proof of concept quickly.

For DIT, we will bring together a small, highly-experienced and expert team across Strategy, Tech, Data and Deployment to deliver *at speed*. We will employ a tailored methodology (detailed below), involving both one-off and ongoing, iterative tasks which will allow us to progress to programme implementation quickly, using in-flight testing to optimise effectiveness and introducing new programmes over time.

#### Methodology to *Elevate DIT CRM to GREAT*:



We have worked with several blue-chip brands ( ) to introduce CRM from the 'ground up' and evolve it over time. For others ( ) we have helped clients move from rudimentary capabilities (e.g. an email programme) to a sophisticated solution – personalised, sustained and multi-channel. To do this, we have selected, validated and implemented new marketing technology; demonstrating quick wins from pilot testing and subsequently rolling-out highly effective programmes to meet business goals.

## 36 A. DISCOVER

### 36.1 1. Target market insight and analysis

Within this phase, our strategy requires two focuses:

- UK businesses we want to encourage to export (with e-exporting as a sub-campaign).
- Overseas businesses we want to encourage to import UK goods or to invest in the UK.

Our start point will be to mine the existing insight available to us, including the 'SWIM' report, DIT's latest campaign evaluation research and any further documents that can be made available after the tender process. We will produce a framework that will identify any gaps, specifically in terms of documented, data-driven market insights. For example, while we have access to detailed and centrally-held information on UK companies and their exporting needs/ attitudes/behaviours, and a solid understanding of British business culture, for international markets, we would draw on the experience of our global network for deeper local market insight. E.g. in China where we have access to 25 offices across the breadth of the country.

This may mean that we start the pilot prioritising programmes for markets where we have sufficient information and data to form robust customer programmes and build out from here.

Where there are knowledge gaps, we will develop a market-specific plan for establishing the information necessary to scope an effective customer programme. For example, we will consider conducting quantitative/qualitative surveys within the overseas trade missions to provide documented insights on market opportunities and business culture. To maximise efficiency, this research can be carried out in parallel to the set-up, and early stages, of the pilot – to be activated later.

## 37 2. AUDIT

### 37.1 Technology and data

To inform our recommendation, we will assess your current tech stack, including the Data Hub, CMS and event booking system. We will review functionality, integration points, data flows and options to connect to the system. We will then audit the data that resides within each platform: the type of information stored, counts and data quality by market. This will allow us to surface unknown issues, any constraints and planned developments related to systems and data. It will also identify system stakeholders and the processes used to initiate system changes and the typical lead times. The audit will also apply to local platforms used by potential pilot markets.

### 37.2 Content

We will quickly audit and categorise the different content assets, digital and offline, that DIT has in the UK and other markets. We will plan to reuse and repurpose as much existing content as possible to maximise cost efficiencies.

### 37.3 Stakeholders and ways of working

We will create a process that ensures DIT stakeholders are engaged at the correct points of the project. This will involve:

- Identifying stakeholder needs and engagement principles during the discovery phase of the project, including approvals process.
- Timeline for milestones, sprints and review sessions.

One example of this process has been well executed is in the design and implementation of a global CMS platform for Barilla. This included project delivery with a core client team and engagement with stakeholders at key milestones across 30+ markets.

## 38 B. DEFINE

### 38.1 1. Define high level recommendations and customer journeys

Using the market insights uncovered in *Discover*, we will develop high-level recommendations on key targets, beginning with industry sectors<sup>1</sup> and then map potential opportunity by value using the 'SWIM' analysis. This will identify key targets within the UK exporter and overseas importer and investor audiences.

Recommendations will be validated in workshops with all key stakeholders. This involves the DIT Sector Teams, overseas marketing staff and the policy team, with the objective of agreeing priority targets for the initial test campaign. At this stage, we will also identify secondary targets for future roll-out beyond the initial pilot.

A further layer of definition will involve writing personas for key target audience groups and then mapping out the customer journeys, programmes and key initiatives within each pilot sector. This includes identifying touchpoints across existing DIT channels (e.g. events, website) and additional options across paid lead-generation channels, where communications are required. This will drive initial candidate channel choices as well as content requirements, allowing for further refinement in the *Design* stage. We will then prioritise and plan the development and delivery of these customer journeys within the pilot.

## 39 2. TECHNICAL BLUEPRINT, REQUIREMENTS DEFINITION AND ROADMAP

From the *Discover* inputs and high-level recommendations, we will define the target solution required to deliver against business objectives. This entails:

- **Marketing platform:** Validation of the capabilities of the proposed DIT marketing solution and assumptions made around individual components, licencing and hosting options.
- **Technical blueprint:** How the new platform will fit into the DIT tech landscape including required integrations, data flows, connection methods and frequency of data transfer.

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<sup>1</sup> Existing DIT research suggests that sector-focussed marketing is more effective than regional or country-based approaches.

- **Detailed requirements:** Definition of the marketing platform, email template definition, documentation of required changes to DIT systems.
- **Technical roadmap:** Optimum phasing of functionality to deliver the solution, realise results early and add functionality as we progress.

### 39.1 Our solution design principles

A fit-for-purpose technology solution for the pilot should be future-proofed and scalable, to support a global roll-out. To achieve this, we adhere to three design principles:



### 39.2 Our proposed solution: Oracle Eloqua

Based on our understanding so far, Oracle Eloqua, part of the Oracle Marketing Cloud, is our recommended marketing automation platform for DIT (Please see Appendix 1). Eloqua is a market-leader in this space<sup>2</sup>, particularly in terms of marketing to B2B audiences where it is best-in-class globally and a platform we know inside out from our work with McLaren six regional marketing teams across 179 international markets. Key features include:

- **Integrated profile** – The platform can ingest information from the DIT Data Hub and supplement it with rich data collected through the sales cycle; including offline data (e.g. events and enquiry forms), engagement data (e.g. email opens and clicks) and online behaviour (e.g. website content views). If needed, it can act as an alternative CRM repository to Data Hub for the pilot.
- **Campaign management** – Allows DIT customer journeys to be built and automated to increase conversion and improve efficiency. Each lead can be segmented, targeted and routed down specific paths based on profile attributes or behaviours. Messages can be served via a broad range of channels including email, SMS, and social platforms such as LinkedIn, YouTube and WeChat in China.
- **Lead management** – Uses the breadth of data captured to score and qualify DIT leads and act upon it. Eloqua can deploy data capture forms as required.
- **Content marketing** – Create personalised DIT experiences with relevant content across channels. Mapping content to sales funnel stage or personas and managing approval processes and translation services. N.B. Eloqua can master content or integrate with CMS.
- **Personalised landing pages** – Eloqua can create personalised landing pages within your website when contacts click through from marketing communications.

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<sup>2</sup> Based on the latest Forrester and Gartner market assessments

We have provisioned two adjacent applications within the Oracle Marketing Cloud to extend our capabilities and deliver a best-in-class solution. These are:

1) Oracle Content Portal

This application allows us to give local DIT marketing teams *controlled* access to centrally approved content stored in Eloqua. Content is easily seachable and teams can subscribe to alerts for new content based on category. The application is integrated with a number of platforms, so it's easy for teams to share across social media as well as email.

2) Oracle Maxymiser

Our solution must allow DIT to 'continue the conversation' – to nurture each contact as they appear on your site by surfacing content that is relevant to their location, industry sector and where they sit in the sales cycle. The Oracle Maxymiser application facilitates this by providing the ability to personalise web content based on each visitor's attributes. It can draw upon the integrated profile built within Eloqua, aligning the experience with the marketing strategy, and can also personalise experiences for unknowns and first-time visitors. It also supports simple A/B and complex multi-variate testing to continuously optimise on-site experiences. Importantly, Maxymiser is simple to deploy across your website.

39.3 Connectivity, hosting and "no-deal" Brexit considerations

Oracle Marketing Cloud has been designed as an "Open Platform" that connects disparate external marketing and digital systems quickly and effectively. To make connectivity simpler, Oracle has a marketplace of pre-built integrations for third-party applications. Should an integration not exist, these can be achieved via methods such as API. As a global provider, Oracle can host data in numerous locations. All DIT data will be hosted in The Netherlands. We are managing the risk associated with the UK's exit from the EU with all of our clients by putting in place a 'standard contractual clause agreement' (SCC). This is for all data processes that involve transferring Personally Identifiable data from the EU to the UK, to confirm we comply with EU regulations. Data transfers from the UK to the EU will not be affected.

39.4 CRM platform

DIT's ambition is likely to require a fully-fledged CRM platform to work alongside the marketing automation tool and Eloqua offers pre-built integrations with major CRM applications. Within the agency, we are currently using an effective combination of Eloqua and Microsoft Dynamics 365 CRM and can provision a full CRM system if required.

39.5 Platform scalability

Oracle Marketing Cloud includes other components that can be utilised as a part of DIT's longer-term strategy. This includes BlueKai, an industry leading Data Management Platform, which supports intelligent programmatic advertising for acquisition and retargeting, look-alike modelling and cross device identity management.

(a) 3. Marketing automation platform set up and onboarding

Initial set up of the platform to support the strategy including:

Data model and platform configuration	System integrations
Data and content migration	Template design and build
Report build	Website tagging strategy and specification, covering paid media tracking pixels as well as Google Analytics

(b) 4. KPIs, targets and reporting

Our DIT evaluation and measurement approach will encompass the high-level and cumulative contribution that the strategy is making to both overall DIT business objectives and the granular performance of individual activities (and inter-relationships between elements). We will work closely with you to ensure all objectives are measurable, mapped to the customer journey and clearly articulated in our measurement framework.

For the pilot, we will develop DIT’s Key Performance Indicators (KPIs) for Policy and Operational objectives to measure both the movement of leads through the funnel, as well as changes in perception and intent. Policy performance will be evaluated using research, analytics and commercial metrics. We will use the pilot to establish performance benchmarks and targets for the roll-out. In addition, we will use the implementational progress of the pilot itself to optimise operational processes by monitoring achieved deliverables and efficiencies. The metrics we envisage using for the DIT pilot are outlined in the grid below:

Policy KPIs		
Research based	<ul style="list-style-type: none"> <li>• Perceptions of DIT and the UK</li> <li>• Intent to import or export</li> </ul>	<ul style="list-style-type: none"> <li>• Customer satisfaction</li> <li>• NPS equivalent (advocacy)</li> </ul>
Commercial reporting focussed	<ul style="list-style-type: none"> <li>• Increased income to the UK</li> </ul>	
Analysis based	<ul style="list-style-type: none"> <li>• 'Bathtub' modelling or customer journey analysis to establish how prospects are moving through the funnel</li> </ul>	
Campaign measures	<ul style="list-style-type: none"> <li>• Awareness: reach, impressions served &amp; event attendance</li> <li>• Engagement (CTR%) from all channels and outbound communications</li> <li>• Website traffic and depth of engagement (page views, dwell time scroll depth)</li> <li>• Consideration: leads, hand raisers and enquirers generated and followed up</li> <li>• Conversion: number, ratio and revenue from converted leads</li> </ul>	
Operational KPIs		
Efficiency measures	<ul style="list-style-type: none"> <li>• Time utilisation (resource)</li> <li>• % time saved (trigger vs batch)</li> </ul>	<ul style="list-style-type: none"> <li>• Budget spends</li> </ul>
Implementation measures	<ul style="list-style-type: none"> <li>• Number of initiatives live</li> <li>• Number of dashboards created</li> <li>• Number of content pieces live</li> </ul>	<ul style="list-style-type: none"> <li>• Number of personalisation elements live</li> <li>• % of integration complete</li> </ul>

Full details of ongoing evaluation and optimisation, reporting and recommended tools are contained in section *A05: Reporting*.

### C. DESIGN, BUILD AND DEPLOY 1. Pilot programme

#### 39.6 Detailed contact strategies

Using the DIT customer journeys plotted within the previous phase, and all contextual information gathered previously, we will identify the detailed communications messages and the owned and paid media channels required to address each of our key target audiences. We will use tools such as Global Web Index to provide intelligence on the digital channels used by B2B target audiences, across international markets, and collaborate with your media agency, employing tools such as TGI to identify the optimal use of paid media. Different DIT sectors, markets and business types are likely to require different media mixes and contact strategies to be effective.

Content requirements will be scoped to determine what already exists vs. what needs to be adapted or created new (maximising opportunities to reuse or repurpose existing assets). Existing content will be mapped to developed personas and sales funnel stage. Where new assets are required, these will be briefed into the Content Studio or other external partners.

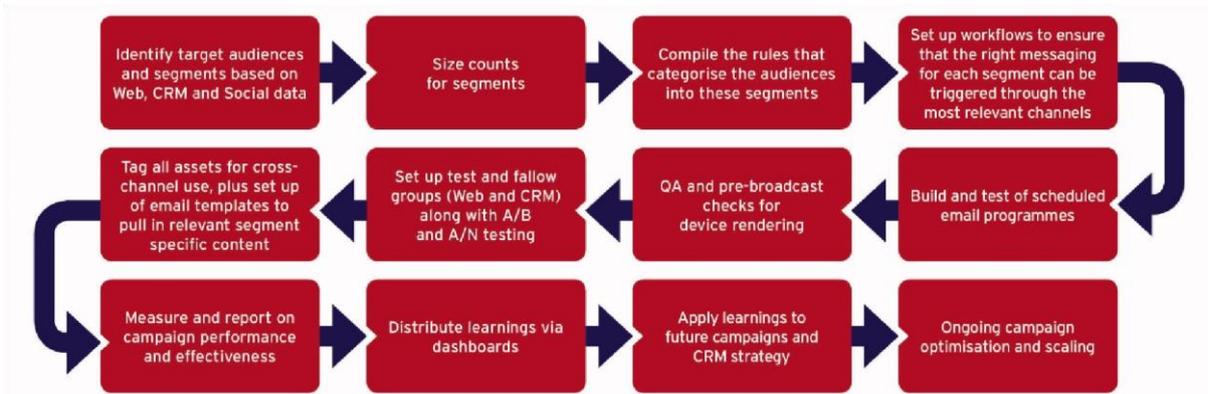
Within each contact strategy, we will define a robust test and learn approach. This will begin by optimising targeting – audience, channels, timing, frequency – before moving into message and creative testing. To begin, we will adopt a simpler, high-level approach to asset/content use, building in the granularity of testing over time and constantly reviewing this on an 'effort vs. reward' basis.

39.7 Data business rules

Once the contact plan is approved, the business rules will be written in a data brief outlining the selections, suppressions, channels, testing and measurement approach for the campaign. This is then built in to the workflow for deployment.

40 **2. CONTACT STRATEGY BUILD AND DEPLOYMENT**

We use agile principles for optimal efficiency. These include agreed SLAs; a small, multiskilled and ring-fenced team; a team leader who coordinates and prioritises workload; daily stand-ups and ongoing sharing of results and learnings for optimisation. Typically, the operations team will work in 1-2 week sprints, which are planned face-to-face and managed using Trello Workflow Management. Campaign teams work in a co-located 'hive' set-up to maximise efficiency and closely monitor progress. Our campaign delivery process for DIT is tried and tested at scale, across multiple channels and markets, and follows these steps:



We optimise the delivery process by enhancing system rules and making full use of available tools. Email workflows are regularly templated and reused. Where viable, campaigns are built as automated programmes which are either deployed to repeat according to scheduled sends or triggered based on customer action. These 'set and forget' programmes are monitored for their duration, using system notification errors to ensure they remain fit for purpose. Web personalisation rules are monitored and periodically 'sense-checked' to ensure that segments are receiving a relevant and personalised experience.

40.1 IP warming and ramp up

During the initial setup of Oracle Eloqua, we need to build DIT's reputation against the new IP address. We create a 'warming plan' to prioritise new/high quality data to minimise risk of complaints, bounces and spam filters. The first email should draw on learnings from previously high performing content and subject lines. Best practice is to broadcast in batches over several days, increasing volumes until the full base has been reached. Reporting is monitored for sudden spikes in complaint and bounces so that action can be taken quickly.



effectiveness were also significant. More customers were reached more regularly, which built brand engagement, increased retention rates and ancillary purchases.

### 43 SUCCESS FACTOR 3: BREADTH AND DEPTH OF MULTI-CHANNEL EXPERTISE AND CAPABILITIES

#### 43.1 Multi-channel programme planning

We use market and customer insight (quantitative and qualitative data and behavioural economics) to develop programmes which move prospects through nurture to conversion. We map touchpoints and identify the media channels best placed to reach prospects at each point in the journey. This includes both owned and paid channels, which are flexed through the journey to deliver maximum impact and push prospects towards conversion. For example, this could include using first party data for both CRM, SMS and social retargeting, or using a combination of cookies and login details to deliver personalised messages online.

#### 43.2 Multi-channel programme experience

██████████ investment in marketing automation tools enabled us to completely overhaul their marketing programme. Research showed us that the legacy approach of all communications being offer-led asked prospective customers for a big commitment, without first building a relationship.

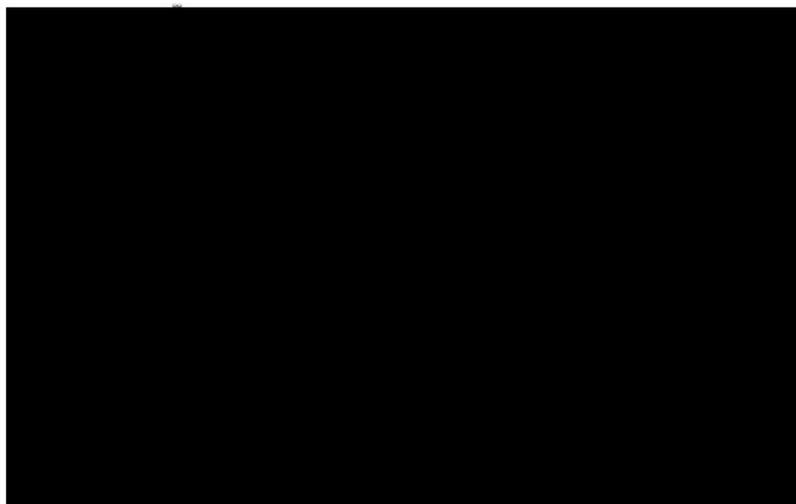
So, we built the '██████████'; a strategy that nurtures prospects through identified, discrete sections of the purchase funnel (Desire: brand awareness, Discover: model preference and Drive: potential ownership). We devised a 3D ecosystem across CRM, programmatic display and website for sequential communications to be triggered by engagement. Content and assets were audited and re-purposed for the ecosystem. The result was a coherent, consistent brand message across all touchpoints that nurtured customers through the buying funnel.

Results have been impressive, initially showing a 298% increase in 'hot' leads (vs the legacy approach) and a 158% increase in directly attributable test drives year-on-year.

For ██████████ we devised the data-led, multi-channel approach to their entire CEM and acquisition programme with email, SMS, website personalisation and highly targeted social and digital display. The programme delivers over £10m in incremental revenue annually – a big improvement on the results from their legacy email-only programme.

#### 43.3 Multi-channel content

We have built strong expertise and capability in the planning and delivery of multi-channel content. Given the evolving nature of social platforms and digital ad formats, we ensure we stay close to new developments, so our content is always fully optimal for each platform.



Our approach to content development maximises the value from initial investment in asset creation. We plan carefully so that expensive hero assets, often involving shoots, can be efficiently turned into multiple assets for different channels. This approach has proved highly effective for clients [REDACTED]

#### 43.4 Effective online and offline channel integration

We are highly experienced at integrating online and offline experiences. [REDACTED] we designed and built an innovative data capture app to use at industry trade shows and events. The app is optimised for touchscreen input (IOS and Android) and allows slick data capture, which is critical at high footfall events with high value prospects.

The app accommodates both a hosted and kiosk mode; the latter allows users to self-serve via an unattended plinth. Forms are designed for GDPR compliance and data is tracked and scored before being triaged out to the respective retailer networks. Known prospects and customers can also be singled out to attend VIP areas whilst tracking their attendance for future engagement scoring. QR codes are used for ease of data capture to further streamline the consumer experience.

These innovative but cost-effective solutions allowed us to almost double the number of leads captured at events, whilst maintaining strict quality controls. We then continue the conversation via CRM and digital channels, maximising the investment made in events.

#### 44 SUCCESS FACTOR 4: USE DATA TO DRIVE EFFECTIVENESS THROUGH PERSONALISATION

We have considerable expertise in using personalisation to enhance relevance and improve performance. In our experience, personalisation based on consumer *behaviour* is the most powerful at driving engagement and results.

For [REDACTED] we developed a multi-channel, highly personalised pre-departure programme that gives people all the information needed in the run-up to their journey. This was designed to overcome the pain

points and confusion often experienced by train travellers. Communications are tailored by booking window, class of travel, destination, travel type and opt-in status. The result is approximately 840 potential variations. The impact of this personalised programme on [REDACTED] has uplifted NPS by 20%.

As another example, while [REDACTED] responds to customer data triggers through personalised programmes such as 'Plan Check'. This alerts customers about their data use and helps them switch to a better tariff (95% of those that click through do upgrade). This has improved customer perception of [REDACTED] and increased NPS.

#### 45 **SUCCESS FACTOR 5: APPLY ADVANCED ANALYTICS TO FURTHER IMPROVE EFFECTIVENESS**

We use advanced analytics techniques such as propensity modelling, scoring and segmentation to maximise the effectiveness of programmes. For [REDACTED] we developed an engagement score to understand which clients and prospects were most likely to invest – this led to a 550% increase in the successful call rate (engagement, sales and saves) for the investment sales and support team.

For [REDACTED] we use a series of 'big data' propensity models to determine a customer's likelihood to churn, and trigger a sequence of communications to prevent this. Regression models determine the recommended best handset, offer and tariff for the communications. These are delivered through all channels so that the website, call centre and outbound communications are all consistent. Within a year, this programme helped lower [REDACTED] churn rate by 14%.

#### 46 **SUCCESS FACTOR 6: ITERATIVE TEST AND LEARN APPROACH TO OPTIMISE FAST (PILOT AND BEYOND)**

We use several testing techniques to optimise activity, pre-, post- and during campaigns. In advance we use techniques such as online neuroscience testing to gauge the implicit and explicit reactions to creative and messaging. Neuroscience helps uncover unconscious responses to stimulus – which is how much advertising is actually processed, meaning we get a much more accurate reading on what will be effective in real life, rather than the 'conscious' deliberations of focus groups. For [REDACTED] we also use eye-tracking software on email and DM packs to ensure they will have maximum impact.

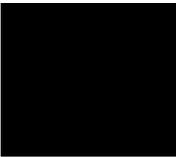
Testing during campaigns is planned across four key elements – audience, channel, messaging and creative. We devise a structured testing plan in conjunction with the client and media agency and prioritise according to impact on objectives and effort to implement. Basic CRM testing includes things like subject lines, channel mix, tailoring and call to action. For [REDACTED] we experienced an uplift of 23% by testing various price point formats to maximise click through and revenue. We have also tested external AI tools [REDACTED] to optimise subject lines. For [REDACTED] we tested the use of personalised messaging – by tailoring content to a customer's existing Home Broadband provider, we saw a 95% uplift in engagement

vs. a generic version. Within digital banners we tested different benefit messaging which resulted in a 23% uplift at roll out.

### A03: Specialism

#### The core Elevate DIT CRM to GREAT team

We have handpicked our core DIT team from our award-winning CRM experts, with high levels of experience and expertise across your core requirements of technology, strategy, data planning and analytics, communications, project and creative delivery. Here is a brief overview of the team that will be providing the services as detailed in the Specification of Requirements section of our response. Further details of individuals from the wider delivery team that will be supporting DIT are available on request.



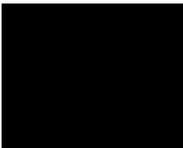
██████████ – BUSINESS DIRECTOR

██████████ I will be responsible for the overall client relationship and project delivery.

**Background:** ██████████ has over 14 years of marketing experience, seven of them at TMW Unlimited. During this time ██████████ has worked across a range of private

and public sector clients, across all areas of CRM, digital and social marketing. ██████████ is passionate about delivering exceptional work and results and is highly experienced in leading teams to deliver complex projects.

**Relevant experience:** ██████████ has led several of TMW Unlimited’s key CRM accounts including supporting ██████████ has also led high volume, fast turnaround content studios for both ██████████



██████████ – SENIOR PROJECT MANAGER

██████████ will lead the day-to-day project delivery.

**Background:** ██████████ is an experienced Project Manager and Certified Scrum

Master. ██████████ has significant experience of working with large complex projects,

leading large teams, efficiently managing budgets and senior stakeholder relationships. **Relevant experience:** ██████████ has delivered high-profile digital platform projects including Salesforce projects for the Cabinet Office and a global CMS platform for Pearson Learning.

██████████ – DIRECTOR OF STRATEGY

██████████ will lead the overall strategic direction and realisation of the project. **Background:** ██████████ has over 25 years of experience in strategic and communications planning. ██████████ leads the team to deliver insight generation,

strategic planning, data planning and analytics, and marketing effectiveness.

**Relevant experience:** ██████████ has extensive experience in lead generation and lead nurture initiatives working on highly successful CRM programmes for clients ██████████ ██████████.

██████████ – MARKETING TECHNOLOGY CONSULTANT

██████████ will lead on the technology solution recommendations and implementation.

**Background:** ██████████ has 20 years' experience in CRM and marketing. ██████████ mix of business and technical skills has enabled him to lead a wide range of consultancy and development projects spanning automotive, FMCG, travel and public sector. **Relevant experience:** ██████████ has recently delivered a number of high-profile projects including technology selection for clients ██████████ and implementation of marketing technology solutions such as ██████████ ██████████.

██████████ – PLANNING DIRECTOR

██████████ will lead the day-to-day strategy of the project, customer journey planning and optimisation recommendations.

**Background:** ██████████ has extensive strategic communications experience across

the full marketing mix and has led the planning requirements on blue-chip accounts including ██████████ ██████████ is currently involved in optimising ██████████ customer contact strategy and developing lifecycle customer journeys for ██████████

**Relevant experience:** ██████████ has experience of working on government B2B campaigns including the ██████████ which involved developing a centralised marketing effort with regional tailoring and event management.

██████████ – DATA PLANNING DIRECTOR

██████████ will lead the data planning and analysis for the project, informing optimisation recommendations.

**Background:** ██████████ has over 15 years' experience working in data planning and

currently heads up the Data Planning and Analytics department at TMW Unlimited, delivering data-driven strategic recommendations across a variety of CRM and digital clients. **Relevant experience:** Recently,

████ has helped █████ deliver increased revenue and customer satisfaction through their CRM programme and planned award-winning acquisition campaigns █████  
████ is currently involved in setting metrics for █████ sizeable investment in digital transformation.

████ – SENIOR DATA ACCOUNT DIRECTOR

████ will lead on programme builds within the selected marketing solution and all data management.

**Background:** █████ has 10 years' data management and solutions experience

working across a number of market-leading FMCG, automotive and consumer electronics accounts, with responsibility for the "hands-on" manipulation of data to translate strategic thinking into practical action.

**Relevant experience:** █████ and █████ team have expertise in the use of leading marketing automation tools to build optimal customer engagement programmes. Their skills cover all areas of data management from programme builds and campaign delivery to report compilation and data visualisation. █████ has extensive experience with leading marketing technology applications, including the Adobe Marketing Cloud, Salesforce and Eloqua.

## 54 RELEVANT CLIENT EXPERIENCE CASE STUDIES

Here we highlight some of the experience which we feel is directly related to our planned solution for DIT. All of our *Elevate DIT CRM to GREAT* team have been directly involved in these clients. We hope you will see that the combination of the experience and expertise of TMW Unlimited with a best-in-class marketing automation tool such as Eloqua will greatly enhance your current customer relationship programme – to deliver the step-change necessary to meet your ambitions to be the best marketing team across Whitehall and best TPA globally.

## 55 CASE STUDY: █████

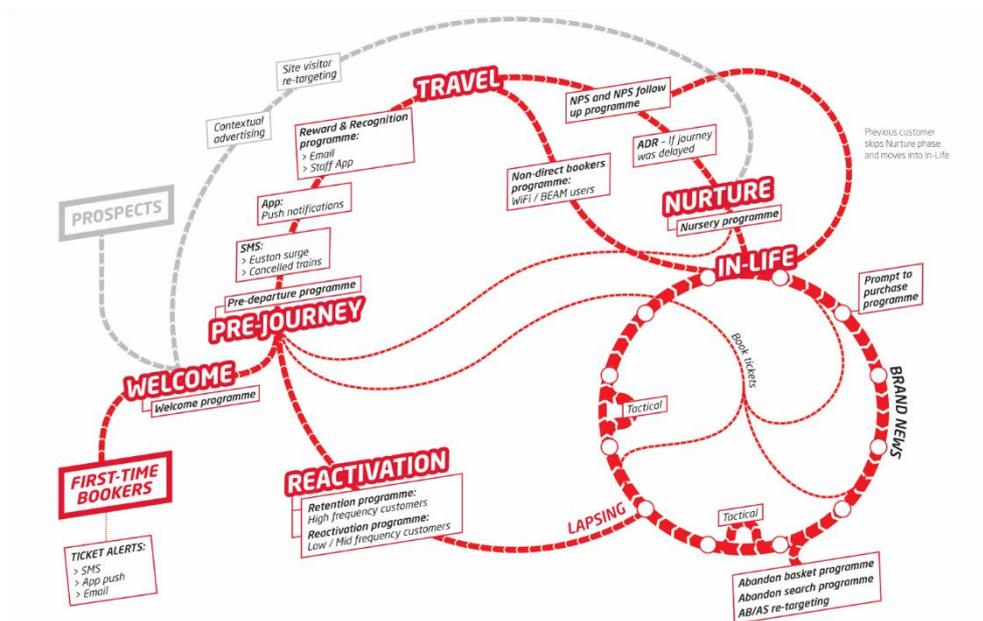
Over the past two years, we have evolved █████ from a simple email newsletter CRM to a sophisticated, automated, tailored multichannel customer experience journey. Our job was to maximise incremental revenue quickly █████

To do this we took a robust strategic planning approach, which included:

1. Segmentation – to understand prospect and customer behaviour in depth.

2. Customer research – to identify customer needs, customer pain points and the ‘Ideal Customer Experience’.
3. Customer research and analysis - to help identify how to overcome barriers to modal shift (messages that would get people to choose ████████ over car or plane).
4. Development of a model based on strategic value drivers to understand the likely impact of CRM on prospect nurture and conversion, increased repurchase rates, reduced lapsation and increased customer satisfaction and advocacy (NPS). Of all of these, NPS was the most powerful, as it is the single biggest driver of lifetime value for ████████

From this, a new customer lifecycle journey (see below) and new personalised, multi-channel programmes were developed, tested, optimised and rolled out.



The programme development and rollout process was prioritised based on our modelling for greatest impact. The key actions were (in order of priority):

1. Delivery of hyper-personalised pre-, during and post-travel customer communications to improve NPS.
2. Improve the volume of registered, opted-in prospects and customers with effective website direct booking acquisition tactics and tailored communications.
3. Increase the conversion and repurchase rate with targeted programmes, messages and offers tailored at an individual level across email, website and app.
4. Improve retention of valuable customers by rewarding and recognising travel behaviour and mitigating poor experiences.
5. Actively manage yield by selling services with significant space available and incentivise customers booked on over capacity trains to travel on different ones, thereby reducing overcrowding and improving the experience onboard.

## 56 RESULTS

The CEM programme was defined and implemented over a 12-18 month period building on iterative learnings; from an implementation and communications perspective. In the first year, we generated over £10m of incremental income along with improvements in NPS rate.

57 CASE STUDY: [REDACTED]

[REDACTED] is the luxury vehicle division of [REDACTED]. TMW Unlimited has been [REDACTED] strategic, creative and data partner since the brand first launched in Europe in 2007. We work closely with them to drive awareness, build the brand and convert interest to sales across 14 markets and 19 language variants.

As a trusted partner, we provide specialist skills to assist [REDACTED] across several parts of their business. We have selected a few specific projects that are directly relevant to the challenges that DIT face:

Tools and technology

[REDACTED] engaged TMW Unlimited in 2017 to design and build a pan-European email marketing solution and single customer view database with associated technical infrastructure. Since the initial build, we have continued to manage their database platform and have ultimate responsibility for identifying new opportunities, collecting, nurturing and converting both B2B (fleet) and B2C leads in all European markets.

As a part of our ongoing Lead Management duties, TMW Unlimited is responsible for [REDACTED] GDPR compliance, from data capture to storage, retention, subject access requests and deletion. We are also responsible for technical infrastructure and provide consultancy for the vendor selection and implementation of an automated marketing technology solution (Adobe Marketing Cloud), which integrates behavioural learnings from web, CRM and social channels and uses this data for highly targeted and personalised communications.

Omnichannel marketing strategy and deployment

The core of our marketing efforts focuses around the 3D programme. This is an omnichannel marketing approach which we designed and built to deliver tailored, single-minded, channel specific messages that nurture consumers from prospect to purchase.

The programme is automated and data-led and takes the customer through a journey of structured brand education, product range discovery and finally, when ready, encouraging test drive. The programme includes web personalisation based on previous actions (CRM & web behaviour), automated 'next-best-action' emails and prospect scoring to prioritise contact by call centre operatives for higher value leads.

The diagram below shows an example of the business logic used for the 3D Programme:

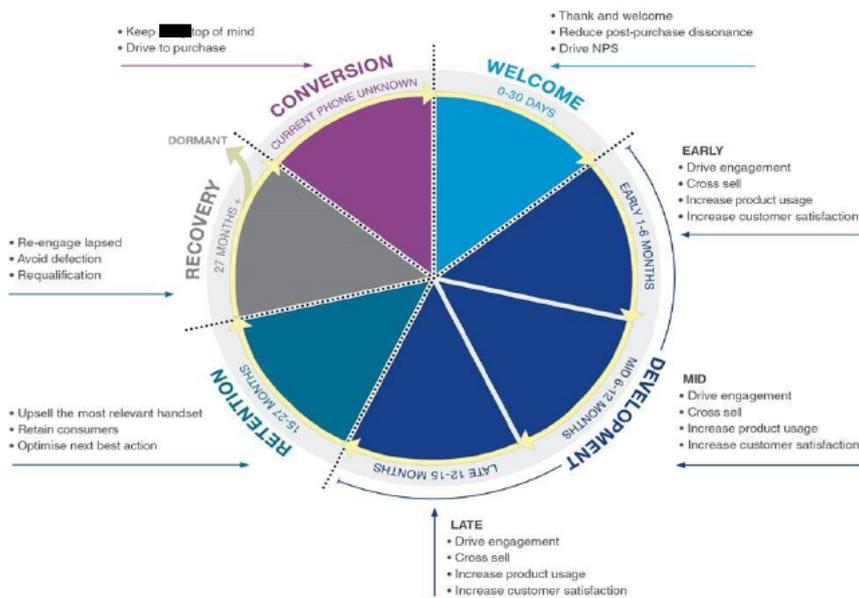


██████████ have grown significantly in Europe since we have been working with them. Our holistic approach generates more than 25,000 test drive requests every year and approximately 10,000 European vehicle sales; an impressive 40% conversion of test drive to ownership.

59 CASE STUDY: ██████████

██████████ We have provided global CRM and digital marketing services for ██████████ for seven years and are responsible for their large, intelligent CRM programme to over 11 million customers worldwide. The programme provides the efficiency of a centralised CRM strategy, tool and lifecycle approach with modular flexibility to allow markets to add their own localised messages and touches to communications.

The consumer-centric programme delivers a five-stage lifecycle approach (Conversion, Welcome, Development, Retention and Recovery) with a suite of emails and app push messages delivering relevant content and messages at each stage. Across all five stages, we maximise relevance through personalisation and targeting with the aim of delivering a one-to-one emotional connection with the brand, as well as driving next best action and creating customer lifetime value. This programme is executed by journey building tools to ensure that the requirements set by the strategy and planning teams are executed at the right time with the right message and content. These tools also allow for continuous performance enhancement via the support of test and learn strategy.



## 60 RESULTS

Pre-programme to lifecycle communications comparison:

- 47% uplift in click-through rates of emails.
- 17% upgraded a new phone on the [REDACTED] eShop as a result of our retention emails.
- 17:1 ROI on our [REDACTED] launch campaign.

## 61 CASE STUDY: [REDACTED]

[REDACTED] [REDACTED] is a luxury sports and supercar manufacturer. Since 2015 [REDACTED] TMW Unlimited has been [REDACTED] lead CRM agency responsible for the strategy and execution of all [REDACTED] journey communications using Oracle Eloqua as well as managing all inbound leads.

In response to a legacy issue of lead quality, each new prospect is now scored on a range of criteria (that has been refined over time) to ensure that we are continuously serving the retailer network with quality leads. We use Eloqua's lead scoring functionality to triage leads based on both profile data and engagement data. This has proved to be pivotal in allowing the [REDACTED] dealer network to prioritise their time by following up high-quality leads and has resulted in increased retailer engagement, satisfaction and better conversion.

### Database and data capture

TMW Unlimited was responsible for the build and management of a bespoke data lead generation database. This was designed for the collection, scoring and triage of all [REDACTED] automotive online and offline leads to the master CRM system and global retailer network. This platform is further enhanced by the integration of a TMW Unlimited created data capture app that is used at all global public tradeshow and events [REDACTED]. Leads are passed in real-time to the database, which allows for 'at event' reporting via a cloud dashboard solution. All activity is tracked using the designated event campaign code and data is scored and passed to the retailer network for timely follow up.

### **A04: Policy**

62

## 63 ACCREDITATIONS

TMW Unlimited is ISO 27001 certified. This is rigorous international standard for information security management systems (ISMS). An ISMS is a framework of policies and procedures that includes all legal, physical and technical controls involved in an organisation's information risk management processes. Policies and procedures include data protection, user access control, physical security, device encryption, asset management, incident reporting, supplier risk assessment, and management of business continuity and disaster recovery.

It is mandatory for all TMW Unlimited employees to attend information security and GDPR training annually.<sup>1</sup> Network penetration testing and business continuity testing are also carried out annually to ensure that our systems are secure from external threats. To maintain ISO 27001 accreditation, TMW Unlimited is subject to independent external audits annually to ensure that the standards of this framework are maintained. All policies are governed by our appointed Information Security Officer and Data Protection Officer, who set out the measures and procedures to maintain a culture of information security and 'data protection by design and by default' across the organisation.

## **64 GDPR COMPLIANCE**

TMW Unlimited is fully compliant with the conditions and sentiment of the EU General Data Protection Regulation (GDPR), in line with the requirements of the new Data Protection Act 2018. This provides us with a reliable framework and standard to ensure that personal information is collected, analysed, stored and managed both legally and responsibly. We adhere to these standards when working with client data across all global markets.

## **65 DATA MANAGEMENT**

During the onboarding of operations, all DIT data will be audited to determine the necessary and appropriate controls required for how data is accessed or managed. At this time, any special considerations for data that is to be processed will be discussed with the client and recorded within a data processing agreement (DPA). DPA documentation is an addendum to the master services framework, and is to be reviewed and co-signed by both Data Processor (TMW Unlimited) and the Data Controller (client). DPA documentation is subject to formal reviews periodically.

## **66 DATA COLLECTION**

All data collection processes, such as data capture forms, where TMW Unlimited holds either data controller or data processor responsibilities, will be subject to a data protection impact assessment (DPIA). In addition to verifying that the required data processing can be lawfully carried out under GDPR, this process will:

- Evaluate and describe the nature, scope, context and purposes of processing.
- Assess necessity, proportionality and compliance measures.
- Identify and assess risks to individuals.
- Identify any additional measures to mitigate those risks.

Risks that are identified by the DPIA will be reviewed for severity and to determine the appropriate policy to be implemented. The lawful basis of data collection will be evaluated and recorded and, where any data

is to be processed as a “legitimate interest”, this will be subject to approval by a further balancing test or legitimate interests’ assessment.

<sup>1</sup> Our *Bulletproof* training programme, which provides comprehensive training on information security issues has been recognised as best-in-class by our ISO 27001 auditors. This training is mandatory for all new joiners and regular refresher modules are provided for all staff, as per an agreed annual programme.

## Data analysis

Where possible, data for analysis purposes is anonymised to protect the interests of the data subjects, and to allow for safe distribution of reports within the organisation. We will ensure that subjects are adequately informed when their data is to be used for profiling and location-based targeting.

## 67 SUBJECT RIGHTS

Under GDPR we must respect the eight rights that an individual can evoke. These are:

- The right to be informed.
- The right of access.
- The right to rectification.
- The right to erasure.
- The right to restrict processing.
- The right to data portability.
- The right to object.
- Rights in relation to automated decision making and profiling.

All systems designed and managed by TMW Unlimited will ensure that these rights are respected and that all customer requests can be responded to, within the 1-month timeframe stipulated by GDPR.

## 68 DATA MINIMISATION AND RETENTION

All data will be evaluated to ensure that we collect a sufficient, yet not excessive, level of personal data – as required for the specified purposes within the DPA. As standard, TMW Unlimited employ a GDPR compliant data retention policy, which can be further refined based on individual client need and project requirements.

## 69 GDPR AND ORACLE ELOQUA

The parameters within Oracle Eloqua can be customised to suit wide-ranging security requirements, including those that are specified by GDPR legislation. Systems access is via unique login and users are

restricted to working with data that relates specifically to the tasks the individual needs to perform in their given role. Personal data can also be restricted from view at account level without impacting the ability to perform marketing operations.

Applications within Oracle Eloqua make it easy to identify tables that hold sensitive information and, once identified, relevant controls can be applied to ensure only privileged users are able to access and process the personal data. Oracle Eloqua encrypts all data automatically when it is written to storage, exported or during back-ups. Encrypted data is correspondingly automatically decrypted when read from storage – this automatic encryption/decryption capability ensures a high level of security and integrity against malicious activity.

## 70 GDPR AND PECR CONSULTANCY

TMW Unlimited provides consultancy services in GDPR and Privacy and Electronic Communications Regulation (PECR) to many clients across the marketing technology landscape and, as such, is an area where we have deep expertise. Our consultancy includes guidance on creating a GDPR compliant organisation and the project management approach and resources necessary to achieve these objectives. Previous consultancy experience in this area includes end-to-end projects for clients [REDACTED]

### A05: Reporting

## 71 REPORTING AND VISUALISATION

In designing the reporting suite to monitor the pilot phase of our *Elevate DIT CRM to GREAT* omni-channel automated programme, we will work closely with you to define the reporting schedule and format in accordance with your requirements and technical capabilities. Starting with the end user in mind, we will ensure our solutions are intuitive, user-friendly and fully tailored to your needs and KPIs. We will also strive to bring data to life in the most visually stimulating and digestible way.

Our approach to reporting for the pilot phase will be the same as for the longer-term programme, so that reporting will be 'ready to go' for the main phase of implementation – of course, applying any learnings and refinements from the pilot phase.

TMW Unlimited has in-house expertise in all the main reporting and BI solutions available. For DIT, we propose using Tableau as it is an industry leader with excellent web-based access, inexpensive licencing and good connectivity to external data sources and platforms. We will build a series of dashboards in Tableau that are linked to the identified KPIs.

Tableau allows us to amalgamate data sources (e.g. web analytics, email, Facebook, LinkedIn, events, research metrics and internal reporting) into a single, easily-digestible view. This process will be automated to ensure timely delivery and minimal ongoing QA. Data is updated regularly, providing 'always on' reporting and the ability to share key information with stakeholders as identified by DIT. This clear, consistent view of performance enhances our collective ability to make strategic decisions.

## 72 ONGOING CAMPAIGN EVALUATION

Learnings are made while a campaign is live, structured testing and regular monitoring of performance within Tableau enables us to implement changes mid-pilot or mid-campaign to optimise the response. For example, we will look to run a series of tests around the messaging for different sectors through the nurture programme.

Throughout the pilot we will have monthly optimisation meetings to review progress and agree the next phase, ensuring we are adhering to the strategy. Ad-hoc analytic deep dives will also be part of our analysis process. We look at answering specific questions through either web or statistical analytical techniques and either suggest improvements or identify opportunities for future updates.

## 73 EXAMPLE REPORTING DASHBOARDS

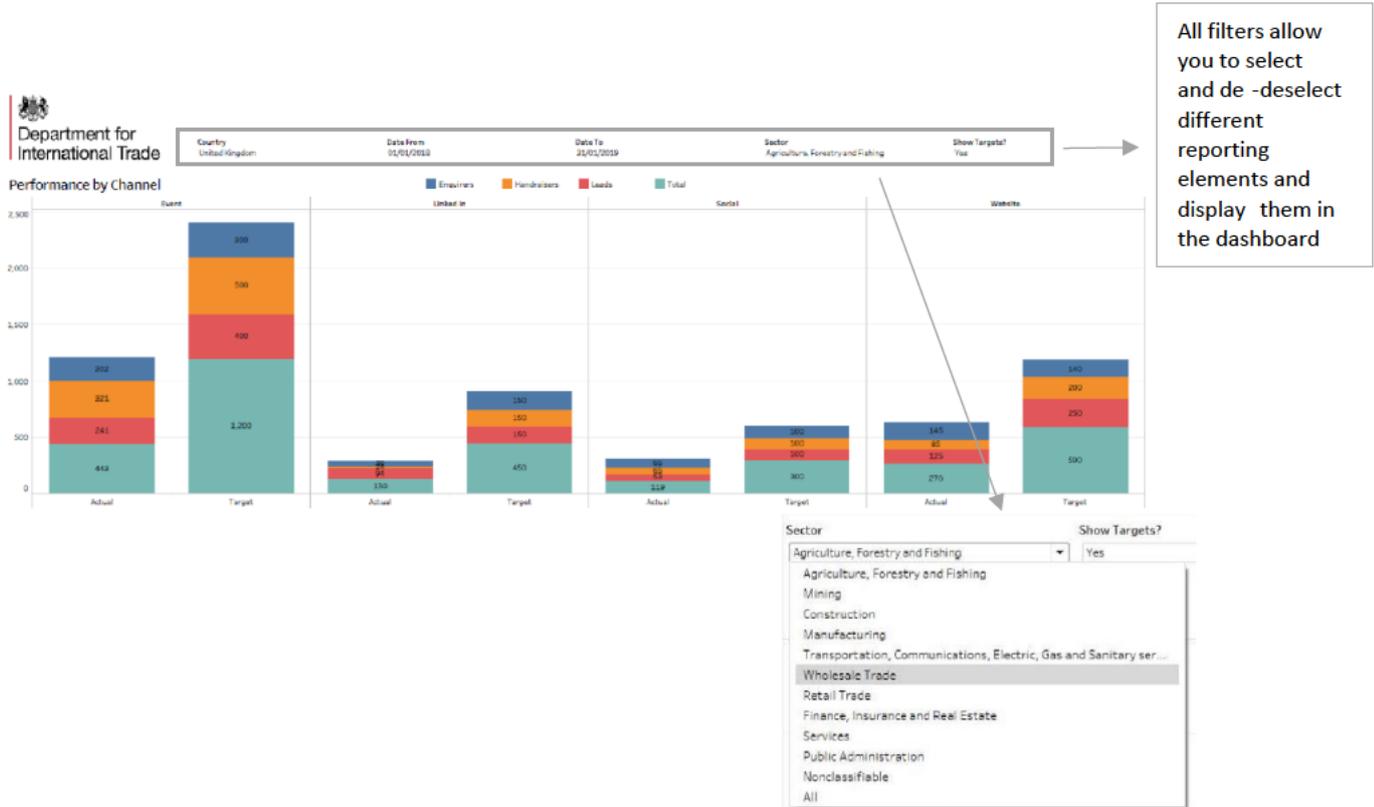
Across the following pages, we have illustrated the different levels of reporting that we can build within Tableau to give instant access to programme performance. As requested, these include how we might address; reporting on performance by channel, performance trends by channel, results against targets, cost and returns by channel.

Please note these are illustrative only and not based on any live data. As stated, we will work with you closely to build a reporting suite whereby all filters and overlays meet your specific requirements.

The live reports will come with the ability to filter results by numerous dimensions including timeframe, country, sector, as well as displaying benchmarks and targets where appropriate for comparison.

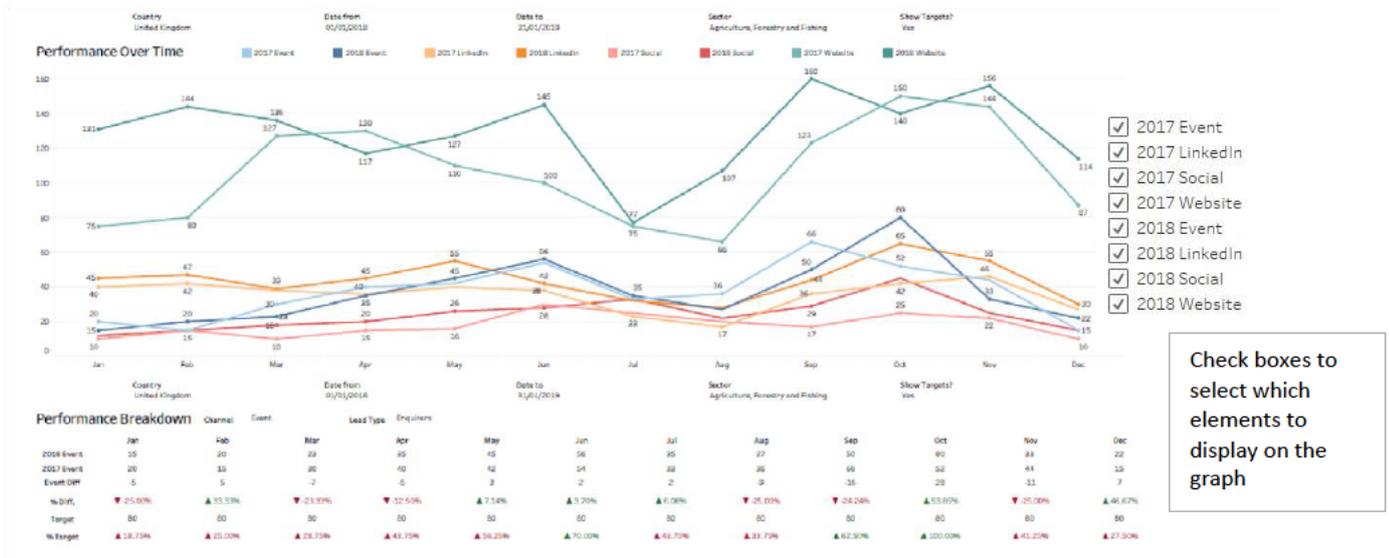
[Example 1: Overview of lead types by channel and over time](#)

This report shows the total number of leads, with the ability to look at different timeframes as well as sectors and countries. It will compare to target metrics for a view of progress.



[Example 2: Performance over time by channel](#)

This report shows the total number of leads, with the ability to look at different timeframes as well as sectors, countries and lead source i.e. hand-raiser vs. enquirer. It also has the ability to visualise a rolling benchmark plotted for context. A data table showing year-on-year performance, as well as performance against targets, will also be included.



**Example 3: Funnel, costs and returns**

An example of a visualisation of the conversion funnel, as well as revenue and ROI over time – to highlight where returns are being generated and our performance against these targets. This can be filtered to display results at different levels to determine the channels, sectors or countries driving the greatest return.



**Example 4: Campaign dashboard**

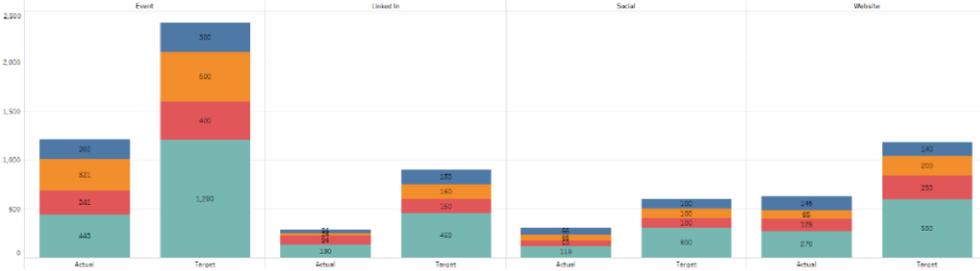
This will monitor both engagement and conversion for ongoing activity across different communication programmes. It will be used to monitor testing at a cell level as well as getting an overall view of performance.



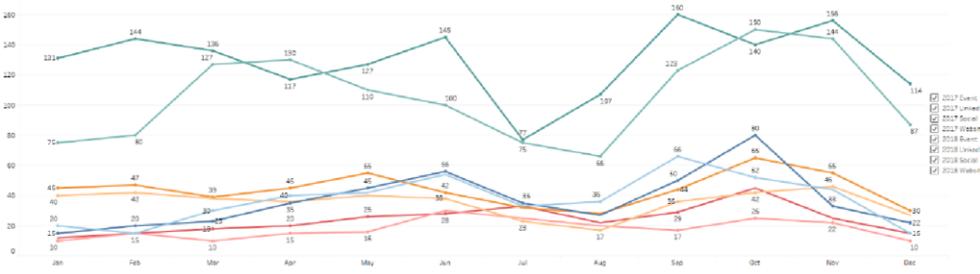
Example 5: The combined dashboard

The following is an example of how the dashboard could look in its entirety – combining all the reporting requirements have specified. All charts and tables will be customised according to agreed brand guidelines and stakeholder ‘look and feel’ preferences.

Performance by Channel



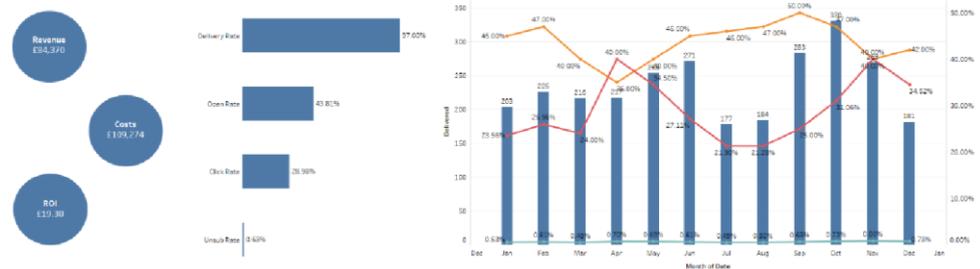
Performance Over Time



Performance Breakdown

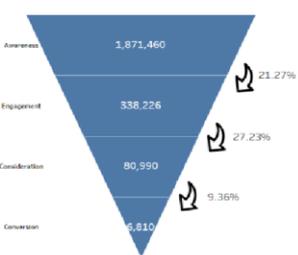
Channel	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2018 Event	35	39	23	35	45	56	35	27	50	80	33	22
2017 Event	20	15	30	40	42	54	23	36	66	52	44	15
Event Diff	-5	5	-7	-5	3	2	2	-9	-16	28	-11	7
% Diff	-25.00%	33.33%	-23.33%	-12.50%	7.14%	3.70%	4.00%	-26.00%	-24.24%	53.85%	-25.00%	46.47%
Target	80	80	80	80	80	80	80	80	80	80	80	80
% Target	18.75%	38.00%	28.75%	43.75%	56.25%	70.00%	43.75%	33.75%	62.50%	100.00%	41.25%	27.50%

Email Performance

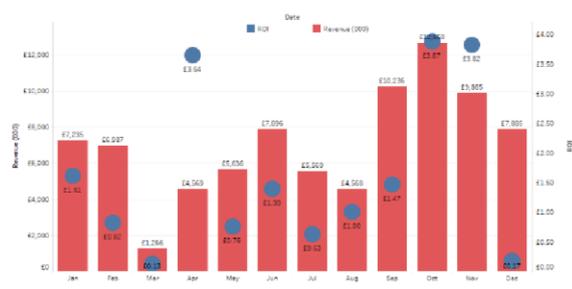


Email Campaign	Delivered	Opens	Clicks	Delivery Rate	Open Rate	Click Rate	Revenue (000)	Costs	ROI
EML_A	362	362	100	97.60%	42.35%	27.36%	22,700	234,276	60.83
EML_B	797	363	100	97.60%	45.67%	26.61%	22,700	234,276	60.83
LinkedIn_A	177	81	17	97.60%	45.67%	21.39%	22,700	234,276	60.83
SMML_A	524	223	68	97.60%	42.35%	26.61%	22,700	234,276	60.83
SMML_B	450	164	62	97.60%	40.80%	27.72%	22,700	234,276	60.27

Conversion Funnel



Costs & Returns



**Part E: Agency's Pricing Proposal**

1.1. For the fixed price elements, the Agency's Pricing is as follows:

Deliverable Number	Description	Total Deliverable Price (£)
1	<b>Strategic Development</b> Business Director Senior Project Manager Director of Strategy Marketing Technology Solutions Consultant Planning Director Senior Data Account Director Data Planning Director	£ 117,420.00
2	<b>Automated Content Marketing Deployment</b> Business Director Senior Project Manager Marketing Technology Solutions Consultant Planning Director Senior Data Account Director Marketing Technologist Marketing Technologist Data Planning Director Studio Delivery Manager Content Producer 3rd party costs (Oracle Marketing Cloud & Tableau Reporting licences for the duration of the pilot).	£ 465,254.40
3	<b>Insight &amp; Analytics (Reporting and Analysis)</b> Business Director Senior Project Manager Senior Data Account Director Marketing Technologist Marketing Technologist Data Planning Director Social Analyst Web Analyst	£ 78,318.00

<b>TOTAL FIXED PRICE COST:</b>	£ 660,992.40
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1.2. The Agency's Schedule of Rates is as follows:

RATE CARD	
LEVEL	
BOARD	
SENIOR	
MIDDLE	
JUNIOR	

1.3. The following roles fall into each level of the Schedule of Rates:

Board	Senior	Middle	Junior
Chairman	Head of Data Strategy	Project Manager	Account Executive
President	Head of Traffic	Account Manager	Analyst
CEO	Technical Director	Designer	Data Analyst
COO	Head of IA	Copywriter	Data Planner
Managing Partner	Senior Analyst	Brand Strategist	Data Consultant
Client Services Director	Head of Design	Strategist	Proof Reader
Board Account Director	Senior Producer (TV/Digital/Print/Events)	Account Planner	Typographer
Group Account Director	Senior Information Architect	Communications Planner	Art Worker
MD/Partner	Head of Social Media	Media Planner	Art Buyer
Executive Creative Director	Strategy Director	Planning Manager	TV Assistant
Executive Planning Director	Head of Planning	Studio Designer	Analyst / Researcher
Chief Strategic Officer	Head of Information	Producer	Artistic Talent
Director of Strategy	Creative Director	Traffic Manager	IT Support
Business Director	Art Director	TV Producer	PR Assistant
	Design Director	Interface Designer	Systems Administrator
	Media Director	Information Architect	TV Production Executive
	Planning Director	Editors	Content Producer
	Director Data Intelligence	Community Managers	
	Creative Services Director	Content/Information Architect	
	Senior Project Manager	Digital Designer	
	Marketing Technology Solutions Consultant	Digital/Web Producer	
	Senior Data Account Director	QA Tester / Manager	
	Studio Delivery Manager	Test Manager	
	Data Planning Director	Graphics / Production Design	
		Technical Lead	
		Web Developer	
		Web Editor / Content Manager	
		UAX	
		Production Manager	
		Analytics / Insight Manager	
		Media Liaison Manager	
		Database Manager	
		Mobile App Developer	
		Social Media Manager	
		Planner	
		PR Consultant	
		Technical Developer	
		Creative Technologist	
		Marketing Technologist	
		Social Analyst	
		Web Analyst	

**SCHEDULE 3:  
STAFF TRANSFER**

**1. DEFINITIONS**

In this Call-Off Schedule 3, the following definitions shall apply:

<b>“Admission Agreement”</b>	The agreement to be entered into by which the Agency agrees to participate in the Schemes as amended from time to time;
<b>“Eligible Employee”</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
<b>“Employee Liabilities”</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"><li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li><li>(b) unfair, wrongful or constructive dismissal compensation;</li><li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li><li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li><li>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</li><li>(f) employment claims whether in tort, contract or statute or otherwise;</li></ul> <p>any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
<b>“Fair Deal Employees”</b>	those Transferring Client Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Agency Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the

	<p>Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal;</p>
<b>“Former Agency”</b>	<p>an agency supplying services to the Client before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such agency (or any sub-contractor of any such sub-contractor);</p>
<b>“New Fair Deal”</b>	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;</p>
<b>“Notified Sub-Contractor”</b>	<p>a Sub-Contractor identified in the Annex to this Call-Off Schedule 3 to whom Transferring Client Employees and/or Transferring Former Agency Employees will transfer on a Relevant Transfer Date;</p>
<b>“Replacement Sub-Contractor”</b>	<p>a sub-contractor of the Replacement Agency to whom Transferring Agency Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);</p>
<b>“Relevant Transfer”</b>	<p>a transfer of employment to which the Employment Regulations applies;</p>
<b>“Relevant Transfer Date”</b>	<p>in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;</p>
<b>“Schemes”</b>	<p>the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Agency by the Minister for the Cabinet Office);</p>
<b>“Service Transfer”</b>	<p>any transfer of the Services (or any part of the Services), for whatever reason, from the Agency or any Sub-Contractor to a Replacement Agency or a Replacement Sub-Contractor;</p>
<b>“Service Transfer Date”</b>	<p>the date of a Service Transfer;</p>
<b>“Staffing Information”</b>	<p>in relation to all persons identified on the Agency's Provisional Agency Personnel List or Agency's Final Agency Personnel List, as the case may be, such information as the Client may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:</p> <ul style="list-style-type: none"><li>(a) their ages, dates of commencement of employment or engagement and gender;</li><li>(b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;</li><li>(c) the identity of the employer or relevant contracting party;</li></ul>

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Agency's Final Agency Personnel List"**

a list provided by the Agency of all Agency Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

**"Agency's Provisional Agency Personnel List"**

a list prepared and updated by the Agency of all Agency Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Agency;

**"Transferring Client Employees"**

those employees of the Client to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Agency Employees"**

in relation to a Former Agency, those employees of the Former Agency to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring Agency Employees"**

those employees of the Agency and/or the Agency's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. INTERPRETATION

Where a provision in this Call-Off Schedule 3 imposes an obligation on the Agency to provide an indemnity, undertaking or warranty, the Agency shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Client, Former Agency, Replacement Agency or Replacement Sub-Contractor, as the case may be.



## **PART A**

### **TRANSFERRING CLIENT EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

- 1.1 The Client and the Agency agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Client Employees; and
  - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Client and the Transferring Client Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Agency and/or any Notified Sub-Contractor and each such Transferring Client Employee.
- 1.2 The Client shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Client Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Client; and (ii) the Agency and/or any Notified Sub-Contractor (as appropriate).

#### **2. CLIENT INDEMNITIES**

- 2.1 Subject to Paragraph 2.2, the Client shall indemnify the Agency and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Client Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Client occurring before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Client before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Client Employees; and/or
    - (b) any custom or practice in respect of any Transferring Client Employees which the Client is contractually bound to honour;
  - 2.1.3 any claim by any trade union or other body or person representing the Transferring Client Employees arising from or connected with any failure by the Client to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
  - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Client Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- (b) in relation to any employee who is not a Transferring Client Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Client to the Agency and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 2.1.5 a failure of the Client to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Client Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Client other than a Transferring Client Employee for whom it is alleged the Agency and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee relating to any act or omission of the Client in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Agency or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
  - 2.2.1 arising out of the resignation of any Transferring Client Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Agency and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Agency or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Client as a Transferring Client Employee claims, or it is determined in relation to any person who is not identified by the Client as a Transferring Client Employee, that his/her contract of employment has been transferred from the Client to the Agency and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 2.3.1 the Agency shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Client; and
  - 2.3.2 the Client may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Agency and/or any Notified Sub-Contractor, or take such other reasonable steps as the Client considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Client, the Agency shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,
- the Agency and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Agency and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Client shall indemnify the Agency and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Agency takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Agency and/or any Sub-Contractor; or
    - (b) any claim that the termination of employment was unfair because the Agency and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
  - 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Agency and/or any Notified Sub-Contractor (as appropriate) to the Client within 6 months of the Call-Off Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Client nor dismissed by the Agency and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Agency and/or any Notified Sub-Contractor and the Agency shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3. AGENCY INDEMNITIES AND OBLIGATIONS**

- 3.1 Subject to Paragraph 3.2 the Agency shall indemnify the Client against any Employee Liabilities in respect of any Transferring Client Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- 3.1.1 any act or omission by the Agency or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Agency or any Sub-Contractor on or after the Relevant Transfer Date of:
  - (a) any collective agreement applicable to the Transferring Client Employees; and/or
  - (b) any custom or practice in respect of any Transferring Client Employees which the Agency or any Sub-Contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Client Employees arising from or connected with any failure by the Agency or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Agency or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Client Employees to their material detriment on or after their transfer to the Agency or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Client Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Agency or any Sub-Contractor to, or in respect of, any Transferring Client Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Client in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (a) in relation to any Transferring Client Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Client Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Client to the Agency or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Agency or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Client Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Client Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Client Employee relating to any act or omission of the Agency

or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Client's failure to comply with its obligations under regulation 13 of the Employment Regulations.

- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Client whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Client's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Agency shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Client Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Client and the Agency.

#### **4. INFORMATION**

The Agency shall, and shall procure that each Sub-Contractor shall, promptly provide to the Client in writing such information as is necessary to enable the Client to carry out its duties under regulation 13 of the Employment Regulations. The Client shall promptly provide to the Agency and each Notified Sub-Contractor in writing such information as is necessary to enable the Agency and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Agency of employees whose employment begins after the Relevant Transfer Date, and the Agency undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Agency shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Client relating to pensions in respect of any Transferring Client Employee as set down in:
  - 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.2.4 the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

## **6. PENSIONS**

The Agency shall, and shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

## **ANNEX TO PART A: PENSIONS**

### **1. PARTICIPATION**

- 1.1 The Agency undertakes to enter into the Admission Agreement.
- 1.2 The Agency and the Client:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Agency to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the Client is entitled to make arrangements with the body responsible for the Schemes for the Client to be notified if the Agency breaches the Admission Agreement;
  - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Agency shall notify the Client in the event that it breaches the Admission Agreement; and
  - 1.2.4 agree that the Client may terminate this Call-Off Contract for material default in the event that the Agency breaches the Admission Agreement.
- 1.3 The Agency shall bear its own costs and all costs that the Client reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Agency participating in the Schemes.

### **2. FUTURE SERVICE BENEFITS**

- 2.1 The Agency shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Agency shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Agency undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Client, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Client in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. FUNDING**

- 3.1 The Agency undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Agency shall indemnify and keep indemnified the Client on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Agency to or in respect of the Schemes.

#### **4. PROVISION OF INFORMATION**

The Agency and the Client respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5. INDEMNITY**

The Agency undertakes to the Client to indemnify and keep indemnified the Client on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6. EMPLOYER OBLIGATION**

The Agency shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7. SUBSEQUENT TRANSFERS**

The Agency shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Agency and/or the Client may reasonably require to enable the Replacement Agency to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the period either:
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call-Off Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Call-Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Agency or the Client, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior Approval of the Client (such Approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **PART B**

### **TRANSFERRING FORMER AGENCY EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. RELEVANT TRANSFERS**

- 1.1 The Client and the Agency agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Agency Employees; and
  - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Agency and the Transferring Former Agency Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Agency and/or Notified Sub-Contractor and each such Transferring Former Agency Employee.
- 1.2 Subject to Paragraph 6, the Client shall procure that each Former Agency shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Agency Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Agency shall make, and the Client shall procure that each Former Agency makes, any necessary apportionments in respect of any periodic payments.

#### **2. FORMER AGENCY INDEMNITIES**

- 2.1 Subject to Paragraphs 2.2 and 6, the Client shall procure that each Former Agency shall indemnify the Agency and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Agency Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.1.1 any act or omission by the Former Agency arising before the Relevant Transfer Date;
  - 2.1.2 the breach or non-observance by the Former Agency arising before the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Agency Employees; and/or
    - (b) any custom or practice in respect of any Transferring Former Agency Employees which the Former Agency is contractually bound to honour;
  - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

- (b) in relation to any employee who is not a Transferring Former Agency Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Agency to the Agency and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.4 a failure of the Former Agency to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Agency Employees in respect of the period to (but excluding) the Relevant Transfer Date;
  - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Agency other than a Transferring Former Agency Employee for whom it is alleged the Agency and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Call-Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
  - 2.1.6 any claim made by or in respect of a Transferring Former Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Agency Employee relating to any act or omission of the Former Agency in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Agency or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Agency Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Agency or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Agency and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Client as a Transferring Former Agency Employee claims, or it is determined in relation to any person who is not identified by the Client as a Transferring Former Agency Employee, that his/her contract of employment has been transferred from a Former Agency to the Agency and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Agency shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Client and, where required by the Client, to the Former Agency; and
  - 2.3.2 the Former Agency may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Agency and/or the Notified Sub-Contractor or take such other reasonable steps as

the Former Agency considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Agency and/or the Client, the Agency shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
  - 2.5.2 such offer has been made but not accepted; or
  - 2.5.3 the situation has not otherwise been resolved,
- the Agency and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Agency and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Client shall procure that the Former Agency indemnifies the Agency and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.5 provided that the Agency takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Agency and/or any Sub-Contractor; or
    - (b) any claim that the termination of employment was unfair because the Agency and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
  - 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Agency and/or any Notified Sub-Contractor (as appropriate) to the Client and, if applicable, the Former Agency, within 6 months of the Call-Off Commencement Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Agency nor dismissed by the Agency and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Agency or Notified Sub-Contractor and the Agency shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

### 3. AGENCY INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Agency shall indemnify the Client and/or the Former Agency against any Employee Liabilities in respect of any Transferring Former Agency Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 3.1.1 any act or omission by the Agency or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
  - 3.1.2 the breach or non-observance by the Agency or any Sub-Contractor on or after the Relevant Transfer Date of:
    - (a) any collective agreement applicable to the Transferring Former Agency Employee; and/or
    - (b) any custom or practice in respect of any Transferring Former Agency Employees which the Agency or any Sub-Contractor is contractually bound to honour;
  - 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Agency Employees arising from or connected with any failure by the Agency or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
  - 3.1.4 any proposal by the Agency or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Agency Employees to their material detriment on or after their transfer to the Agency or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Agency Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
  - 3.1.5 any statement communicated to or action undertaken by the Agency or a Sub-Contractor to, or in respect of, any Transferring Former Agency Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Client and/or the Former Agency in writing;
  - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (a) in relation to any Transferring Former Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
    - (b) in relation to any employee who is not a Transferring Former Agency Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Agency to the Agency or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory

authority relates to financial obligations arising on or after the Relevant Transfer Date;

- 3.1.7 a failure of the Agency or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Agency Employees in respect of the period from (and including) the Relevant Transfer Date; and
  - 3.1.8 any claim made by or in respect of a Transferring Former Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Agency Employee relating to any act or omission of the Agency or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Agency's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Agency whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Agency's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Agency shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Agency Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Agency and the Former Agency.

#### **4. INFORMATION**

The Agency shall, and shall procure that each Sub-Contractor shall, promptly provide to the Client and/or at the Client's direction, the Former Agency, in writing such information as is necessary to enable the Client and/or the Former Agency to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Client shall procure that the Former Agency shall promptly provide to the Agency and each Notified Sub-Contractor in writing such information as is necessary to enable the Agency and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Agency shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Client relating to pensions in respect of any Transferring Former Agency Employee as set down in:
  - 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

- 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

## **6. PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Client accepts an obligation to procure that a Former Agency does or does not do something, such obligation shall be limited so that it extends only to the extent that the Client's contract with the Former Agency contains a contractual right in that regard which the Client may enforce, or otherwise so that it requires only that the Client must use reasonable endeavours to procure that the Former Agency does or does not act accordingly.

## **7. PENSIONS**

The Agency shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex in respect of any Transferring Former Agency Employees who transfer from the Former Agency to the Agency.

## **ANNEX TO PART B: PENSIONS**

### **1. PARTICIPATION**

- 1.1 The Agency undertakes to enter into the Admission Agreement.
- 1.2 The Agency and the Client:
  - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Agency to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the Client is entitled to make arrangements with the body responsible for the Schemes for the Client to be notified if the Agency breaches the Admission Agreement;
  - 1.2.3 notwithstanding Paragraph 1.2.2 of this Annex, the Agency shall notify the Client in the event that it breaches the Admission Agreement; and
  - 1.2.4 agree that the Client may terminate this Call-Off Contract for material default in the event that the Agency breaches the Admission Agreement.
- 1.3 The Agency shall bear its own costs and all costs that the Client reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Agency participating in the Schemes.

### **2. FUTURE SERVICE BENEFITS**

- 2.1 If the Agency is rejoining the Schemes for the first time, the Agency shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Agency shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Agency shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Agency undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Client, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Client in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes at the relevant date.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3. FUNDING**

- 3.1 The Agency undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Agency shall indemnify and keep indemnified the Client on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Agency to or in respect of the Schemes.

#### **4. PROVISION OF INFORMATION**

The Agency and the Client respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

#### **5. INDEMNITY**

The Agency undertakes to the Client to indemnify and keep indemnified the Client on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

#### **6. EMPLOYER OBLIGATION**

The Agency shall comply with the requirements of the Pensions Act 2008 and the Transfer of Employment (Pension Protection) Regulations 2005.

#### **7. SUBSEQUENT TRANSFERS**

The Agency shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the relevant future transfer;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Agency and/or the Client may reasonably require to enable the Replacement Agency to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the period either
  - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Call-Off Contract, to terminate the Agreement or any part of the Services; or
  - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Call-Off Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Agency or the Client, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior Approval of the Client (such Approval not to be unreasonably withheld). Save that this

sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **PART C**

### **NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

#### **1. PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Client and the Agency agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Client and/or any Former Agency.
- 1.2 If any employee of the Client and/or a Former Agency claims, or it is determined in relation to any employee of the Client and/or a Former Agency, that his/her contract of employment has been transferred from the Client and/or the Former Agency to the Agency and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Agency shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Client and, where required by the Client, give notice to the Former Agency; and
  - 1.2.2 the Client and/or the Former Agency may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Agency or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Client or Former Agency (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Client and/or the Former Agency), the Agency shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved,the Agency and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### **2. INDEMNITIES**

- 2.1 Subject to the Agency and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Client shall:
  - 2.1.1 indemnify the Agency and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Client referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
  - 2.1.2 subject to paragraph 3, procure that the Former Agency indemnifies the Agency and/or any Notified Sub-Contractor against all Employee Liabilities arising out of

termination of the employment of the employees of the Former Agency made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Client and/or the Former Agency as appropriate nor dismissed by the Agency and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Agency and/or the Sub-Contractor (as appropriate) and the Agency shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Agency and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Agency and/or the Sub-Contractor and the Agency shall indemnify the Client and any Former Agency, and shall procure that the Sub-Contractor shall indemnify the Client and any Former Agency, against any Employee Liabilities that either of them may incur in respect of any such employees of the Agency and/or employees of the Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
    - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
  
in any case in relation to any alleged act or omission of the Agency and/or any Sub-Contractor; or
  - (b) any claim that the termination of employment was unfair because the Agency and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Agency and/or any Sub-Contractor to the Client and, if applicable, Former Agency within 6 months of the Call-Off Commencement Date.

### **3. PROCUREMENT OBLIGATIONS**

Where in this Part C the Client accepts an obligation to procure that a Former Agency does or does not do something, such obligation shall be limited so that it extends only to the extent that the Client's contract with the Former Agency contains a contractual right in that regard which the Client may enforce, or otherwise so that it requires only that the Client must use reasonable endeavours to procure that the Former Agency does or does not act accordingly.

## PART D

### EMPLOYMENT EXIT PROVISIONS

#### 1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Agency agrees that within twenty (20) Working Days of the earliest of:
  - 1.1.1 receipt of a notification from the Client of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call-Off Contract;
  - 1.1.3 the date which is twelve (12) months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Client at any time (provided that the Client shall only be entitled to make one such request in any six (6) month period),it shall provide in a suitably anonymised format so as to comply with the DPA, the Agency's Provisional Agency Personnel List, together with the Staffing Information in relation to the Agency's Provisional Agency Personnel List and it shall provide an updated Agency's Provisional Agency Personnel List at such intervals as are reasonably requested by the Client.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Agency shall provide to the Client or at the direction of the Client to any Replacement Agency and/or any Replacement Sub-Contractor:
  - 1.2.1 the Agency's Final Agency Personnel List, which shall identify which of the Agency Personnel are Transferring Agency Employees; and
  - 1.2.2 the Staffing Information in relation to the Agency's Final Agency Personnel List (insofar as such information has not previously been provided).
- 1.3 The Client shall be permitted to use and disclose information provided by the Agency under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Agency and/or Replacement Sub-Contractor.
- 1.4 The Agency warrants, for the benefit of the Client, any Replacement Agency, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Agency agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Agency's Provisional Agency Personnel List and shall not without the Approval of the Client (not to be unreasonably withheld or delayed):
  - 1.5.1 replace or re-deploy any Agency Personnel listed on the Agency Provisional Agency Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Agency Personnel (including any payments connected with the termination of employment);

- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Agency Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Agency's Provisional Agency Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Agency's Provisional Agency Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Client or, at the direction of the Client, any Replacement Agency and any Replacement Sub-Contractor of any notice to terminate employment given by the Agency or relevant Sub-Contractor or received from any persons listed on the Agency's Provisional Agency Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Agency shall provide, and shall procure that each Sub-Contractor shall provide, to the Client any information the Client may reasonably require relating to the manner in which the Services are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
  - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Agency shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Client, any Replacement Agency and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Agency Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Agency Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Agency shall provide, and shall procure that each Sub-Contractor shall provide, to the Client or, at the direction of the Client, to any Replacement Agency and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Agency's Final Agency Personnel List who is a Transferring Agency Employee:
  - 1.7.1 the most recent month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay; and
  - 1.7.6 bank/building society account details for payroll purposes.

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Client and the Agency acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Call-Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Agency and/or a Replacement Sub-Contractor. Such change in the identity of the Agency of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Client and the Agency further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Agency and the Transferring Agency Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Agency and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Agency Employee.
- 2.2 The Agency shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Agency Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Agency Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Agency and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Agency and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Agency shall indemnify the Client and/or the Replacement Agency and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Agency Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Agency or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Agency or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Agency Employees; and/or
- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Agency Employees which the Agency or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Agency Employees arising from or connected with any failure by the Agency or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Agency Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency to the Client and/or Replacement Agency and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Agency or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Agency or any Sub-Contractor other than a Transferring Agency Employee for whom it is alleged the Client and/or the Replacement Agency and/or any Replacement Sub-Contractor may be liable by virtue of this Call-Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee relating to any act or omission of the Agency or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Client and/or Replacement Agency to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Agency and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Agency Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Agency and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
  - 2.4.2 arising from the Replacement Agency's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Agency Employee claims, or it is determined in relation to any person who is not a Transferring Agency Employee, that his/her contract of employment has been transferred from the Agency or any Sub-Contractor to the

Replacement Agency and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- 2.5.1 the Client shall procure that the Replacement Agency shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Agency; and
  - 2.5.2 the Agency may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Agency and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Agency or a Sub-Contractor, the Client shall procure that the Replacement Agency shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
  - 2.7.2 such offer has been made but not accepted; or
  - 2.7.3 the situation has not otherwise been resolved
- the Client shall advise the Replacement Agency and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Agency and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Agency shall indemnify the Replacement Agency and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Agency takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
    - (a) any claim for:
      - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,  
  
in any case in relation to any alleged act or omission of the Replacement Agency and/or Replacement Sub-Contractor; or
    - (b) any claim that the termination of employment was unfair because the Replacement Agency and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Agency and/or Replacement Sub-Contractor to the Agency within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Agency or any Sub-Contractor nor dismissed by the Replacement Agency and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Agency Employee and the Replacement Agency and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Agency shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Agency Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Agency and/or any Sub-Contractor; and
- 2.11.2 the Replacement Agency and/or the Replacement Sub-Contractor.
- 2.12 The Agency shall, and shall procure that each Sub-Contractor shall, promptly provide to the Client and any Replacement Agency and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Client, the Replacement Agency and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Client shall procure that the Replacement Agency and/or Replacement Sub-Contractor shall promptly provide to the Agency and each Sub-Contractor in writing such information as is necessary to enable the Agency and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs the Client shall procure that the Replacement Agency indemnifies the Agency on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Agency Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee) arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Agency and/or Replacement Sub-Contractor;
- 2.13.2 the breach or non-observance by the Replacement Agency and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Agency Employees; and/or
- (b) any custom or practice in respect of any Transferring Agency Employees which the Replacement Agency and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Agency Employees arising from or connected with any failure by the Replacement

- Agency and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 2.13.4 any proposal by the Replacement Agency and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Agency Employees on or after their transfer to the Replacement Agency or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Agency Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Agency or Replacement Sub-Contractor to, or in respect of, any Transferring Agency Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Agency in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (b) in relation to any employee who is not a Transferring Agency Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency or Sub-Contractor, to the Replacement Agency or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Agency or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee relating to any act or omission of the Replacement Agency or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Agency and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.



## SCHEDULE 4:

### DISPUTE RESOLUTION PROCEDURE

1. Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The obligations of the Parties under this Call-Off Contract will not be suspended, cease or be delayed during a dispute.
3. If any dispute arises between the Parties in connection with this Call-Off Contract, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute.
4. If the Parties have not settled the Dispute in accordance with paragraph 3 above, they must notify CCS of the details of the Dispute and escalate the dispute to the Client Representative, the Agency Representative and CCS who will have a further 10 Working Days from the date of escalation to settle the dispute.
5. If the dispute cannot be resolved by the Parties within 30 Working Days of the notice given under paragraph 3 above, they must refer it to mediation, unless the Client considers that the dispute is not suitable for resolution by mediation.
6. If a dispute is referred to mediation, the Parties must:
  - appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment. If they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution to appoint a Mediator
  - meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged
7. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
8. If the Parties reach a resolution, a written agreement may be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
9. If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. This opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
10. If the Parties fail to reach a resolution within 90 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless the Client considers that it is not suitable for resolution by arbitration.
11. If a dispute is referred to arbitration, the Parties must comply with the following provisions:
  - the arbitration will be governed by the provisions of the Arbitration Act 1996
  - the London Court of International Arbitration (LCIA) procedural rules will apply, and are deemed to be incorporated into this Call-Off Contract. It however there is any conflict

between the LCIA procedural rules and this Call-Off Contract, this Call-Off Contract will prevail

- the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
- the tribunal shall consist of a sole arbitrator to be agreed by the Parties
- if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
- the arbitration proceedings shall take place in a location to be agreed between the Parties.

**SCHEDULE 5: VARIATION FORM**

No of Call Off Letter of Appointment being varied:  
.....

Variation Form No:  
.....

BETWEEN:

**The Secretary of State for the Department for International Trade ("the Client")**

and

**Tullo Marshall Warren Ltd ("the Agency")**

1. This Call-Off Contract is varied as follows and shall take effect on the date signed by both Parties:

***[Insert details of the Variation]***

2. Words and expressions in this Variation shall have the meanings given to them in this Call-Off Contract.
3. This Call-Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Client

Signature \_\_\_\_\_  
Date \_\_\_\_\_  
Name (in Capitals) \_\_\_\_\_  
Address \_\_\_\_\_

Signed by an authorised signatory to sign for and on behalf of the Agency

Signature \_\_\_\_\_  
Date \_\_\_\_\_  
Name (in Capitals) \_\_\_\_\_  
Address \_\_\_\_\_

0.

**SCHEDULE 6: ADDITIONAL CLAUSES**

NOT USED

**CALL OFF SCHEDULE 7: MOD DEFCONS AND DEFFORMS**

NOT USED

### SCHEDULE 8: AUTHORISED PROCESSING TEMPLATE

1. The contact details of the Client Data Protection Officer is:

**Data Protection:** [REDACTED]

2. The contact details of the Agency Data Protection Officer is:

Data Protection Officer: [REDACTED]

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Schedule.

<b>Contract Reference:</b>	DN386933 – Automated Content Marketing Services
<b>Date:</b>	12 <sup>th</sup> March 2019
<b>Description Of Authorised Processing</b>	<b>Details</b>
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Agency is the Processor.
Subject matter of the processing	In providing the services, the Agency will process business information, that may contain personal information, such as names, email addresses and phone numbers of employees of businesses, for the purpose of analysing and directing automated content marketing services.
Duration of the processing	For the duration of the Call-Off Contract
Nature and purposes of the processing	The nature of the processing is collection, recording, structuring and analyzing and using for communication purposes  The data will be used for the purpose of analyzing and directed automated content marketing services at.

Type of Personal Data	The majority of the data collected and processed will be business data, however this could include the names, emails and phone numbers of employees at this business.
Categories of Data Subject	Staff of exporting or investing businesses.
	The data is stored by the Controller on it's Customer Data Management System (CDMS), "Datahub", separately to this Contract. This is done in a GDPR compliant way, upon permission of the data subject, and is deleted upon receiving a deletion request.