

TERMS AND CONDITIONS THAT WILL APPLY TO CONTRACTS AWARDED
TO SUPPLIERS ON COI'S ADVERTISING SERVICES ROSTER

SECTION 1 – APPLICABILITY AND USAGE

Definitions

- 1.1 (a) "COI" means the Central Office of Information whose head office is situated at Hercules House, Hercules Road, London SE1 7DU.
- (b) "the Contractor" means that company or person with whom this Framework Contract has been agreed.
- (c) "the Agency" means the Contractor.
- (d) "COI Manager" means the Designated Officer as defined in Section 2, Clause 2.1(a).

Applicability

- 1.2 (a) COI and the Agency agree that these Terms and Conditions, including "COI's Standard Conditions of Contract for the Supply of Services" (Section 2), will apply to all contracts for Advertising Services awarded to the Agency.
- (b) The deliverables and timescales for any contract awarded under this Framework will be Mutually Agreed when it is awarded.

Award of Contracts

- 1.3 (a) All contracts for Services will be awarded by means either of a COI Purchase Order or of a Contract Letter issued by COI and sent to a nominated person in the Agency.
- (b) Any Purchase Order/Contract Letter will be issued to these terms and conditions and will constitute the entire agreement between the Parties relating to the subject matter of the Contract. The Purchase Order/Contract Letter will supersede all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- (c) No amendment to the deliverables or the price of the Contract as defined in the Purchase Order/Contract Letter will be effective unless Mutually Agreed in writing.
- (d) COI shall have no liability beyond the value of the Contract agreed at the time the Purchase Order/Contract Letter is issued unless a change is mutually agreed in writing.

Time Of The Essence

- 1.4 (a) Because of the nature of the Services to be provided, time will be of the essence of the Contract and any late delivery will be taken as a fundamental default on the part of the Agency except where the delay is caused:
- (i) through the fault of COI, the Client Department or another COI Contractor; or
- (ii) through reason of Force Majeure as defined in Condition 2.26 in Section 2 of the Contract.
- (b) In the event of late delivery caused other than by the exceptions given above:
- (i) COI may withhold any or all of the outstanding value of the Contract; and
- (ii) at the request of COI, the Contractor will repay any or all amounts already paid to him in respect of the Contract.
- (c) COI shall have the right to decide what amounts will be withheld or repaid. In exercising its rights or remedies under this Condition COI will act in a reasonable and proportionate manner paying full and proper regard to the loss in value of the Services that late delivery has caused.
- (d) In the event that late delivery results in the Services having no value to COI and no payment is made to the Contractor then Condition 2.10 in Section 2 shall not apply, the Contractor shall retain all rights in Materials he has produced and COI shall have no rights to such Materials. In the event that late delivery results in the Services having a reduced value to COI and a reduced payment is made then Condition 2.10 in Section 2 shall apply in full.
- (e) Default through late delivery will be treated as a fundamental breach not capable of remedy when interpreting Condition 2.28 in Section 2.

Account Management

- 1.5 (a) The Agency shall work in close association with, and will comply with the reasonable requirements of, the COI Manager appointed by COI.
- (b) The COI Manager shall be The Agency's first point of contact within COI on all issues.
- (c) The Agency shall ensure that the COI Manager is advised in advance of all meetings between The Agency and the Client Department.
- (d) All meetings and telephone conversations that involve action or decisions will be call reported immediately by The Agency and distributed to interested parties at COI, the Client Department and The Agency within two working days. *(The Agency's attention is drawn to the fact that this places a contractual obligation on him to inform COI in advance of any meeting with the Client Department not attended by COI.)*

Agency Performance

- 1.6 (a) The Agency will be subject to COI's standard Agency Assessment procedures.
- (b) The Agency will be measured on its performance, if services have been provided to COI during the assessment period, and its score compared to the COI benchmark.
- (c) The Agency agrees to submit any information and/or evidence reasonably requested by COI for the carrying out of the assessment.
- (d) The Agency will be informed of the result of COI's assessment of its performance.

Account Planning/Research

- 1.7 (a) The Agency will provide research/information to support its advertising recommendations and include campaign evaluation measures. Campaign evaluation measures shall be agreed in advance of any recommendations and quantified targets set following discussion between the Agency, COI and the Client Department.
- (b) The Agency will work with and/or use any information held by COI Research Service on qualitative or quantitative research projects. This includes liaising on the production of research briefs, briefing meetings with research agencies and the interpretation of results.
- (c) The level of finish required for stimulus material will be agreed with the COI Manager and costs for its production will be agreed with the COI Manager prior to production. Commission may be charged on the cost for production of this stimulus material.
- (d) The Agency will allocate a senior planner to each COI account.

Creative & Briefing

- 1.8 (a) The Agency will supply a Creative Brief that will include how the campaign will be measured, clearly defined target audience(s) and production budget parameters. The COI Manager must agree the Creative Brief before work commences. Failure to do this will be noted in the Agency Assessment and will result in a lower overall score.
- (b) All creative work at each stage of development must be seen by the COI Manager at the same time as, or prior to, its presentation to the Client Department. This should be attached as a pdf file to the contact report of the meeting or telephone conversation at which the creative work was shown or discussed unless the COI Manager instructs the agency not to do so.
- (c) The Agency is responsible for the clearance of all creative concepts and proposals presented to COI and the Client Department. It will be assumed that this has been done prior to the presentation unless the Agency specifically notifies COI that clearance is required. In particular, The Agency will ensure that it has the legal right to use all material and ideas included in any campaign, that copyright is assigned to COI and that all moral rights are waived unless COI approves otherwise in writing. *(The Agency's attention is drawn to Section2, Condition 2.10.)*
- (d) It is also the Agency's responsibility to ensure that creative proposals are practical, particularly in terms of logistics, taste and budget. *(This does not conflict with the COI Producer role of finalising cost and shoot/recording arrangements.)*

- (e) The Agency is asked to consider appropriate depiction of BME groups in creative work and if necessary, consult with COI's inclusivity consultancy.
- (f) The Agency must also consider the depiction of disability in their creative work. A Specialist Adviser is available at COI via the COI Manager if required. The Agency Account Director is responsible for capturing The Agency's compliance for this issue and completing the monitoring form.
- (g) The Agency is also reminded to refer to Informability guidelines on plain language and clear design, and in particular a minimum 12-point type size in print work.

Media Planning and Buying

- 1.9
- (a) Media Planning and Media Buying will normally be carried out by separate suppliers under contracts specifically awarded by COI for these purposes.
 - (b) The Agency undertakes to operate within the media plan provided by COI or the media-planning agency appointed by COI.

Production - Press

- 1.10
- (a) The Agency will produce a press production estimate on the standard COI estimate form providing sufficient detail (as prompted on the estimate form) for the COI Manager to compare costs against the COI Price List. The Agency must allow sufficient time, ideally 3 working days, for the COI Manager to discuss this estimate with the Client Department before any production work is ordered or carried out. As this has been a particular problem area in the past, failure to do this will be noted in the Agency Assessment and will result in a lower score.
 - (b) COI reserves the right to manage the production of a press campaign directly with the pre-press supplier if it decides that circumstances so warrant.
 - (c) The Agency may use its own in-house studio for press production work up to and including master stage only providing:
 - (i) the in-house studio is wholly owned by the agency; and
 - (ii) COI remains content that the in-house studio is producing work to the required quality otherwise a supplier selected by the Agency from COI's list of approved pre-press houses must be used.
 - (d) **Work beyond the master stage, including adapts, must only be done by a supplier on COI's list of approved pre-press houses.** When the in-house studio meets this criterion it may be used. Otherwise the Agency will select a pre-press house from the COI approved list and send the master and media schedule for production and despatch of adapts to them to complete the work.
 - (e) The Agency will purchase all press production within the prices specified on the COI Price List provided by COI. The COI price list will be updated and re-supplied annually in the autumn. The cost of any process not covered by the COI Price List must be agreed with the COI Manager before any work is ordered or commences. The agency may charge commission on the full cost of production of adapts.
 - (f) The Agency is responsible for monitoring the quality of reproduction and accuracy for all press production work. This includes ensuring that the correct response code appears (utilising the COICARP mnemonics).
 - (g) All press production work sent to suppliers on COI's behalf must clearly indicate that it is for a COI campaign. All COI campaigns work must be excluded from any discount arrangement The Agency may have with the suppliers concerned except for prompt payment discounts, which shall be passed back to COI.
 - (h) The Agency will ensure that clear copy instructions are provided with the artwork despatched to each title, whether this is despatched directly by the agency or by the approved supplier. The copy instruction must include any repeat instructions and consequent response code changes (utilising the COICARP mnemonics).

- (i) The Agency will retain creative control of photography but accepts that COI will carry out all cost negotiations with photographers. The Agency will provide the COI Manager with three alternative photographers on the COI photography briefing form. The Agency will brief the three photographers but will at no time discuss fees or charges. COI will then negotiate prices and inform The Agency as to the photographer to be used. The Agency does not receive commission on the Photographer's fee. The Agency will not normally receive a fee for setting up a shoot, however in exceptional circumstances this may be considered by the COI Manager if raised early enough before the shoot. For low-budget, straightforward shots, COI will nominate a photographer.
- (j) The Agency will ensure that the COI Photographic Manager and the COI Manager always receive low-resolution PDF files of the master version and any subsequent amends of the advertisement. As this has been a particular problem area in the past, failure to do this will be noted in the Agency Assessment and will result in a lower score.
- (k) Although there is no standard requirement for final 'hard copy' proofs, on request, the Agency will also supply the COI Manager with final proofs of all approved advertisements.
- (l) All props purchased for photographic shoots will become and will remain the property of COI and must be delivered up to COI at the end of the shoot.

Production - Poster Artwork

- 1.11 (a) Conditions 1.10(i) to 1.10(l), above, will apply equally to photography for and props used in poster artwork production.
- (b) The Agency is responsible for poster production as far as the artwork stage. Poster production will be carried out by a printer appointed by COI unless in special circumstances COI decides otherwise.
 - (c) The Agency is also responsible for technical clearance of the final colour proof prior to printing.
 - (d) The Agency will produce a production estimate for poster production on the standard COI estimate form. This estimate must be approved by the COI Manager before any work is ordered or carried out.
 - (e) The Agency shall comply with all poster artwork specifications and safe copy areas.
 - (f) The Agency shall ensure that special colours and four colour workings are on as few panels as possible.
 - (g) The Agency is aware of and shall pay due regard to the legal requirement for the imprint to appear on all printed material.
 - (h) All approved artwork provided for printing of posters must have COI's print briefing form correctly filled out and attached. This is available via the COI Manager.

Production - Television

- 1.12 (a) The Agency is responsible for the writing of scripts for all TV commercials.
- (b) The Agency accepts that COI and not The Agency is responsible for the provision of the Film Producer who will manage the TV commercial production.
 - (c) The Agency will work closely with the Film Producer to ensure that all parties are kept aware of the status of the production at every stage of the process.
 - (d) The Agency shall advise the COI Manager and the Film Producer as soon as possible of the names of three prospective directors/production companies. Once the director has been selected, COI and not The Agency will negotiate the production budget and all associated costs and will issue and manage all necessary contracts.
 - (e) The Agency shall present the commercial to BACC and obtain the necessary approval in good time for the purposes of the campaign.
 - (f) At least 2 clear working days prior to the transmission date, the Agency shall send copy rotation instructions to TV stations, the COI Manager and the centralised TV buying agency in good time for the purposes of the campaign.

- (g) All props purchased for TV and/or photographic shoots will become and will remain the property of COI and must be delivered up to COI at the end of the shoot.

Production - Radio

- 1.13 (a) The Agency is responsible for the writing of scripts for all radio commercials unless otherwise advised and for obtaining the necessary approval of scripts from RACC.
- (b) The Agency accepts that COI and not The Agency is responsible for the provision of a Radio Producer who will manage all aspects of the radio commercial production.
- (c) The Agency will work closely with the Radio Producer to ensure that all parties are kept aware of the status of the production at every stage of the process.
- (d) The Agency will supply rotation schedules to COI Radio Producer, the COI Manager and the centralised radio buying agency in good time so that these can be included with the layout of the commercial.

Production - Cinema

- 1.14 (a) The Agency is responsible for the writing of scripts for all cinema commercials.
- (b) The Agency accepts that COI and not The Agency is responsible for the provision of a Film Producer who will manage the cinema commercial production.
- (c) The Agency will work closely with the Film Producer to ensure that all parties are kept aware of the status of the production at every stage of the process.
- (d) The Agency shall advise the COI Manager and the Film Producer as soon as possible of three prospective directors/production companies. Once the director has been selected, COI and not The Agency will negotiate the production budget and all associated costs and will issue and manage all necessary contracts.
- (e) COI will obtain the necessary clearances from British Board of Film Classification.
- (f) The Agency will advise the COI Manager and the centralised cinema buying agency of how many bulk prints of cinema commercials are required.

Production – Digital Media

- 1.15 (a) COI maintains a separate roster of digital media creative companies. The Agency will therefore only be involved with digital media when it is one element of a multi-media campaign. In this event the Agency may be asked to recommend the content and design elements of digital media as part of the complete multi-media package.
- (b) COI and the appointed company from its digital media creative roster will be responsible for all aspects of digital media production. The final decision on whether to use any content and design elements recommended by the Agency rests with COI. When appropriate with multi-media campaigns, the appointed digital media creative company will be instructed to cooperate and liaise fully with the Agency to ensure that the finished digital media product integrates fully with the overall campaign concepts.

Post Campaign Assessment

- 1.16 Unless otherwise agreed with the COI Manager, The Agency will provide a comprehensive campaign assessment as soon after the end of the campaign as possible, covering such areas as objectives, campaign strategy and campaign evaluation. The lack of these assessments has been a particular problem in the past, so failure to do this will be noted in the Agency Assessment and will result in a lower score.

Maximum Liability

- 1.17 The campaign costs for which The Agency is responsible must not exceed the maximum cost specified in the Purchase Order/Contract Letter issued by COI.

Excluded Costs

- 1.18 (a) The Agency accepts that COI does not pay the following excepting the proviso given in Condition 1.18(b):
- (i) Creative development costs.
 - (ii) Research material costs.
 - (iii) Out of pocket expenses for agency personnel within the UK.
 - (iv) Rush charges.
 - (v) The cost of delivering press ads to titles by courier.
- (b) In exceptional circumstances any or all of the above costs may be paid but only provided that written agreement has been obtained in advance from the COI Manager and that agreed costs have been identified as a separate item on the COI Production Forms.

Invoices

- 1.19 (a) The Agency will submit all invoices providing full details and narrative as appropriate. For all invoices this must include campaign title, name of Client Department, the medium to which they relate and contract number. Press and poster production invoices must include in addition the agency job number and, where appropriate, details of previous billing on the same campaign.
- (b) The Agency will not submit a single invoice covering:
- (i) costs incurred on separate campaigns; or
 - (ii) costs spanning two different types of media; or
 - (iii) costs spanning two COI financial years. (Note: COI's financial year is 1st April to 31st March.)
- (c) The Agency will submit all invoices, together with all necessary supporting documentation to the reasonable satisfaction of COI, within four months of the end of the campaign. COI will have no obligation to pay any late submitted invoice.

Submission Of Invoices

This information is considered commercially sensitive.



Supporting Documentation

- 1.21 All invoices must be submitted with the appropriate supporting documentation:
- (i) Centrally bought media commission - The Agency will include with the invoice a copy of the correspondence from COI Administration confirming net costs.
 - (ii) Press & Poster production - The Agency will include with the invoice a clear and legible copy of the invoice from the production house and a copy of the approved production estimate.

Standard Terms

This information is considered commercially sensitive.

[REDACTED]

Official Secrets Acts

1.23 The Agency's attention is drawn to the provisions of the Official Secrets Acts 1911 through to 1989 and any statutory modification or re-enactment thereof. The Agency shall take steps and appropriate means to ensure that all persons employed on any work in connection with the contract have notice that these statutory provisions apply to them and will continue to apply after the completion or earlier termination of the contract.

Agency Audit Inspection

1.24 In addition to COI's standard Right of Audit (Section 2, Condition 2.16) COI shall have access at all reasonable times to all The Agency's personnel and to all books, records, correspondence, receipts, invoices, and other papers of any kind in The Agency's possession relating to any and all COI's advertising contracts that is necessary for COI to investigate and verify the cost of all items and/or services for which the agency has received payment.

Contractual Responsibility

1.25 Contractors will have a contractual responsibility solely to COI for the provision of services. Any requests from third parties (including the Client Department) to carry out additional work or alter existing systems/working practices must be cleared by the Contractor's project manager with COI in advance. Failure to do so may result in any costs incurred by the supplier when carrying out third party requests not being paid for. It is also expected that Contractors project managers will alert COI to any direct contact of this nature, which has not been pre-authorised.

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SECTION 2 – COI'S STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF SERVICES

Definitions

2.1 In this Contract:

- (a) "Designated Officer" means the individual appointed by COI as the responsible official for the purposes of the Contract.
- (b) "Client Department" means the government department, agency or sponsored body on whose behalf COI is placing the Contract.
- (c) "Issued Property" means all government property issued in connection with the Contract.
- (d) "Materials" means all items and data produced by the Contractor in the execution of the contract in paper, electronic or any other form.
- (e) "Sub-contractor" means any person, firm or company under contract to the Contractor to perform work and/or provide professional services and/or supply goods.
- (f) "Staff" means all persons employed by the Contractor under contracts of service, contracts for services, contracts for the supply of employees' services, or otherwise.
- (g) "Key Staff" means those Staff specifically named by the Contractor as providing the Service.
- (h) "Premises" means land or buildings where the Services are to be performed.
- (i) "Site" means the area within the Premises in which the Services are performed.
- (j) "Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names and other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.
- (k) "Month" means calendar month
- (l) "Mutually Agreed" means mutually agreed in writing between COI and the Contractor.
- (m) Where the context allows, the masculine includes the feminine and the neuter.
- (n) Where the context allows, the singular includes the plural and vice versa.
- (o) Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

The Services

- 2.2 (a) The Services to be provided by the Contractor are as Mutually Agreed at the time a Contract is awarded.
- (b) Where the context so admits, the Services shall include any Materials or articles to be supplied by the Contractor.
- (c) The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good industry practice. Timely provision of the Services is of the essence of the Contract.
- (d) The Contractor will monitor his performance, the performance of his staff and the performance of his subcontractors and will notify the Designated Officer immediately if there is any risk that the agreed content and/or quality and/or timeliness of the Services may not be met..
- (e) The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the supply of and conditions affecting labour and the equipment necessary for the performance of the Service, subject to all such matters being discoverable by the Contractor.

Staff

- 2.3 (a) The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the Services.
- (b) All Staff deployed on work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to COI. Where so required, full particulars of Staff to be so employed shall be provided in advance to the Designated Officer for confirmation of acceptability.

- (c) The Contractor shall provide, at all times, the number of Staff required to fulfil his obligations under the Contract.
- (d) The Contractor shall take all reasonable steps to avoid changes of Staff assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness, etc. The Contractor shall give at least one month's notice of proposals to change Key Staff (See Clause 2.1(g)) and replacements will not be appointed without the approval of COI. That approval will not be unreasonably withheld.

Progress Reports

- 2.4
- (a) Where progress reports are required under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.
 - (b) The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.
 - (c) The Contractor undertakes to maintain and make available adequate records to verify that work has been carried out in accordance with this Contract.

Price

- 2.5 Unless otherwise stated in the Contract, the price shall be the total price for the Services including the cost of all labour, Materials, equipment, holiday relief or substitute as and when necessary, overheads and all other costs incurred by the Contractor in connection with the proper execution of the Contract. (VAT is covered at Condition 2.13.)

Variation Of Requirement And/Or Contract

- 2.6
- (a) COI shall have the right to vary the Services at any time, subject to the variation being related in nature to the Services being provided. No such variation shall vitiate the Contract.
 - (b) In the event of an emergency where there is not time to Mutually Agree a change in writing COI shall have the right to vary the Contract by oral instructions which shall be confirmed in writing within seven days. Otherwise all variations will be notified in accordance with Clause 2.7(b), below.
 - (c) Where the variation warrants it, a fair and reasonable adjustment to the Contract Price shall be mutually agreed as soon as is practicable. In the event of delay in reaching agreement a provisional adjustment shall be made by COI. If the finally agreed adjustment is higher than the provisional adjustment COI will pay the difference. If the finally agreed adjustment is lower than the provisional adjustment the Contractor will repay the difference.
 - (d) Where the contract is for a fixed period, COI shall have the right to extend that period on giving fair and reasonable notice to the Contractor. Such an extension will be treated as a variation to the Services and the rights and obligations conferred in Clauses 2.6(a), 2.6(b) and 2.6(c) will apply.
 - (e) The Contractor may propose a variation where he considers that a change may be beneficial or necessary. In this case:
 - (i) the proposed variation shall be supported by a detailed quotation;
 - (ii) COI may approve or reject the proposed variation at its own discretion; and
 - (iii) no variation will become effective until it is Mutually Agreed and no purported variation by any other means shall bind COI.

Notices And Communications

- 2.7
- (a) Except as otherwise provided within the Contract, no notice or communication given under or pursuant to the Contract shall have any validity unless made in writing.
 - (b) Any notice or communication given under or pursuant to the Contract may be sent by any means resulting in the receipt of a written communication in permanent form and shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

Suspension Of The Services

- 2.8 (a) COI reserves the right to require the Contractor to suspend all activity on the Contract for a period specified by COI:
- (i) during the period of any local, Parliamentary or European election campaign(s);
 - (ii) to comply with any emergency orders issued by the Government; or
 - (iii) in the case of any event which in the reasonable opinion of COI would make it temporarily inappropriate to continue the project.
- (b) Such an event will be treated as a variation to the Services under Condition 2.6. COI will pay valid costs incurred by the Contractor up to the time of the suspension of the Service but accepts no liability in respect of any expenditure or commitment incurred during the period of the suspension except as otherwise Mutually Agreed.

Re-Tendering And Handover

- 2.9 (a) In the event that a different organisation is required to take on the Services at the expiry or termination of the Contract, the Contractor shall co-operate in arrangements for the transfer so as to reduce to a minimum any interruption in the Services.
- (b) Except as allowed for below, such arrangements shall be regarded as variations to the Services under Condition 2.6.
- (c) In the period leading up to the handover of the Service:
- (i) Within 21 days of being so requested by COI, the Contractor shall provide, and thereafter keep updated, such information as is reasonably required by COI to prepare invitation to tender documents for the future provision of the Services.
 - (ii) This information shall be provided free of charge to COI.
 - (iii) COI shall take all reasonable precautions to ensure that the information so provided is given only to service providers who have qualified to tender for the future provision of the Services. COI shall require that such service providers undertake in writing to treat that information in confidence, to use it only for the preparation of their tenders and to restrict its distribution solely to those staff involved in preparing their tenders.
 - (iv) The Contractor will co-operate in all other ways reasonably requested by COI.
- (d) At the time of the handover of the Service:
- (i) The Contractor shall co-operate fully with COI in order to achieve an effective transfer without disruption to the provision of the Service.
 - (ii) Without charge, the Contractor shall allow COI, or any party nominated by COI, full access to all documents, reports, summaries and any other information necessary for the transfer.
 - (iii) Without charge, the Contractor shall transfer to COI, or any party nominated by COI, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package available to COI.
- (e) The Contractor shall indemnify COI against any claim made at any time by any person arising from any deficiency or inaccuracy in the information that the Contractor provides.
- (f) Until the transfer is completed, the Contractor shall not change the Staff nominated to provide the Service except as allowed under Condition 2.3(d).
- (g) The Contractor shall notify COI if he believes that the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply in respect of the transfer of the Services. COI shall ensure that prospective suppliers are notified accordingly. Similarly, COI will notify the Contractor if any prospective supplier believes the Regulations will or might apply.

Intellectual Property Rights

- 2.10 (a) The Contractor hereby assigns to COI all Intellectual Property Rights owned by the Contractor in any Materials which is generated by the Contractor or by his sub-contractors and delivered to COI in the performance of the Services and shall waive all moral rights relating to such Materials. The Contractor shall not reproduce, publish or supply any such Materials to any party other than COI without the prior written approval of COI.

- (b) The Contractor shall ensure where necessary that he secures the necessary rights to effect such vesting in COI. The Contractor shall obtain the approval of COI before utilising any Materials in which he cannot secure such rights.
- (c) Subject to Condition 2.10(d) the Contractor shall indemnify COI against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by COI following delivery by the Contractor, of any Materials which involves any infringement or alleged infringement of the Intellectual property Rights of any third party.
- (d) The provisions of Condition 2.10(c) shall not apply in respect of any Materials which COI has supplied to the Contractor or which COI has specified for use by the Contractor or for delivery to COI.
- (e) COI shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, of any Materials referred to in Condition 2.10(d) which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.
- (f) Where any claim is made by a third party in respect of any Materials referred to in Condition 2.10(c) or 2.10(e), the Party which is required to provide an indemnity under those provisions shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

Patents

2.11 All royalties, licence fees or similar expenses for the supply or use of any item, information or Materials in connection with the Contract shall be deemed to have been included in the Contract Price. The Contractor shall indemnify COI from and against all claims and proceedings which may be brought and any damages, costs and expenses incurred by the authority in respect of such supply or use.

Assignment And Sub-Contracting

- 2.12 (a) The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the previous consent in writing of COI. This consent shall not be unreasonably withheld. COI reserves the right to view sub-contracts before consenting to their being let.
- (b) The Contractor shall be responsible for acts and omissions of his sub-contractors as though they were his own.

Payment And Value Added Tax

- 2.13 (a) The Contractor shall submit invoices to COI at intervals defined elsewhere in the Contract or otherwise Mutually Agreed. Each invoice will contain all appropriate references, will break down the charges as required by COI and will be supported by any other documentation reasonably required by COI to substantiate the amounts claimed.
- (b) Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of valid invoices, submitted in arrears for work completed to the satisfaction of COI.
- (c) COI shall pay the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax (VAT) chargeable on the amounts invoiced. Where VAT is to be charged by the Contractor it shall be shown separately on all invoices as a strictly net extra charge. Any invoice or other request for payment made by the Contractor shall be a tax invoice in the form required under the Finance Act 1972.
- (d) COI may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of COI.

Payment Of Sub-Contractors

2.14 Where the Contractor enters into a sub-contract for the provision of any part of the Services, he shall ensure that a term is included which requires him to pay all valid invoices from the sub-Contractor within a specified period not exceeding 30 days from the date of receipt.

Recovery Of Sums Due

- 2.15 (a) Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to COI in respect of any breach of this Contract), COI may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other Contract with COI or with any other department, office or agency of the Crown.
- (b) COI shall give at least 14 days' notice to the Contractor of its intention to make a deduction under Condition 2.15(a), giving particulars of the sum to be recovered and the Contract under which the payment arises from which the deduction is to be made.
- (c) Any overpayment by COI to the Contractor, whether of the Contract price or of Value Added Tax, shall be a sum of money recoverable by COI from the Contractor.

Right Of Audit

- 2.16 (a) The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such other period as may be Mutually Agreed, full and accurate records of the Services, all expenditure reimbursed by COI and all payments made by COI.
- (b) The Contractor shall grant to COI, or its authorised agents, such access to those records as it may reasonably require in order to check the Contractor's compliance with the Contract.
- (c) For the purpose of:
- (i) the examination and certification of COI 's accounts;
 - (ii) any examination (pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof) of the economy, efficiency and effectiveness with which COI has used its resources;

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. It is hereby declared that the carrying out of an examination under 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Contractor is not a function exercisable under this Condition.

Security

- 2.17 (a) The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.
- (b) The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition 2.17(a) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

Data Protection

- 2.18 (a) The Contractor shall fully comply with the requirements of the Data Protection Act 1998 and any other applicable statutory obligations relating to any personal data which forms part of the Materials.
- (b) The Contractor will use any personal data (as defined by the Act) solely for the purpose of the Contract and for no other purpose.
- (c) The Contractor shall have in place appropriate technical and organisational measures to protect against accidental or unlawful destruction or loss or alteration to, unauthorised disclosure of and unauthorised access to any personal data.
- (d) On request, the Contractor shall provide such information as COI may reasonably require to confirm that the Contractor is complying with Conditions 2.18(a), 2.18(b) and 2.18(c).
- (e) The Contractor shall ensure that each of his employees, agents and sub-contractors are made aware of his obligations with regard to the security and protection of personal data and shall require that they enter into binding obligations reflecting the provisions of this condition.

- (f) The Contractor shall fully indemnify COI against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998 that would not have arisen but for some act, omission or negligence on the part of the Contractor, his Sub-contractors, agents or Staff.
- (g) Upon completion or termination of the Contract the Contractor shall return the personal data to COI unless authorised in writing that this is not necessary. Once COI confirms receipt and so authorises, all copies of the personal data held by the Contractor must then be destroyed.

Security Of Materials

- 2.19
- (a) The Contractor shall maintain appropriate security procedures to protect Materials from destruction, damage, loss and unauthorised access or alteration.
 - (b) On request, the Contractor shall allow COI to have access to the premises at which Materials are stored to check on the procedures in place.
 - (c) If Materials are lost, destroyed, damaged or altered without the consent of COI, the Contractor shall restore those Materials without charge or reimburse COI with the costs of having those Materials restored elsewhere.

Use Of Documents, Disclosure Of Information, Etc

- 2.20
- (a) Except with the consent in writing of COI, which will not be unreasonably withheld, the Contractor shall not disclose the Contract to anyone other than Staff or other persons concerned with the carrying out of the Contract. Such disclosure shall be made in confidence and extend only as may be necessary for the purposes of the Contract.
 - (b) Except with the consent in writing of COI, which will not be unreasonably withheld, the Contractor shall not make use of the Contract or any information supplied by or on behalf of COI other than for the purpose of the Contract. In particular the Contractor shall not refer to COI or the Contract in any advertisement or in any proposal or any tender without COI's prior written consent.
 - (c) No information regarding the Services shall be given to third parties by the Contractor except with prior written permission of COI, which will not be unreasonably withheld. In particular the Contractor shall not communicate with representatives of the press, radio, television or other communications media about the Contract without specific permission in writing from COI, to whom any press or other enquiry should be addressed.
 - (d) The Contractor shall not use information obtained during the performance of the Contract for the solicitation of business from COI, any other part of the Crown or any other third party without the written permission of COI, which will not be unreasonably withheld.
 - (e) Any documents issued by or on behalf of COI remain the property of COI and must be returned on completion of the Contract.
 - (f) The provisions of this Condition shall not apply to any information:
 - (i) which is or becomes public knowledge (otherwise than by breach of this Condition); or
 - (ii) which is in the possession of the Contractor, without restriction as to its disclosure, before entering into the Contract; or
 - (iii) which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) which is required to be disclosed by law.
 - (g) Nothing in this Condition shall prevent the Contractor from using any techniques, ideas or know-how gained during the performance of the Contract in the course of his normal business providing that this does not result in a disclosure of confidential information or any infringement of any Intellectual Property Rights.
 - (h) Should COI so request, the Contractor shall ensure that all Staff employed in the performance of the Contract sign a confidentiality undertaking before commencing work in connection with the provision of the Service.
 - (i) The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.
 - (j) The Contractor shall ensure that all Staff employed in the performance of the Contract are aware of this Condition.

Indemnity And Insurance

- 2.21 (a) COI shall have no liability for damages caused by the Contractor or his Staff to third parties in the course of the supply of the Services.
- (b) The Contractor shall indemnify COI against all actions and claims for damages, expenses or costs instigated by third parties (including any servant or agent of the Contractor or of the Crown) in respect of any loss or damage or personal injury (including death) arising out of any action or omission by the Contractor.
- (c) The Contractor shall effect and maintain insurance to cover jointly COI, the Contractor and all his Sub-contractors or consultants for the risks faced under Conditions 2.21(a) and 21(b) above. The Contractor shall produce to COI, on request, copies of all insurance policies referred to in this Condition.
- (d) Similarly, COI shall indemnify the Contractor against all actions and claims for damages, expenses or costs arising out of any act or omission by COI.

Corrupt Gifts And Payments Of Commission

- 2.22 (a) The Contractor shall not do (and warrants that in entering the contract he has not done) any of the following (referred to in this condition as "prohibited acts"):
- (i) offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other Contract with the Crown, or for showing or not showing favour or disfavour to any Person in relation to this or any other Contract with the Crown;
- (ii) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to COI.
- (b) If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other Contract with the Crown, COI shall be entitled:
- (i) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (ii) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (iii) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- (c) In exercising its rights or remedies under this Condition, COI shall:
- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
- (ii) give all due consideration, where appropriate, to action other than termination of the Contract, including (but without limitation to):
- requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
 - requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.

Discrimination

- 2.23 (a) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1996 or any statutory modification or re-enactment thereof relating to discrimination in relation to employment.
- (b) The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all Sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in condition 2.23(a).

Severability

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

Waiver

- 2.25 (a) The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- (b) No waiver shall be effective unless it is communicated to the other Party in writing.
- (c) A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

Force Majeure

- 2.26 (a) Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practical means available to the Party concerned to avoid such failure or delay.
- (b) If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.
- (c) For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventative action by the Party concerned, but shall not include any industrial action occurring within any sub-contractor's organisation.
- (d) Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

Termination On Change Of Control And/Or Insolvency

- 2.27 (a) COI may terminate the Contract by written notice having immediate effect if:
- (i) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
 - (ii) where the Contractor is an individual or firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom: or
 - (iii) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor would be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- (b) COI may only exercise its right under Condition 2.27(a)(i) within 6 months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify COI immediately when any change of control occurs or is likely to occur.

Termination On Default

- 2.28 COI may terminate the Contract or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
 - (i) the Contractor has not remedied the default to the satisfaction of COI within 30 days, or such other period as may be reasonably specified by COI, after service of written notice specifying the default and requiring it to be remedied; or
 - (ii) the default is not capable of remedy; or
 - (iii) the default is a fundamental breach of the Contract.

Break

- 2.29 (a) COI shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time. Except as allowed for in Condition 2.30(b) a minimum three months written notice will be given to the Contractor. COI may extend the period of notice at any time before it expires, subject to agreement of the level of Services to be provided by the Contractor during the period of extension.
- (b) If at any time COI considers it desirable on the grounds of public policy to terminate the Contract, or to terminate the provision of any part of the Services, it shall by notice in writing require the Contractor to bring to an end all expenditure or commitments relating to the Service immediately.

Consequence Of Termination

- 2.30 (a) If COI terminates the Contract under Condition 2.28, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, COI shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by COI throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 2.28, no further payments shall be payable by COI until COI has established the final costs of making those other arrangements.
- (b) If COI terminates the Contract, or terminates the provision of any part of the Services, under Condition 2.29, COI shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all Contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce equipment and labour costs as appropriate.
- (c) For the purposes of Condition 2.30(b) the Contractor shall submit to COI, within 20 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

Contractor's Status

- 2.31 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between COI and the Contractor.

Arbitration

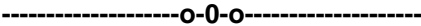
- 2.32 All disputes, differences or questions between the parties to the Contract, other than a matter on which the decision of COI is final under the Contract, shall be referred to the arbitration of two persons, one to be appointed by COI and one by the Contractor, in accordance with the provisions of the Arbitration Act 1996.

Law

- 2.33 The Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Headings

- 2.34 Headings to Conditions shall not affect their interpretation.



TERMS AND CONDITIONS THAT WILL APPLY TO CONTRACTS AWARDED
TO SUPPLIERS ON COI'S RECRUITMENT & STATUTORY NOTICES SERVICES ROSTER

SECTION 1 – APPLICABILITY AND USAGE

Definitions

- 1.1 (a) "COI" means the Central Office of Information whose head office is situated at Hercules House, Hercules Road, London SE1 7DU.
- (b) "the Contractor" means that company or person with whom this Framework Contract has been agreed.
- (c) "the Agency" means the Contractor.
- (d) "COI Manager" means the Designated Officer as defined in Section 2, Clause 2.1(a).

Applicability

- 1.2 (a) COI and the Agency agree that these Terms and Conditions, including "COI's Standard Conditions of Contract for the Supply of Services" (Section 2), will apply to all contracts for Recruitment & Statutory Notices Services awarded to the Agency.
- (b) The deliverables and timescales for any contract awarded under this Framework will be Mutually Agreed when it is awarded.

Award of Contracts

- 1.3 (a) All contracts for Services will be awarded by means either of a COI Purchase Order or of a Contract Letter issued by COI and sent to a nominated person in the Agency.
- (b) Any Purchase Order/Contract Letter will be issued to these terms and conditions and will constitute the entire agreement between the Parties relating to the subject matter of the Contract. The Purchase Order/Contract Letter will supersede all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- (c) No amendment to the deliverables or the price of the Contract as defined in the Purchase Order/Contract Letter will be effective unless Mutually Agreed in writing.
- (d) COI shall have no liability beyond the value of the Contract agreed at the time the Purchase Order/Contract Letter is issued unless a change is mutually agreed in writing.

Project Management

- 1.4 (a) Depending on the particular requirements of any contract awarded under this Framework Contract, Project Management may be the responsibility of either COI or the Client Department:
- (i) When COI is responsible for Project Management, all COI's rights and obligations under the contract will remain with COI.
- (ii) When the Client Department is responsible for Project Management, all COI's rights and obligations related to service delivery and payment will transfer to the Client Department. COI will retain rights and obligations related to contractual matters. An indication of those rights and obligations that will transfer to the Client Department is given at the end of each condition.
- (b) The Agency will be informed whether COI or the Client Department will be responsible for Project Agreement when the invitation to tender for a contract is issued.

Time Of The Essence

- 1.5 (a) Because of the nature of the Services to be provided, time will be of the essence of the Contract and any late delivery will be taken as a fundamental default on the part of the Agency except where the delay is caused:
- (i) through the fault of COI, the Client Department or another COI Contractor; or
- (ii) through reason of Force Majeure as defined in Condition 2.26 in Section 2 of the Contract.

- (b) In the event of late delivery caused other than by the exceptions given above, COI shall have the right to decide what amounts will be withheld or repaid. In exercising its rights or remedies under this Condition COI will act in a reasonable and proportionate manner paying full and proper regard to the loss in value of the Services that late delivery has caused.
- (c) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clauses 1.5(a) and 1.5(b) shall transfer to the Client Department.

Account Management

- 1.6 (a) The Agency shall work in close association with, and will comply with the reasonable requirements of, the COI Manager appointed by COI.
- (b) The COI Manager shall be The Agency's first point of contact within COI on all issues.
- (c) The Agency shall ensure that the COI Manager is advised in advance of all meetings between The Agency and the Client Department.
- (d) All meetings and telephone conversations that involve action or decisions will be call reported immediately by The Agency and distributed to interested parties at COI, the Client Department and The Agency within two working days. *(The Agency's attention is drawn to the fact that this places a contractual obligation on him to inform COI in advance of any meeting with the Client Department not attended by COI.)*
- (e) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clauses 1.6(a) and 1.6(b) shall transfer to the Client Department (with "COI Manager" referring to the Manager appointed by the Client Department) and Clauses 1.6(c) and 1.6(d) shall not apply.

Agency Performance

- 1.7 (a) The Agency may be subject to COI's standard Agency Assessment procedures. COI will brief the Agency on these procedures when appropriate.
- (b) The Agency may be measured on its performance, if services have been provided to COI during the assessment period, and its score compared to the COI benchmark.
- (c) The Agency agrees to submit any information and/or evidence reasonably requested by COI for the carrying out of the assessment.
- (d) The Agency will be informed of the result of COI's assessment of its performance.
- (e) When the Client Department is responsible for Project Management, Clauses 1.7(a) to 1.7(d) will not normally apply. In the event that they will, the Agency will be instructed accordingly.

Account Planning/Research

- 1.8 (a) When requested, the Agency will provide research/information to support its advertising recommendations and include campaign evaluation measures. Campaign evaluation measures shall be agreed in advance of any recommendations and quantified targets set following discussion between the Agency, COI and the Client Department.
- (b) When the Client Department is responsible for Project Management, the agreement relating to campaign evaluation measures and quantified targets will be between the Agency and the Client Department.

Creative & Briefing

- 1.9 (a) When requested, the Agency will supply a Creative Brief that will include how the campaign will be measured, clearly defined target audience(s) and production budget parameters. The COI Manager must agree the Creative Brief before work commences.
- (b) All creative work at each stage of development must be seen by the COI Manager at the same time as, or prior to, its presentation to the Client Department. This should be attached as a pdf file to the contact report of the meeting or telephone conversation at which the creative work was shown or discussed unless the COI Manager instructs the agency not to do so.

- (c) The Agency is responsible for the clearance of all creative concepts and proposals presented to COI and the Client Department. It will be assumed that this has been done prior to the presentation unless the Agency specifically notifies COI that clearance is required. In particular, The Agency will ensure that it has the legal right to use all material and ideas included in any campaign, that copyright is assigned to COI and that all moral rights are waived unless COI approves otherwise in writing. (The Agency's attention is drawn to Section 2, Condition 2.10.)
- (d) It is also the Agency's responsibility to ensure that creative proposals are practical, particularly in terms of logistics, taste and budget.
- (e) When there is a visual element, the Agency should consider the following:
 - (i) Appropriate depiction of BME groups in creative work, if necessary in consultation with COI's inclusivity consultancy.
 - (ii) The depiction of disability in their creative work. A Specialist Adviser is available at COI via the COI Manager if required. The Agency Account Director is responsible for capturing The Agency's compliance for this issue and completing the monitoring form.
- (f) The Agency is also reminded to refer to Informability guidelines on plain language and clear design, and in particular a minimum 12-point type size in print work, though this may be inappropriate for small space classified artwork.
- (g) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clauses 1.9(a) and 1.9(c) to 1.9(f) shall transfer to the Client Department (with "COI Manager" referring to the Manager appointed by the Client Department) and Clause 1.9(b) shall not apply. In addition, the Client Department will decide whether COI or themselves will provide the expert guidance referred to in Clauses 1.9(e) and 1.9(f).

Media Planning and Buying

- 1.10 (a) The Agency must provide a media schedule based on the Client Departments requirements, showing title, most suitable date of insertion, deadline for confirming media, deadline for confirming production, COI client cost and ratecard showing a percentage saving, where available, between the two.
- (b) COI will provide, on a need-to-know basis, access to COI's centrally negotiated media rates.
- (c) The agency should use best efforts to negotiate additional savings.
- (d) Clauses 1.10(a) to 1.10(c) will apply whether COI or the Client Department is responsible for Project Management.

Production - Press

- 1.11 (a) The Agency will produce a press production estimate on the standard COI estimate form providing sufficient detail (as prompted on the estimate form) for the COI Manager to compare costs against the COI Recruitment Price List. The Agency must allow sufficient time, ideally 2 working days, for the COI Manager to discuss this estimate with the Client Department before any production work is ordered or carried out.
- (b) COI reserves the right to manage the production of a press campaign directly with the pre-press supplier if it decides that circumstances so warrant.
- (c) The Agency may charge commission on all press production. (As at 1.18)
- (d) The Agency may use its own in-house studio for:
 - (i) black and white advertisements masters and adapts; and
 - (ii) colour advertisements up to and including master stage only
 providing the in-house studio is wholly owned by the agency and COI remains content that the in-house studio is producing work to the required quality otherwise a supplier selected by the Agency from COI's list of approved pre-press houses must be used.
- (e) **Unless otherwise instructed by the COI Manager, work on colour advertisements beyond the master stage, including adapts, must only be done by a supplier on COI's list of approved pre-press houses.** When the in-house studio meets this criterion it may be used. Otherwise the Agency will select a pre-press house from the COI approved list and send the master and media schedule for production and despatch of adapts to them to complete the work.

- (f) The Agency will purchase all press production within the prices specified on the COI Recruitment Price List. The cost of any process not covered by the COI Price List must be agreed with the COI Manager before any work is ordered or commences.
- (g) The Agency is responsible for monitoring the quality of reproduction and accuracy for all press production work. This includes ensuring that the correct response code appears (utilising the COICARP mnemonics).
- (h) All press production work sent to suppliers on COI's behalf must clearly indicate that it is for a COI campaign. All COI campaigns work must be excluded from any discount arrangement The Agency may have with the suppliers concerned except for prompt payment discounts, which shall be passed back to COI.
- (i) The Agency will ensure that clear copy instructions are provided with the artwork despatched to each title, whether this is despatched directly by the agency or by the approved supplier. The copy instruction must include any repeat instructions and consequent response code changes (utilising the COICARP mnemonics).
- (j) When photographs are required, the Agency will retain creative control of photography but accepts that COI will carry out all cost negotiations with photographers. The Agency will provide the COI Manager with three alternative photographers on the COI photography briefing form. The Agency will brief the three photographers but will at no time discuss fees or charges. COI will then negotiate prices and inform The Agency as to the photographer to be used. The Agency does not receive commission on the Photographer's fee. The Agency will not normally receive a fee for setting up a shoot, however in exceptional circumstances this may be considered by the COI Manager if raised early enough before the shoot. For low-budget, straightforward shots, COI will nominate a photographer.
- (k) The Agency will ensure that the COI Photographic Manager and the COI Manager always receive low-resolution PDF files of the master version and any subsequent amends of the advertisement.
- (l) Although there is no standard requirement for final 'hard copy' proofs, on request, the Agency will also supply the COI Manager with final proofs of all approved advertisements.
- (m) All props purchased for photographic shoots will become and will remain the property of COI and must be delivered up to COI at the end of the shoot.
- (n) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clauses 1.11(a) to 1.11(m) shall transfer to the Client Department (with "COI Manager" referring to the Manager appointed by the Client Department) except that Clauses 1.11(j) to 1.11(m) covering Photography may be subject to change to meet the requirements of the Client Department.

Production - Poster Artwork

- 1.12 (a) Conditions 1.11(j) to 1.11(m), above, will apply equally to photography for and props used in poster artwork production.
- (b) The Agency is responsible for poster production as far as the artwork stage. Poster production will be carried out by a printer appointed by COI unless in special circumstances COI decides otherwise.
 - (c) The Agency is also responsible for technical clearance of the final colour proof prior to printing.
 - (d) The Agency will produce a production estimate for poster production on the standard COI estimate form. This estimate must be approved by the COI Manager before any work is ordered or carried out.
 - (e) The Agency shall comply with all poster artwork specifications and safe copy areas.
 - (f) The Agency shall ensure that special colours and four colour workings are on as few panels as possible.
 - (g) The Agency is aware of and shall pay due regard to the legal requirement for the imprint to appear on all printed material.

- (h) All approved artwork provided for printing of posters must have COI's print briefing form correctly filled out and attached. This is available via the COI Manager.
- (i) When the Client Department is responsible for Project Management, posters will not normally be a requirement. In the event that they are, the Agency will alert COI and, together, COI and the Client Department will decide who will be responsible for design and production and will instruct the Agency accordingly.

Production – Television & Cinema

- 1.13 (a) Terms and conditions relating to television and/or cinema production will be notified to the Agency if and when necessary, once they have alerted COI to the requirement.
- (b) Clause 1.13(a) will apply whether COI or the Client Department is responsible for Project Management.

Production - Radio

- 1.14 (a) The Agency is responsible for the writing of scripts for all radio commercials unless otherwise advised and for obtaining the necessary approval of scripts from RACC.
- (b) The Agency accepts that COI and not The Agency is responsible for the provision of a COI Radio Producer who will manage all aspects of the radio commercial production.
- (c) The Agency will work closely with the COI Radio Producer to ensure that all parties are kept aware of the status of the production at every stage of the process.
- (d) The Agency will supply rotation schedules to COI Radio Producer, the COI Manager and the centralised radio buying agency in good time so that these can be included with the layout of the commercial.
- (e) When the Client Department is responsible for Project Management, radio will not normally be a requirement. In the event that it is, the Agency will alert COI and, together, COI and the Client Department will decide who will be responsible for creative work and production and will instruct the Agency accordingly.

Production – Digital Media

- 1.15 (a) COI maintains a separate roster of digital media creative companies. The Agency will therefore only be involved with digital media when it is one element of a multi-media campaign. In this event the Agency may be asked to recommend the content and design elements of digital media as part of the complete multi-media package.
- (b) COI and the appointed company from its digital media creative roster will be responsible for all aspects of digital media production. The final decision on whether to use any content and design elements recommended by the Agency rests with COI. When appropriate with multi-media campaigns, the appointed digital media creative company will be instructed to cooperate and liaise fully with the Agency to ensure that the finished digital media product integrates fully with the overall campaign concepts.
- (c) When the Client Department is responsible for Project Management, digital media will not normally be a requirement. In the event that it is, the Agency will alert COI and, together, COI and the Client Department will decide who will be responsible for design and production and will instruct the Agency accordingly.

Excluded Costs

- 1.16 (a) The Agency accepts that COI does not pay the following excepting the proviso given in Condition 1.16(b):
 - (i) Creative development costs.
 - (ii) Research material costs.
 - (iii) Out of pocket expenses for agency personnel within the UK.
 - (iv) Rush charges.
 - (v) The cost of delivering press ads to titles by courier.

- (b) In exceptional circumstances any or all of the above costs may be paid but only provided that written agreement has been obtained in advance from the COI Manager and that agreed costs have been identified as a separate item on the COI Production Forms.
- (c) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clauses 1.16(a) and 1.16(b) shall transfer to the Client Department; with "COI Manager" referring to the Manager appointed by the Client Department.

Invoices

- 1.17 (a) The Agency will submit all invoices providing full details and narrative as appropriate. For all invoices this must include campaign title, name of Client Department, the medium to which they relate and contract number. Press and poster production invoices must include in addition the agency job number and, where appropriate, details of previous billing on the same campaign.
- (b) The Agency will not submit a single invoice covering:
 - (i) costs incurred on separate campaigns; or
 - (ii) costs spanning two different types of media; or
 - (iii) costs spanning two COI financial years. (Note: COI's financial year is 1st April to 31st March.)
- (c) The Agency will submit all invoices, together with all necessary supporting documentation to the reasonable satisfaction of COI, within four months of the end of the campaign. COI will have no obligation to pay any late submitted invoice.
- (d) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clauses 1.17(a) to 1.17(c) shall transfer to the Client Department.

Submission Of Invoices

This information is considered commercially sensitive.

[REDACTED]

Standard Terms

This information is considered commercially sensitive.

[REDACTED]



[REDACTED]

Official Secrets Acts

- 1.20 (a) The Agency's attention is drawn to the provisions of the Official Secrets Acts 1911 through to 1989 and any statutory modification or re-enactment thereof. The Agency shall take steps and appropriate means to ensure that all persons employed on any work in connection with the contract have notice that these statutory provisions apply to them and will continue to apply after the completion or earlier termination of the contract.
- (b) When the Client Department is responsible for Project Management, COI's rights and responsibilities under Clause 1.20(a) shall transfer to the Client Department.

Agency Audit Inspection

- 1.21 (a) In addition to COI's standard Right of Audit (Section 2, Condition 2.16) COI shall have access at all reasonable times to all The Agency's personnel and to all books, records, correspondence, receipts, invoices, and other papers of any kind in The Agency's possession relating to any and all COI's advertising contracts that is necessary for COI to investigate and verify the cost of all items and/or services for which the agency has received payment.
- (b) When the Client Department is responsible for Project Management, both COI and the Client Department will have the Right of Audit.

Contractual Responsibility

- 1.22 (a) Contractors will have a contractual responsibility solely to COI for the provision of services. Any requests from third parties (including the Client Department) to carry out additional work or alter existing systems/working practices must be cleared by the Contractor's project manager with COI in advance. Failure to do so may result in any costs incurred by the supplier when carrying out third party requests not being paid for. It is also expected that Contractors project managers will alert COI to any direct contact of this nature, which has not been pre-authorised.
- (b) When the Client Department is responsible for Project Management, Clause 1.22(a) shall not apply.

COI Standard Terms and Conditions

- 1.23 When the Client Department is responsible for Project Management, any COI rights and obligations in the COI Standard Terms and Conditions contained in Section 2 that directly relate to rights and responsibilities transferred to the Client Department above will also transfer. All other rights and responsibilities therein remain with COI.

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SECTION 2 – COI'S STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF SERVICES

Definitions

2.1 In this Contract:

- (a) "Designated Officer" means the individual appointed by COI as the responsible official for the purposes of the Contract.
- (b) "Client Department" means the government department, agency or sponsored body on whose behalf COI is placing the Contract.
- (c) "Issued Property" means all government property issued in connection with the Contract.
- (d) "Materials" means all items and data produced by the Contractor in the execution of the contract in paper, electronic or any other form.
- (e) "Sub-contractor" means any person, firm or company under contract to the Contractor to perform work and/or provide professional services and/or supply goods.
- (f) "Staff" means all persons employed by the Contractor under contracts of service, contracts for services, contracts for the supply of employees' services, or otherwise.
- (g) "Key Staff" means those Staff specifically named by the Contractor as providing the Service.
- (h) "Premises" means land or buildings where the Services are to be performed.
- (i) "Site" means the area within the Premises in which the Services are performed.
- (j) "Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether registerable or not), applications for any of the above rights, copyright, trade or business names and other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.
- (k) "Month" means calendar month
- (l) "Mutually Agreed" means mutually agreed in writing between COI and the Contractor.
- (m) Where the context allows, the masculine includes the feminine and the neuter.
- (n) Where the context allows, the singular includes the plural and vice versa.
- (o) Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

The Services

- #### **2.2**
- (a) The Services to be provided by the Contractor are as Mutually Agreed at the time a Contract is awarded.
 - (b) Where the context so admits, the Services shall include any Materials or articles to be supplied by the Contractor.
 - (c) The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good industry practice. Timely provision of the Services is of the essence of the Contract.
 - (d) The Contractor will monitor his performance, the performance of his staff and the performance of his subcontractors and will notify the Designated Officer immediately if there is any risk that the agreed content and/or quality and/or timeliness of the Services may not be met..
 - (e) The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the supply of and conditions affecting labour and the equipment necessary for the performance of the Service, subject to all such matters being discoverable by the Contractor.

Staff

- #### **2.3**
- (a) The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the Services.
 - (b) All Staff deployed on work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to COI. Where so required, full particulars of Staff to be so employed shall be provided in advance to the Designated Officer for confirmation of acceptability.

- (c) The Contractor shall provide, at all times, the number of Staff required to fulfil his obligations under the Contract.
- (d) The Contractor shall take all reasonable steps to avoid changes of Staff assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness, etc. The Contractor shall give at least one month's notice of proposals to change Key Staff (See Clause 2.1(g)) and replacements will not be appointed without the approval of COI. That approval will not be unreasonably withheld.

Progress Reports

- 2.4 (a) Where progress reports are required under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise agreed between the Parties.
- (b) The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.
- (c) The Contractor undertakes to maintain and make available adequate records to verify that work has been carried out in accordance with this Contract.

Price

- 2.5 Unless otherwise stated in the Contract, the price shall be the total price for the Services including the cost of all labour, Materials, equipment, holiday relief or substitute as and when necessary, overheads and all other costs incurred by the Contractor in connection with the proper execution of the Contract. (VAT is covered at Condition 2.13.)

Variation Of Requirement And/Or Contract

- 2.6 (a) COI shall have the right to vary the Services at any time, subject to the variation being related in nature to the Services being provided. No such variation shall vitiate the Contract.
- (b) In the event of an emergency where there is not time to Mutually Agree a change in writing COI shall have the right to vary the Contract by oral instructions which shall be confirmed in writing within seven days. Otherwise all variations will be notified in accordance with Clause 2.7(b), below.
- (c) Where the variation warrants it, a fair and reasonable adjustment to the Contract Price shall be mutually agreed as soon as is practicable. In the event of delay in reaching agreement a provisional adjustment shall be made by COI. If the finally agreed adjustment is higher than the provisional adjustment COI will pay the difference. If the finally agreed adjustment is lower than the provisional adjustment the Contractor will repay the difference.
- (d) Where the contract is for a fixed period, COI shall have the right to extend that period on giving fair and reasonable notice to the Contractor. Such an extension will be treated as a variation to the Services and the rights and obligations conferred in Clauses 2.6(a), 2.6(b) and 2.6(c) will apply.
- (e) The Contractor may propose a variation where he considers that a change may be beneficial or necessary. In this case:
 - (i) the proposed variation shall be supported by a detailed quotation;
 - (ii) COI may approve or reject the proposed variation at its own discretion; and
 - (iii) no variation will become effective until it is Mutually Agreed and no purported variation by any other means shall bind COI.

Notices And Communications

- 2.7 (a) Except as otherwise provided within the Contract, no notice or communication given under or pursuant to the Contract shall have any validity unless made in writing.
- (b) Any notice or communication given under or pursuant to the Contract may be sent by any means resulting in the receipt of a written communication in permanent form and shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

Suspension Of The Services

- 2.8 (a) COI reserves the right to require the Contractor to suspend all activity on the Contract for a period specified by COI:
- (i) during the period of any local, Parliamentary or European election campaign(s);
 - (ii) to comply with any emergency orders issued by the Government; or
 - (iii) in the case of any event which in the reasonable opinion of COI would make it temporarily inappropriate to continue the project.
- (b) Such an event will be treated as a variation to the Services under Condition 2.6. COI will pay valid costs incurred by the Contractor up to the time of the suspension of the Service but accepts no liability in respect of any expenditure or commitment incurred during the period of the suspension except as otherwise Mutually Agreed.

Re-Tendering And Handover

- 2.9 (a) In the event that a different organisation is required to take on the Services at the expiry or termination of the Contract, the Contractor shall co-operate in arrangements for the transfer so as to reduce to a minimum any interruption in the Services.
- (b) Except as allowed for below, such arrangements shall be regarded as variations to the Services under Condition 2.6.
- (c) In the period leading up to the handover of the Service:
- (i) Within 21 days of being so requested by COI, the Contractor shall provide, and thereafter keep updated, such information as is reasonably required by COI to prepare invitation to tender documents for the future provision of the Services.
 - (ii) This information shall be provided free of charge to COI.
 - (iii) COI shall take all reasonable precautions to ensure that the information so provided is given only to service providers who have qualified to tender for the future provision of the Services. COI shall require that such service providers undertake in writing to treat that information in confidence, to use it only for the preparation of their tenders and to restrict its distribution solely to those staff involved in preparing their tenders.
 - (iv) The Contractor will co-operate in all other ways reasonably requested by COI.
- (d) At the time of the handover of the Service:
- (i) The Contractor shall co-operate fully with COI in order to achieve an effective transfer without disruption to the provision of the Service.
 - (ii) Without charge, the Contractor shall allow COI, or any party nominated by COI, full access to all documents, reports, summaries and any other information necessary for the transfer.
 - (iii) Without charge, the Contractor shall transfer to COI, or any party nominated by COI, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package available to COI.
- (e) The Contractor shall indemnify COI against any claim made at any time by any person arising from any deficiency or inaccuracy in the information that the Contractor provides.
- (f) Until the transfer is completed, the Contractor shall not change the Staff nominated to provide the Service except as allowed under Condition 2.3(d).
- (g) The Contractor shall notify COI if he believes that the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply in respect of the transfer of the Services. COI shall ensure that prospective suppliers are notified accordingly. Similarly, COI will notify the Contractor if any prospective supplier believes the Regulations will or might apply.

Intellectual Property Rights

- 2.10 (a) The Contractor hereby assigns to COI all Intellectual Property Rights owned by the Contractor in any Materials which is generated by the Contractor or by his sub-contractors and delivered to COI in the performance of the Services and shall waive all moral rights relating to such Materials. The Contractor shall not reproduce, publish or supply any such Materials to any party other than COI without the prior written approval of COI.

- (b) The Contractor shall ensure where necessary that he secures the necessary rights to effect such vesting in COI. The Contractor shall obtain the approval of COI before utilising any Materials in which he cannot secure such rights.
- (c) Subject to Condition 2.10(d) the Contractor shall indemnify COI against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by COI following delivery by the Contractor, of any Materials which involves any infringement or alleged infringement of the Intellectual property Rights of any third party.
- (d) The provisions of Condition 2.10(c) shall not apply in respect of any Materials which COI has supplied to the Contractor or which COI has specified for use by the Contractor or for delivery to COI.
- (e) COI shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, of any Materials referred to in Condition 2.10(d) which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.
- (f) Where any claim is made by a third party in respect of any Materials referred to in Condition 2.10(c) or 2.10(e), the Party which is required to provide an indemnity under those provisions shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

Patents

2.11 All royalties, licence fees or similar expenses for the supply or use of any item, information or Materials in connection with the Contract shall be deemed to have been included in the Contract Price. The Contractor shall indemnify COI from and against all claims and proceedings which may be brought and any damages, costs and expenses incurred by the authority in respect of such supply or use.

Assignment And Sub-Contracting

- 2.12 (a) The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the previous consent in writing of COI. This consent shall not be unreasonably withheld. COI reserves the right to view sub-contracts before consenting to their being let.
- (b) The Contractor shall be responsible for acts and omissions of his sub-contractors as though they were his own.

Payment And Value Added Tax

- 2.13 (a) The Contractor shall submit invoices to COI at intervals defined elsewhere in the Contract or otherwise Mutually Agreed. Each invoice will contain all appropriate references, will break down the charges as required by COI and will be supported by any other documentation reasonably required by COI to substantiate the amounts claimed.
- (b) Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of valid invoices, submitted in arrears for work completed to the satisfaction of COI.
- (c) COI shall pay the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax (VAT) chargeable on the amounts invoiced. Where VAT is to be charged by the Contractor it shall be shown separately on all invoices as a strictly net extra charge. Any invoice or other request for payment made by the Contractor shall be a tax invoice in the form required under the Finance Act 1972.
- (d) COI may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of COI.

Payment Of Sub-Contractors

2.14 Where the Contractor enters into a sub-contract for the provision of any part of the Services, he shall ensure that a term is included which requires him to pay all valid invoices from the sub-Contractor within a specified period not exceeding 30 days from the date of receipt.

Recovery Of Sums Due

- 2.15 (a) Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to COI in respect of any breach of this Contract), COI may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other Contract with COI or with any other department, office or agency of the Crown.
- (b) COI shall give at least 14 days' notice to the Contractor of its intention to make a deduction under Condition 2.15(a), giving particulars of the sum to be recovered and the Contract under which the payment arises from which the deduction is to be made.
- (c) Any overpayment by COI to the Contractor, whether of the Contract price or of Value Added Tax, shall be a sum of money recoverable by COI from the Contractor.

Right Of Audit

- 2.16 (a) The Contractor shall keep secure and maintain until two years after the final payment of all sums due under the Contract, or such other period as may be Mutually Agreed, full and accurate records of the Services, all expenditure reimbursed by COI and all payments made by COI.
- (b) The Contractor shall grant to COI, or its authorised agents, such access to those records as it may reasonably require in order to check the Contractor's compliance with the Contract.
- (c) For the purpose of:
- (i) the examination and certification of COI 's accounts;
 - (ii) any examination (pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof) of the economy, efficiency and effectiveness with which COI has used its resources;

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. It is hereby declared that the carrying out of an examination under 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Contractor is not a function exercisable under this Condition.

Security

- 2.17 (a) The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.
- (b) The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition 2.17(a) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.

Data Protection

- 2.18 (a) The Contractor shall fully comply with the requirements of the Data Protection Act 1998 and any other applicable statutory obligations relating to any personal data which forms part of the Materials.
- (b) The Contractor will use any personal data (as defined by the Act) solely for the purpose of the Contract and for no other purpose.
- (c) The Contractor shall have in place appropriate technical and organisational measures to protect against accidental or unlawful destruction or loss or alteration to, unauthorised disclosure of and unauthorised access to any personal data.
- (d) On request, the Contractor shall provide such information as COI may reasonably require to confirm that the Contractor is complying with Conditions 2.18(a), 2.18(b) and 2.18(c).
- (e) The Contractor shall ensure that each of his employees, agents and sub-contractors are made aware of his obligations with regard to the security and protection of personal data and shall require that they enter into binding obligations reflecting the provisions of this condition.

- (f) The Contractor shall fully indemnify COI against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998 that would not have arisen but for some act, omission or negligence on the part of the Contractor, his Sub-contractors, agents or Staff.
- (g) Upon completion or termination of the Contract the Contractor shall return the personal data to COI unless authorised in writing that this is not necessary. Once COI confirms receipt and so authorises, all copies of the personal data held by the Contractor must then be destroyed.

Security Of Materials

- 2.19
- (a) The Contractor shall maintain appropriate security procedures to protect Materials from destruction, damage, loss and unauthorised access or alteration.
 - (b) On request, the Contractor shall allow COI to have access to the premises at which Materials are stored to check on the procedures in place.
 - (c) If Materials are lost, destroyed, damaged or altered without the consent of COI, the Contractor shall restore those Materials without charge or reimburse COI with the costs of having those Materials restored elsewhere.

Use Of Documents, Disclosure Of Information, Etc

- 2.20
- (a) Except with the consent in writing of COI, which will not be unreasonably withheld, the Contractor shall not disclose the Contract to anyone other than Staff or other persons concerned with the carrying out of the Contract. Such disclosure shall be made in confidence and extend only as may be necessary for the purposes of the Contract.
 - (b) Except with the consent in writing of COI, which will not be unreasonably withheld, the Contractor shall not make use of the Contract or any information supplied by or on behalf of COI other than for the purpose of the Contract. In particular the Contractor shall not refer to COI or the Contract in any advertisement or in any proposal or any tender without COI's prior written consent.
 - (c) No information regarding the Services shall be given to third parties by the Contractor except with prior written permission of COI, which will not be unreasonably withheld. In particular the Contractor shall not communicate with representatives of the press, radio, television or other communications media about the Contract without specific permission in writing from COI, to whom any press or other enquiry should be addressed.
 - (d) The Contractor shall not use information obtained during the performance of the Contract for the solicitation of business from COI, any other part of the Crown or any other third party without the written permission of COI, which will not be unreasonably withheld.
 - (e) Any documents issued by or on behalf of COI remain the property of COI and must be returned on completion of the Contract.
 - (f) The provisions of this Condition shall not apply to any information:
 - (i) which is or becomes public knowledge (otherwise than by breach of this Condition); or
 - (ii) which is in the possession of the Contractor, without restriction as to its disclosure, before entering into the Contract; or
 - (iii) which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) which is required to be disclosed by law.
 - (g) Nothing in this Condition shall prevent the Contractor from using any techniques, ideas or know-how gained during the performance of the Contract in the course of his normal business providing that this does not result in a disclosure of confidential information or any infringement of any Intellectual Property Rights.
 - (h) Should COI so request, the Contractor shall ensure that all Staff employed in the performance of the Contract sign a confidentiality undertaking before commencing work in connection with the provision of the Service.
 - (i) The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.
 - (j) The Contractor shall ensure that all Staff employed in the performance of the Contract are aware of this Condition.

Indemnity And Insurance

- 2.21 (a) COI shall have no liability for damages caused by the Contractor or his Staff to third parties in the course of the supply of the Services.
- (b) The Contractor shall indemnify COI against all actions and claims for damages, expenses or costs instigated by third parties (including any servant or agent of the Contractor or of the Crown) in respect of any loss or damage or personal injury (including death) arising out of any action or omission by the Contractor.
- (c) The Contractor shall effect and maintain insurance to cover jointly COI, the Contractor and all his Sub-contractors or consultants for the risks faced under Conditions 2.21(a) and 21(b) above. The Contractor shall produce to COI, on request, copies of all insurance policies referred to in this Condition.
- (d) Similarly, COI shall indemnify the Contractor against all actions and claims for damages, expenses or costs arising out of any act or omission by COI.

Corrupt Gifts And Payments Of Commission

- 2.22 (a) The Contractor shall not do (and warrants that in entering the contract he has not done) any of the following (referred to in this condition as "prohibited acts"):
- (i) offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other Contract with the Crown, or for showing or not showing favour or disfavour to any Person in relation to this or any other Contract with the Crown;
- (ii) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to COI.
- (b) If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other Contract with the Crown, COI shall be entitled:
- (i) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
- (ii) to recover from the Contractor the amount or value of any such gift, consideration or commission; and
- (iii) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- (c) In exercising its rights or remedies under this Condition, COI shall:
- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
- (ii) give all due consideration, where appropriate, to action other than termination of the Contract, including (but without limitation to):
- requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
 - requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.

Discrimination

- 2.23 (a) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1996 or any statutory modification or re-enactment thereof relating to discrimination in relation to employment.
- (b) The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all Sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in condition 2.23(a).

Severability

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

Waiver

- 2.25 (a) The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- (b) No waiver shall be effective unless it is communicated to the other Party in writing.
- (c) A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

Force Majeure

- 2.26 (a) Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practical means available to the Party concerned to avoid such failure or delay.
- (b) If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.
- (c) For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventative action by the Party concerned, but shall not include any industrial action occurring within any sub-contractor's organisation.
- (d) Any failure or delay by the Contractor in performing his obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

Termination On Change Of Control And/Or Insolvency

- 2.27 (a) COI may terminate the Contract by written notice having immediate effect if:
- (i) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
 - (ii) where the Contractor is an individual or firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom: or
 - (iii) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor would be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- (b) COI may only exercise its right under Condition 2.27(a)(i) within 6 months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify COI immediately when any change of control occurs or is likely to occur.

Termination On Default

- 2.28 COI may terminate the Contract or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
- (i) the Contractor has not remedied the default to the satisfaction of COI within 30 days, or such other period as may be reasonably specified by COI, after service of written notice specifying the default and requiring it to be remedied; or
 - (ii) the default is not capable of remedy; or
 - (iii) the default is a fundamental breach of the Contract.

Break

- 2.29 (a) COI shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time. Except as allowed for in Condition 2.30(b) a minimum three months written notice will be given to the Contractor. COI may extend the period of notice at any time before it expires, subject to agreement of the level of Services to be provided by the Contractor during the period of extension.
- (b) If at any time COI considers it desirable on the grounds of public policy to terminate the Contract, or to terminate the provision of any part of the Services, it shall by notice in writing require the Contractor to bring to an end all expenditure or commitments relating to the Service immediately.

Consequence Of Termination

- 2.30 (a) If COI terminates the Contract under Condition 2.28, or terminates the provision of any part of the Services under that Condition, and then makes other arrangements for the provision of the Services, COI shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by COI throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 2.28, no further payments shall be payable by COI until COI has established the final costs of making those other arrangements.
- (b) If COI terminates the Contract, or terminates the provision of any part of the Services, under Condition 2.29, COI shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all Contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce equipment and labour costs as appropriate.
- (c) For the purposes of Condition 2.30(b) the Contractor shall submit to COI, within 20 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

Contractor's Status

- 2.31 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between COI and the Contractor.

Arbitration

- 2.32 All disputes, differences or questions between the parties to the Contract, other than a matter on which the decision of COI is final under the Contract, shall be referred to the arbitration of two persons, one to be appointed by COI and one by the Contractor, in accordance with the provisions of the Arbitration Act 1996.

Law

- 2.33 The Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

Headings

- 2.34 Headings to Conditions shall not affect their interpretation.

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