

**RECITALS**

- A The Client wishes to engage the services of the Consultant to act as the Competent Person for the Client in dealing with the Client's Health and Safety Obligations (as defined below).
- B The Consultant has the skills, background, and experience in providing a Competent Persons Service to employers.
- C The Consultant is willing to provide the Consultancy Services (as defined below) and the Client is willing to appoint the Consultant to provide the Consultancy Services, all in accordance with the provisions of this Agreement.

**1 Consultancy service**

- 1.1 The Consultant shall provide the Consultancy Services according to the Specification to the Client in consideration for the Client paying the Fee to the Consultant for the Term, subject to the provisions of this Agreement.
- 1.2 The Consultant and the Client shall agree the time and place for the performance of the Consultancy Services subject to the availability of the Consultant's staff and agents.
- 1.3 The Consultant shall use reasonable endeavours to complete the Consultancy Services including the provision of data, materials or reports by the Completion Date.
- 1.4 The Consultancy Services shall be performed by such employees or agents that the Consultant may choose as most appropriate to carry out the Consultancy Services as agreed, from time to time by the Parties.

- 1.5 From the Commencement Date the Parties shall discuss and agree the particular Consultancy Services to be carried out by the Consultant. The Consultancy Services to be performed as agreed by the Parties, the time estimates for the provision of the particular Consultancy Services, and the rates to be paid shall be set out in the Specification.

## **2 Clients Obligations**

- 2.1 During the preparation of the Specification and performance of the Consultancy Services the Client will:

- 2.1.1 co-operate with the Consultant as the Consultant reasonably requires;
- 2.1.2 provide the information and documentation that the Consultant reasonably requires;
- 2.1.3 make available to the Consultant such facilities as the Consultant reasonably requires; and
- 2.1.4 ensure that the Client's staff and agents co-operate with and assist the Consultant.

- 2.2 'Facilities' means working space, computer equipment, access to the internet and the Client's computer network, telecommunications system etc, and shall include not only access to such resources but also use of them to the extent required by the Consultant in order to perform the Consultancy Services.

- 2.3 The Client will not charge for the Consultant's use of the Facilities made available by the Client.

- 2.4 If the Client does not provide the Facilities that the Consultant reasonably requires (and within the time period) to perform the Consultancy Services, then any additional costs and expenses which are reasonably incurred by the Consultant will be paid by the Client.

## **3 Confidentiality**

- 3.1 Each Party ('Receiving Party') shall keep the confidential information of the other Party ('Supplying Party') confidential and secret, whether disclosed to or received by the Receiving

Party. The Receiving Party shall only use the confidential information of the Supplying Party for the Purpose and for performing the Receiving Party's obligations under the Agreement. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause, and ensure that the Receiving Party's officers, employees and agents meet the obligations.

3.2 The obligations of clause 10.1 shall not apply to any information which:

- 3.2.1 was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- 3.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
- 3.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- 3.2.4 was developed by the Receiving Party (or on its behalf) who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
- 3.2.5 is required to be disclosed by order of a court of competent jurisdiction.

3.3 This clause 10 shall survive termination of this Agreement for a period of 5 years.

#### **4 Warranties, liability and indemnities**

4.1 The Client shall indemnify the Consultant against for any and all loss, liability, costs (including legal costs on an indemnity basis), damages or expenses arising from any breach of the terms of this agreement including any negligent or reckless act, omission or default.

4.2 The Consultant warrants that it will use reasonable care and skill in performing the Consultancy Services to the standard generally accepted within the industry, sector or profession in which the Consultant operates for the type of Consultancy Services provided by the Consultant.

4.3 If the Consultant performs the Consultancy Services (or any part of the Consultancy Services) negligently or materially in breach of the Specification, then, if requested by the Client, the Consultant will re-perform the relevant part of the Consultancy Services, subject to clauses 12.4 and 12.5 below. The Client's request must be made within 6 months of the date the Consultant completed performing the Consultancy Services.

4.4 The Consultant provides no warranty that any result or objective can or will be achieved or attained at all or by a given completion date or any other date, whether stated in this Agreement or the Specification or elsewhere.

4.5 Except in the case of death or personal injury caused by the Consultant's negligence, the liability of the Consultant under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Fee(s) paid by the Client to the Consultant under this Agreement. The provision of this clause 12.4 shall not apply to clause 12.6.

4.6 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation

any economic loss or other loss of turnover, profits, business or goodwill. The provision of this clause 12.5 shall not apply to clause 12.6.

4.7 The Client shall indemnify and hold harmless the Consultant from and against all Claims and Losses arising from loss, damage, liability, injury to the Consultant, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Client by the Consultant, its employees or consultants, or supplied to the Consultant by the Client within or without the scope of this Agreement. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

4.8 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

## **5 General**

### **5.1 Force majeure**

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

### **5.2 Amendments**

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

### 5.3 Assignment

Subject to the following sentence, neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party. A Party may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

### 5.4 Entire agreement

This Agreement contains the whole agreement between the Parties in respect of services to be delivered under the terms of this agreement as briefly described in paragraph A of the Recitals and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

### 5.5 Waiver

No failure or delay by the Consultant in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

### 5.6 Agency, partnership etc

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

### 5.7 Further assurance

Each Party to this Agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

### 5.8 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this

Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

#### 5.9 Announcements

No Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the approval of the other Party to its terms. However, no Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

#### 5.10 Interpretation

In this Agreement unless the context otherwise requires:

- 5.10.1.1 words importing any gender include every gender;
- 5.10.1.2 words importing the singular number include the plural number and vice versa;
- 5.10.1.3 words importing persons include firms, companies and corporations and vice versa;
- 5.10.1.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 5.10.1.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 5.10.1.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 5.10.1.7 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
- 5.10.1.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

5.10.1.9 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.

## 5.11 Notices

5.11.1.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address of the relevant Party set out at the head of this Agreement, or to the relevant facsimile number set out below, or such other address or facsimile number as that Party may from time to time notify to the other Party in accordance with this clause. The relevant contact information for the Parties is as follows:

Consultant: (SQR Group - email address: [hse@sqrgroup.co.uk](mailto:hse@sqrgroup.co.uk))  
Client: [-----]

5.11.1.2 Notices sent as above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of facsimile messages, but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine, confirming that the facsimile was sent to the number indicated above and confirming that all pages were successfully transmitted), or next working day after sending (in the case of e-mail).

5.11.1.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

## 5.12 Law and jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).



#### 5.13 Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.