

**Protect Commercial**



**FORMAL CONTRACT**

**between**

**HM Revenue & Customs**

**and**

**buyingTeam Ltd t/a Proxima**

**For the provision of  
HMRC Commercial Strategic Delivery Partner**

**Version: 4.0**

**Contract ref: 1269**

**e-Sourcing ref: 15-PSCR-1269-Commercial Strategic Delivery  
Partner-OJEU-OPEN**

**Common Procurement Vocabulary (CPV):**

79996000 - Business Organisation Services  
79410000 – Business and Management Consultancy Services  
79411000 – General Management Consultancy  
79418000 – Procurement Consultancy  
79411100 – Business Development Consultancy Services  
79994000 - Contract Administration Services

**Start Date: 30/03/2016**

**Expiry Date: 29/03/2018**

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**L        Training & Development**

## Form of Agreement

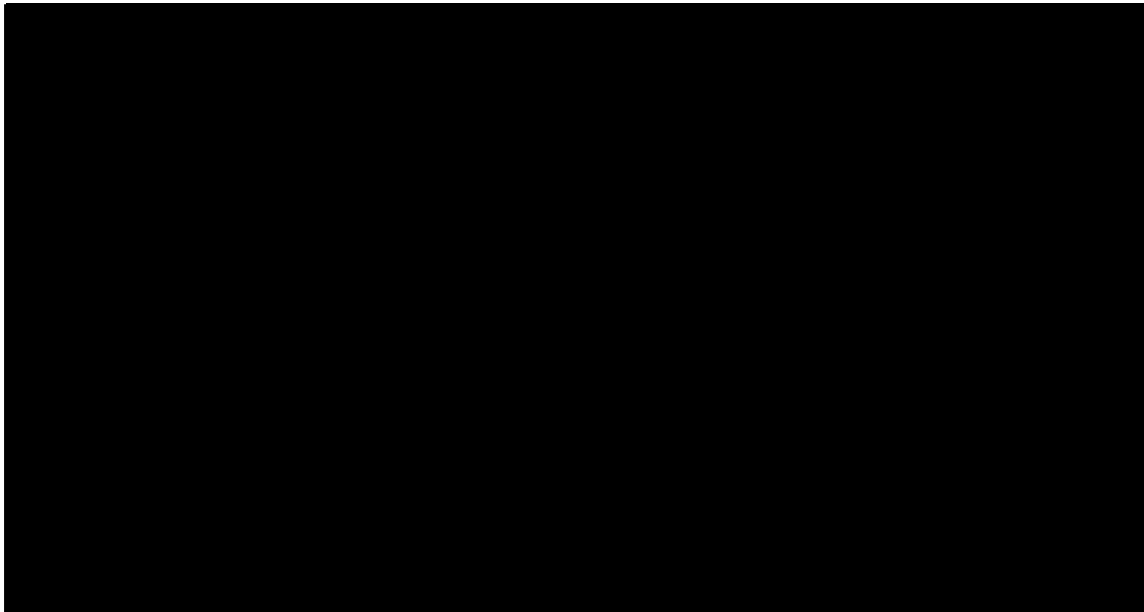
This Agreement is made between Her Majesty's Revenue and Customs, acting as part of the Crown, "the Client", of 100 Parliament Street, London) and buyingTeam Limited t/a Proxima "the Contractor" whose main or registered office is at 107 Cheapside, London EC2V 6DN together referred to as "the Parties" and is effective as of 30<sup>th</sup> March 2016 ("Commencement Date")

It is agreed that:

This Form of Agreement together with the Terms and Conditions and Schedules are the documents that collectively form the "Contract".

The Contract effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.

Signed for and on behalf of:



# Terms and Conditions

## A GENERAL PROVISIONS

### A1 Definitions and Interpretation (Glossary)

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Approval”** means the written consent of the Client.

**“BPSS”** means the HMG Baseline Personnel Security Standard Key personnel vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group.

**“Change Request”** means a request by the Contractor for a Variation to the Contract.

**“Client”** means Her Majesty’s Revenue & Customs (HMRC) acting as part of the Crown.

**“Client Data”** means:

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

**“Commencement Date”** means the effective date shown within the Form of Agreement.

**“Commercially sensitive Information”** means information notified to the Client in writing (prior to the commencement of this Contract) which has been clearly marked by the Contractor as Commercially Sensitive Information, comprising of information:

- (a) which is provided by the Contractor to the Client in confidence; and/or
- (b) that constitutes a trade secret; and /or
- (c) information of a commercially sensitive nature relating to the Contractor, its IPRs or its business or which the Contractor has indicated to the Client that, if disclosed by the Client, would cause the Contractor significant commercial disadvantage or material financial loss.

**“Confidential Information”**

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this

Agreement that relates to:

- (i) the Disclosing Party Group; or
- (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above,

but not including any Information which:

- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
- (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
- (iv) a. was independently developed without access to the Confidential Information; or  
b. relates to the Contractors performance under this Agreement

**“Contract”** means this written agreement between the Client and the Contractor consisting of these Clauses and any attached Schedules.

**“Contracting Client”** means any Contracting Client as defined in Regulation 2 of the Public Contracts Regulations 2015.

**“Contractor”** means the person, firm or company with whom the Client enters into the Contract.

**“Contract Period”** means the period from the Commencement Date to:

- (a) the date of expiry set out in Clause A2 (Initial Contract Period); or
- (b) following an extension pursuant to Clause E6 (Extension of Initial Contract Period), the date of expiry of the extended period;

or

such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT) payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with Clause B6 (Price Adjustment on Extension of Initial Contract Period).

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of the relevant Party or the Key personnel in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“Disruption”** means any event that will interfere with the continuity of the Client operations and or supply of services

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

**“DPA”** means the Data Protection Act 1998 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such legislation.

**“Due Diligence Information”** means any information supplied to the Contractor by or on behalf of the Client prior to the Commencement Date.

**“E-Sourcing Messaging Facility”** means the ability to send and receive messages via the E-Sourcing application.

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such regulations.

**“Equipment”** means the Contractor’s Equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.



**“Exit Management”** means the services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Contractor to the Client and/or a Replacement Contractor, as set out or referred to in Schedule F (*Exit Management*)

**“Exit Plan”** means the plan produced and updated by the Contractor during the Term in accordance with para? of Schedule F (*Exit Management*);

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

**“FOIA”** means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such legislation.

**“Force Majeure Event”** any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, disaster, or inability to reach agreement or produce a Benchmark report pursuant to paragraph 5.10 of Schedule 7.3 but excluding any industrial dispute relating to the Contractor or the Contractor Personnel or any other failure in the Contractor’s or a Sub-contractor’s supply chain.

**“Force Majeure Notice”** a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

**“Fraud”** means any offence under Laws creating offences in respect of fraudulent acts or at common Law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

**“General Anti-Abuse Rule”** means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“Information”** has the meaning given under section 84 of the FOIA.

**“Halifax Abuse Principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**“Initial Contract Period”** means the period from the Commencement Date to the date of expiry set out in Clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Intellectual Property Rights” or “IPR’s”** means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“Key Personnel”** means persons appointed by the Contractor to fulfil the key roles, to perform its obligations under the Contract. Being the persons listed in Schedule J (KEY PERSONNEL) against each key role as at the effective date or as amended from time to time in accordance with clauses I4.2, I4.3 and I4.4.

**Know-How** means all ideas, concepts, schemes, information, knowledge, market intelligence, techniques, methodology, and anything else in the nature of know-how relating to the Services

**“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of Law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

**“Month”** means calendar Month.

**“Occasion of Tax Non-Compliance”** means: (to be considered in context with Public Contracts Regulation 2015 Section 57)

(a) any tax return of the Contractor submitted to a Relevant Tax Client on or after 1 October 2012 is found to be incorrect as a result of:

(i) a Relevant Tax Client successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Client under the DOTAS or any equivalent or similar regime; and/or

(b) the Contractor’s tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

**“Outgoing Contractor”** means the Person, firm or company currently providing the Services and whose replacement is envisaged pursuant to the Contract.

**“Party”** means a Party to the Contract.

**“Premises”** means the location where the Services are to be supplied, as set out in the Specification.

**“Pricing Schedule”** means the detail as set out in Schedule B Pricing Schedule.

**‘Procurement Probity Policy’** means the Strategic Delivery Partner Procurement Probity Policy as detailed in Schedule I

**“Prohibited Transaction”** means a reduction of any UK tax on any contractual payment which is due

**“Property”** means the Property, other than real Property, issued or made available to the Contractor by the Client in connection with the Contract.

**“Public Contracts Regulations 2015”** means the new EU procurement regulations brought into force in the UK on 26 February 2015. To be referred to as ‘PCR 2015’ <http://www.legislation.gov.uk/uksi/2015/102/contents/made>

**“Quality Standards”** means the Quality Standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**“Regulatory Bodies”** means those Crown bodies and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.

**“Relevant Convictions”** means a conviction that is relevant to the nature of the Services and/or relevant to the work of the Client as previously agreed between the Client and the Contractor.

**“Relevant Tax Client”** means HM Revenue and Customs, or, if applicable, a tax Client in the jurisdiction in which the Contractor is established.

**“Relevant Transfer”** means a transfer of employment to which the Employment Regulations applies; shall have the meaning set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)

**“Replacement Contractor”** means any third Party service provider appointed by the Client to supply any Services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**“Request for Information”** shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Returning Employees”** means those persons listed in a Schedule to be agreed by the Parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any sub-contractor) wholly and/or mainly in the provision of the Services immediately before the end of the Contract Period.

**“Schedule”** means a Schedule attached to, and forming part of, the Contract.

**"Security Plan"** means the Contractor's Security Plan prepared pursuant to the Client's instructions and set out in Schedule H

**"Security Policy"** means the Client's current Security Policy as updated from time to time.

**"Services"** means the Services to be supplied as specified in the Specification.

**"Specification"** means the description of the Services to be supplied under the Contract and set out in Schedule A.

**"Tender"** means the document(s) submitted by the Contractor to the Client in response to the Client's invitation to Contractors for formal offers to supply it with the Services.

**"Termination"** means to end the contract

**"Transfer Date"** means the date that a Relevant Transfer takes place and may or may not be coincidental to the Commencement Date.

**"Variation"** has the meaning given to it in Clause E3.1 (Variation).

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

## **A GENERAL PROVISIONS**

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) Words importing the masculine include the feminine and the neuter;
- (c) Reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (d) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

### **A2 Initial Contract Period**

A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on 30th March 2018, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause E6 (Extension of Initial Contract Period).

### **A3 Contractor's Status**

A3.1 At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

### **A4 Client's Obligations**

A4.1 Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any

liability under the Contract (howsoever arising) on the part of the Client to the Contractor.

## **A5 Notices**

- A5.1 Any notice or other communication which is to be given by either Party to the other shall be issued by the E-Sourcing Messaging Facility. Where, for legal or other reasons, this is not possible, notice shall be given by letter, (sent by hand or post, registered post or recorded delivery), or transmitted by facsimile or e-mail, confirmed in either case by written letter. Such notice or communication shall be deemed to have been 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.

## **A6 Mistakes in Information**

- A7 The Contractor shall be responsible for the accuracy of all drawings, documentation and Information supplied to the Client by the Contractor in connection with the supply of the Services and shall satisfy liability for any extra costs occasioned by any discrepancies, errors or omissions therein referred to in Clause F1.2., unless any such discrepancies, errors or omissions are based upon drawings, documentation or Information provided to Contractor by Client and that these are discrepancies, errors or omissions that the Contractor would not, in the performance of its obligations, be reasonably expected to detect.. Conflicts of Interest**

- A7.1 The Contractor shall take appropriate steps to ensure that, to the best of its knowledge, neither the Contractor nor any Key personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract, the Client's duty as a public authority or duties under the Civil Service Code of Conduct. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

- A7.2 The Client reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract, the Client's duty as a public authority or duties under the Civil Service Code of Conduct.. The actions of the Client pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client. The Client shall pay to the Contractor any sums outstanding in the event that the Contract is terminated under this Clause A7.2.

## **A7a Procurement Probity Policy and Ethical Walls**

- A7a.1 The Contractor shall at all times comply with the Client's Probity Policy as set out in Schedule I. The Client reserves the right to exclude the Contractor from a future competition in the event it deems the contractor to have breached the terms of the Probity Policy at any point either during the term of the contract or after the contract term end.

A7a.2 Where required to do so, the Contractor shall establish appropriate Ethical Wall arrangement approved by the Client. Such approval is not to be unreasonably withheld or delayed.

A7a.3 In the event that the contractor commits a breach of its obligations under A7a.1 or A7a.2 the Client shall be entitled to

- i) terminate the contract in accordance with G2; and / or
- ii) Exercise the right to exclude the contractor from any future procurement competition

A7a.4 Clauses A7a.1, A7a.2 and A7a.3 shall apply during the continuance of the Contract.

## **A8 Access to Client's Premises**

A8.1 The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises to:

- (a) any member of the Key personnel; or
- (b) any person employed or engaged by any member of the Key personnel,

whose admission or continued presence would, in the reasonable opinion of the Client, be undesirable.

A8.2 At the Client's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.

A8.3 The Contractor's Key personnel, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

A8.4 If the Contractor fails to comply with Clause A9.2 within 14 days of the date of the request and in the reasonable opinion of the Client such failure may be prejudicial to the interests of the Crown, then the Client may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

A8.5 The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Clause A9.2 shall be final and conclusive.

## **A9 Licence to occupy Premises**

A9.1 Any land or Premises made available from time to time to the Contractor by the Client in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under

the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- A9.2 The Contractor shall limit access to the land or Premises to such Key personnel as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Key personnel co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.
- A9.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.
- A9.4 The Contractor shall (and shall ensure that its Key personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Key personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed Equipment or fittings therein.
- A9.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Key personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Client retains the right at any time to use any Premises owned or occupied by it in any manner it sees fit.

#### **A10 Key personnel Vetting and Government Baseline Security Standard**

- A10.1 The Contractor shall comply with the HMG Baseline Personnel Security Standard (BPSS) in respect of all Key Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Key Personnel employed or engaged by the Contractor have been vetted and recruited in accordance with the BPSS.



- A10.2 The Contractor hereby warrants and represents that the checks specified in the BPSS have been carried out in respect of each of the Key Personnel assigned to access Premises, Property or Information belonging to the Client and that the results of those checks are satisfactory.
- A10.3 The Contractor shall maintain full and accurate records of BPSS checks such that the Client (or its authorised agents) may verify that the Contractor has carried out such checks in accordance with the BPSS.
- A10.4 Subject to legal requirements in respect of confidentiality, the Contractor shall grant to the Client (or its authorised agents) the right of reasonable access to all its records of BPSS checks and shall provide all reasonable assistance at all times for the purpose of carrying out an audit of the Contractor's compliance with the BPSS.
- A10.5 The Client may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

## **A11 Security of Premises**

- A11.1 The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Client while on the Premises, and shall ensure that all of its Key personnel comply with such requirements.
- A11.2 The Contractor shall take all steps reasonably required by the Client to prevent unauthorised persons from being admitted to the Client's Premises. The Client shall afford to the authorised personnel of the Contractor at all reasonable times and with prior agreement such access to the Client's Premises as may be necessary for the performance of the Contract provided always that the Client shall have the right to refuse admittance to or order the removal from the Premises any person employed by or acting on behalf of the Contractor or any sub-contractor who in the opinion of the Client (which shall be final) is not a fit and proper person to be on the Client's Premises. Action taken under this Condition shall be confirmed in writing to the Contractor by the Client and shall not relieve the Contractor of its obligations under the Contract. At all times personnel of the Contractor shall obey the Client's directions relating to safety.
- A11.3 Where Key personnel are required to have a pass for admission to the Client's Premises, the Client's representative shall, subject to satisfactory completion of Approval procedures, arrange for passes to be issued.
- A11.4 The Client shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

## **A12 Property**

- A12.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the Property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.
- A12.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.
- A12.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- A12.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.
- A12.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

### **A13 Due Diligence**

A14.1 The Contractor acknowledges that:

- (a) the Client has made available to the Contractor information, documents and Due Diligence Information that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;
- (b) the Contractor, based on the information provided by the Client prior to the date of this Agreement, has satisfied itself that it understands the scope of its obligations under this Agreement.

## **B PAYMENT TERMS AND CONTRACT PRICE**

### **B1 Contract Price**

- B1.1 The Contract Prices and Rates shall remain firm for the initial twelve (12) months of the Contract Period and will be subjected to review at the end of this period with the subsequent twelve (12) month (and any further extension) Prices and Rates to be mutually agreed with both parties in line with the cost model principles referred to in the Pricing Schedule B.

B1.2 In the event that the Contract Price is increased or decreased as a result of any new legislation or regulation being made after the Commencement Date, the amount of any such increase or decrease shall be treated as a Variation to the Contract and will be assessed on an individual basis. Such Variations will not be allowed where new legislation or regulations are enacted after the commencement of the Contract but were made public prior to the Commencement Date. Any such Variations to price, which can be foreseen by the Contractor prior to the Commencement Date, will be deemed to have been included in the Contract Price.

## **B2 Payment Terms and VAT**

B2.1 The Client shall pay all undisputed sums due to the Contractor no later than 30 days from the issue date of the relevant invoice.

B2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and is supported by any other documentation reasonably required by the Client to substantiate the invoice.

B2.3 Where the Contractor enters into a sub-contract with a Contractor or sub-contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the date on which the relevant invoice is regarded as valid and undisputed.

B2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Client shall pay the VAT to the Contractor following its receipt of a valid VAT invoice.

B2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause B2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.

B2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Clause G2.3 (Termination on Default) for failure to pay undisputed sums of money. If any amount payable under this Contract is not paid within 30 days of the due date for payment, interest shall be payable by the Client at a rate of 5% above the base rate of the Bank of England, from the due date to the date of actual payment.

## **B3 Recovery of Sums Due**

B3.1 Wherever 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 the Client in respect of any breach of the Contract), subject to there being no resolution under the Dispute Resolution procedure, that sum may be deducted from any sum then due, or which at any later time may become due to the

Contractor under the Contract or under any other agreement or Contract with the Client or the Crown.

- B3.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

#### **B4 Compliance with Value Added Tax and Other Tax Requirements**

- B4.1 The Contractor shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- B4.2 Failure to comply may constitute a material breach of this Contract and the Client may exercise the rights and provisions conferred by Condition G2 (Termination on Default) hereof.
- B4.3 The Contractor shall provide to the Client the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or Self Assessment reference of any agent, Contractor or sub-contractor of the Contractor prior to the commencement of any work under this Contract by that agent, Contractor or sub-contractor. Upon a request by the Client, the Contractor shall not employ or will cease to employ any agent, Contractor or sub-contractor.

#### **B5 Arrears of Value Added Tax**

- B5.1 Where an amount, including any assessed amount, is due from the Contractor as Value Added Tax under the Value Added Tax Act 1994 (as amended) an equivalent amount may be deducted by the Client from the amount of any sum due to the Contractor under the Contract.
- B5.2 The Client shall give the Contractor at least 14 days notice in writing before exercising the right of deduction under Clause B5.1. The notice shall specify the amount to be deducted and shall contain a description of the VAT due from the Contractor in respect of which the deduction is made.

#### **B6 Price adjustment on extension of the Initial Contract Period**

- B6.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to Clause E6 (Extension of Initial Contract Period) the Client shall, in the 6 Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a Variation in the Contract Price.
- B6.2 If the Parties are unable to agree a Variation in the Contract Price in accordance with Clause B6.1, the Contract shall terminate at the end of the Initial Contract Period.
- B6.3 If a Variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- B6.4 Any increase in the Contract Price pursuant to Clause B6.1 shall not exceed the percentage change in the Price Index previously agreed between the Client and

the Contractor between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

## **B7 Euro**

B7.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Client.

B7.2 The Client shall provide all reasonable assistance to facilitate compliance with Clause B7.1 by the Contractor.

## **C STATUTORY OBLIGATIONS AND REGULATIONS**

### **C1 Prevention of Corruption and the Bribery Act 2010**

C1.1 The Contractor shall comply, and shall ensure that its employees, agents and sub-contractors comply, with the provisions of the Bribery Act 2010

C1.2 The Contractor shall not offer or give, or agree to give, to the Client or any other Crown body or any person employed by or on behalf of the Client or any other Crown body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other Contract with the Client or any other Crown body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such Contract.

C1.3 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other Crown body or any person employed by or on behalf of the Client or any other Crown body in connection with the Contract.

C1.4 If the Contractor, its Key personnel or anyone acting on the Contractor's behalf, engages in conduct prohibited by Clauses C1.2 or C1.3, the Client may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those Clauses.

### **C2 Prevention of Fraud**

C2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Key personnel and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Client.

- C2.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- C2.3 If the Contractor or its Key personnel commits Fraud in relation to this or any other Contract with the Crown (including the Client) the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
  - (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this Clause.

### **C3 Discrimination**

- C3.1 The Contractor shall not unlawfully discriminate either directly or indirectly because of race, colour, ethnic or national origin, disability, sex, sexual orientation, gender reassignment, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (which replaces the following: Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2007, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006), the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- C3.2 The Contractor shall take all reasonable steps to secure the observance of Clause C3.1 by all Key personnel.

### **C4 The Contracts (Rights of Third Parties) Act 1999**

- C4.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

### **C5 Environmental Requirements**

- C5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

### **C6 Health and Safety**

- C6.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Key personnel and

other persons working on the Premises in the performance of its obligations under the Contract.

C6.2 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

C6.3 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Key personnel and other persons working there.

C6.4 The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

## **D DATA SECURITY AND PROTECTION OF INFORMATION**

### **D1 Client Data**

D1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to Client Data.

D1.2 The Contractor shall not store, copy, disclose, or use Client Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Client.

D1.3 To the extent that Client Data is held and/or processed by the Contractor, the Contractor shall supply that Client Data to the Client as may be requested by the Client and in the format specified by the Client.

D1.4 The Contractor shall take responsibility for preserving the integrity of Client Data and shall take all necessary steps to prevent the corruption or loss of Client Data.

D1.5 The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Client's instructions. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at agreed intervals.

D1.6 The Contractor shall ensure that any system on which the Contractor holds Client Data, including back-up data, is a secure system that complies with the Client's current Security Policy. If any Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Client Data to the extent required by the Client and in accordance with the Client's security requirements and the Contractor shall do so as soon as practicable but not later than any agreed timescale; and/or

- (b) itself restore or procure the restoration of the Client Data, and shall be reimbursed by the Contractor any reasonable expenses incurred in doing so to the extent required by the Client and in accordance with the Client's security requirements.

D1.7 If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.

## **D2 Data Protection Act**

D2.1 For the purposes of this Clause D2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

D2.2 The Contractor shall (and shall ensure that all Key personnel) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

D2.3 Notwithstanding the general obligation in Clause D1.2, where the Contractor is processing Personal Data as a Data Processor for the Client the Contractor shall:

- (a) Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Client to the Contractor);
- (b) Comply with all applicable Laws;
- (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (e) Take reasonable steps to ensure the reliability of Key personnel and agents who may have access to the Personal Data;
- (f) Obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- (g) Not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;



- (h) Ensure that all Key personnel and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause D2;
- (i) Ensure that none of the Key personnel and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client;
- (j) Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and

D2.4 Notify the Client within 5 Working Days if it receives:

- (a) A request from a Data Subject to have access to that person's Personal Data; or
- (b) A complaint or request relating to the Client's obligations under the DPA;

D2.5 Provide the Client with reasonable cooperation and assistance in relation to any such complaint or request made, including by:

- (a) Providing the Client with full details of the complaint or request;
- (b) Assisting the Client to comply with any such request in accordance with the Client's reasonable instructions; and
- (c) Providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales reasonably required by the Client).

D2.6 The provision of this Clause D2 shall apply during the Contract Period and for a period of seven (7) years after its expiry.

### **D3 Official Secrets Acts and related Legislation**

D3.1 The Contractor shall comply with, and shall ensure that its Key personnel comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989; and
- (c) Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005

D3.2 In the event that the Contractor or its Key personnel fail to comply with this Clause, the Client reserves the right to terminate the Contract with immediate effect.

### **D4 Confidential Information**

D4.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the Information owner's prior written consent.

D4.2 Clause D4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause D5 (Freedom of Information);
- (b) such Information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the Information owner;
- (c) such Information was obtained from a third Party without obligation of confidentiality;
- (d) such Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

D4.3 The Contractor may only disclose the Client's Confidential Information to the Key personnel who are directly involved in the provision of the Services and who need to know the Information, and shall ensure that such Key personnel are aware of and shall comply with these obligations as to confidentiality.

D4.4 The Contractor shall not, and shall procure that the Key personnel do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.

D4.5 Where deemed appropriate by the Client, and at the written request of the Client, the Contractor shall procure that its Key personnel sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.

D4.6 Nothing in this Contract shall prevent the Client from disclosing the Contractor's Confidential Information (including the Management Information obtained under Schedule D to this Contract):

- (a) to the Crown or any other Contracting Client. The Crown and any Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to the Crown or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third Party which is not part the Crown or any Contracting Client;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- (c) to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, Contractor or other person engaged by any of the entities described in clause D4.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) for the purpose of the examination and certification of the Client's accounts; or
- (f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
- (g) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this clause D4.

- D4.7 The Client shall use all reasonable endeavours to ensure that any Crown body, Contracting Client, employee, third Party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause D4.6 is made aware of the Client's obligations of confidentiality.
- D4.8 Nothing in this Clause D4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in disclosure of the other Party's Confidential Information or an infringement of its Intellectual Property Rights.

## **D5 Freedom of Information**

- D5.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its information disclosure obligations.
- D5.2 The Contractor shall and shall procure that any sub-contractors shall:
  - (a) transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receiving a Request for Information;
  - (b) provide the Client with a copy of all information in its possession or power in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request; and
  - (c) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time

for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- D5.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- D5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.
- D5.5 If the Client receives a Request for Information relating to information previously considered by the Parties to be Commercially Sensitive Information that is exempt under the FOIA the Client shall:
- (a) consider whether the information is, in fact, exempt and;
  - (b) consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information (unless the Information benefits from an absolute exemption) and;
  - (c) consult with the Contractor prior to disclosure of the information whenever reasonably practicable.
- D5.6 Without prejudice to Clause D5.5 the Client shall consult with the Contractor before disclosing any Confidential Information of the Contractor unless the Client is obliged under the FOIA to disclose such Information without consulting the Contractor.
- D5.7 The Client shall not be liable for any loss or damage suffered by the Contractor, whether in Contract, tort or any other way, as a result of the Client disclosing Information in response to a request made under the FOIA.
- D5.8 The Contractor shall ensure that all information is retained for disclosure in accordance with any legislation or guidelines from time to time in place and shall permit the Client to inspect such records as requested from time to time.

## **D6 Security Requirements**

- D6.1 In the performance of this Contract, the Contractor shall comply with (and shall ensure that its Key personnel comply with) the Client's specific security requirements as described in the Specification of Requirements at Schedule A as appropriate. Failure to do so may result in the termination of the contract in accordance with Clause G2. The Contractor shall be obliged to inform the Client of any security incident, regardless of its size or perceived impact on the Client's business, as soon as the Contractor becomes aware of such an incident, and shall maintain auditable records of such events.
- D6.2 Where required by the Client, the Contractor shall comply, and shall procure the compliance of its Key personnel, with the HMRC Security Policy and the Security Plan at Schedule H of this Contract and the Contractor shall ensure that its Security Plan fully complies with the Security Policy.

- D6.3 The Client shall notify the Contractor of any changes or proposed changes to the Security Policy.
- D6.4 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate these costs. Any such change shall then be agreed in accordance with the change procedures previously agreed between the Client and the Contractor.
- D6.5 Unless and/or until such a change is agreed by the Client pursuant to Clause D6.4 the Contractor shall continue to perform the Services in accordance with its existing obligations under the Contract.
- D6.6 The Contractor shall, as an enduring obligation for the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- D6.7 Notwithstanding Clause D6.6, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- D6.8 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause D6.7 shall be borne by the parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Client Data (whilst the Client Data was under the control of the Contractor); and
  - (b) by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

## **D7 Publicity, Media and Official Enquiries**

- D7.1 The Contractor shall not:
- (a) make any press announcements or publicise this Contract or its contents in any way; or
  - (b) use the Client's name or brand in any promotion or marketing or announcement of orders;
- Without the prior written consent of the Client, which shall not be unreasonably withheld or delayed.
- D7.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or Services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such Approval or endorsement.

- D7.3 Both Parties shall take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, Contractors, professional advisors and consultants comply with Clause D7.1.

## **D8 Intellectual Property Rights**

- D8.1 Excluding the Contractors pre-existing Intellectual Property and the Contractor's IP, all Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

- (a) furnished to or made available to the Contractor by or on behalf of the Client shall remain the Property of the Client; and
- (b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client; and the Contractor shall not, and shall ensure that the Key personnel shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- D8.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause D8.1 (b). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

- D8.3 The Contractor shall execute all documentation necessary to execute the assignment under Clause D8.2. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor or the performance of the Contract.

- D8.4 The Contractor shall not infringe any Intellectual Property Rights of any third Party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Client; or
- (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

- D8.5 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

- D8.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor.
- D8.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services which are the subject of the alleged infringement on terms which are acceptable to the Client, and in the event that the Contractor is unable to comply with Clauses D8.7 (a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.
- D8.8 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence, subject to Contractor's written approval which will not be unreasonably withheld) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.
- D8.9 Notwithstanding the foregoing, the Contractor will retain ownership of the frameworks, methodologies, analytical tools and industry data and insights provided and used by the Contractor during the performance of its services and any improvements thereof made during such performance (the "Contractor's IP"). However for the avoidance of doubt any frameworks, methodologies, analytical tools specifically developed and industry data and insights created specifically for the Client by the Contractor during the performance of this contract will remain the ownership of the Client.

## **D9 Audit and the National Audit Office**

- D9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

## **D10 Client's Right to Publish the Contract**

- D10.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA

and subject to D10.2, the content of this Contract is not Confidential Information. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Client to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

D10.2 The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision at its absolute discretion.

D10.3 The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract

## **E CONTROL OF THE CONTRACT**

### **E1 Transfer, Sub-Contracting and Novation**

- E1.1 The Contractor shall not assign, novate or otherwise transfer or dispose of any of its rights or obligations under the Agreement without the prior written consent of the Client, which may be withheld at the Client's absolute discretion, and any attempt by the Contractor to assign, novate or otherwise transfer or dispose of its rights or obligations in violation hereof shall be null and void as between the Parties.
- E1.2 If relevant at any point during the term the Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- E1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- E1.4 Notwithstanding Clause E1.1, the Contractor may assign to a third Party (the "Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract. Any assignment under this Clause E1.4 shall be subject to:
- (a) deduction of any sums in respect of which the Client exercises its right of recovery under Clause B3 (Recovery of Sums Due); and
  - (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid;
- E1.5 In the event that the Contractor assigns the right to receive the Contract Price under Clause E1.4, the Contractor shall notify the Client if future payments are to be made directly to the Assignee and shall provide the Client with the relevant Information. The provisions of Clause B2 (Payment Terms and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.



E1.6 Subject to Clause E1.8, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Client; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
- (c) any private sector body which substantially performs the functions of the Client,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

E1.7 Any change in the legal status of the Client such that it ceases to be a Contracting Client shall not, subject to Clause E1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

E1.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause E1.6 to a body which is not a Contracting Client or if there is a change in the legal status of the Client such that it ceases to be a Contracting Client (in the remainder of this Clause both such bodies being referred to as the "Transferee"):

- (a) the rights of termination of the Client in Clauses G1 (Termination on insolvency and change of control) and G2 (Termination on Default) shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee;
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Contractor.

E1.9 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

E1.10 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

E1.11 The Client hereby consents that, by giving the Contractor prior written notice, the Client may assign, novate, sub-contract or otherwise dispose of, and be released from, any or all of its rights and/or obligations under the Agreement:

- to any Contracting Client; or
- to any successor Client following a reorganisation within government or to any body (including any private sector body) other than a Contracting Client which substantially performs any of the functions that previously had been performed by the Client provided that
  - (i) there will be, in the Contractor's reasonable opinion, no change to the risks and their allocation within the Agreement; and
  - (ii) in the case of a private sector body only, if such body does not have a credit rating substantially similar to that of the Client, then the Parties shall agree a reasonable adjustment to the Service Charges to compensate the Contractor for any increase in its funding costs necessarily incurred as a result of such assignment, novation or other disposal); or
  - (iii) (only with the prior written consent of the Contractor (which shall not be unreasonably withheld or delayed)) to any other person, provided that the Client's assignee or successor in title undertakes in writing to the Contractor to be bound by the obligations of the Client under the Agreement.

E1.12 Any change in the legal status of the Client such that it ceases to be a Contracting Client shall not affect the validity of the Agreement. In such circumstances, the Agreement shall be binding on any successor body to the Client.

## **E2 Waiver**

E2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

E2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A5 (Notices).

E2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **E3 Variation [To be read in conjunction with Regulation 72 PCR 2015] <http://www.legislation.gov.uk/uksi/2015/102/contents/made>**

E3.1 Subject to the provisions of this Clause E3.1, the Client may request a Variation of the Specification provided that such Variation does not amount to a material change to the Specification or to a breach of Regulation 72 PCR 2015. Such a change is hereinafter called a "Variation".

- E3.2 The Client may request a Variation by notifying the Contractor in writing giving the Contractor sufficient Information to assess the extent of the Variation and any additional cost that may be incurred by the Contractor. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- E3.3 In the event that the Contractor is unable to provide the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
  - (b) Refer the matter to be dealt with under the Dispute Resolution procedure detailed at Clause H2; or
  - (c) Subject to there being no resolution under the Dispute Resolution procedure, terminate the Contract with 30 days written notice, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification.

#### **E4 Severability**

- E4.1 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.

#### **E5 Remedies Cumulative**

- E5.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **E6 Extension of Initial Contract Period**

- E6.1 This Contract contains the option to extend for a further period of up to 12 months subject to the agreement of both parties. The Contract terms and conditions will apply throughout any such extended period.

#### **E7 Entire Agreement**

- E7.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this

Clause shall not exclude liability in respect of any Fraud or Fraudulent misrepresentation.

E7.2 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the Clauses of the Contract.

## **F LIABILITIES AND WARRANTIES**

### **F1 Liability, Indemnity and Insurance**

F1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused directly or indirectly by its negligence; or
- (b) Fraud; or
- (c) Fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

F1.2 Subject to Clauses F1.3 and F1.4, the Contractor shall be liable for all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of or in consequence of the supply, or the late or purported supply, of the Services, or the performance or non-performance by the Contractor of its obligations under the Contract, or the presence of the Contractor or any Key personnel on the Premises, including in respect of any death or personal injury, loss of or damage to the Client's Property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any negligent act or omission of the Contractor.

F1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

F1.4 Subject always to Clause F1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the Property of the other under or in connection with the Contract shall in no event exceed £1,000,000 million; and

- (b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by Clauses D8.4 (Intellectual Property Rights) or F1.4(a) shall in no event exceed 100% of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises;
  - (c) The aggregate liability of the Contractor under Clause D8.4 (Intellectual Property Rights) where applicable shall in no event exceed £1,000,000.
- F1.5 Subject always to Clause F1.1, in no event shall either Party be liable to the other for any:
  - (a) loss of profits, business, revenue or goodwill; and/or
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) indirect or consequential loss or damage.
- F1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including in respect of death or personal injury, loss of or damage to Property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor and shall be maintained for the Contract Period
- F1.7 The Contractor shall hold employer's liability insurance to a minimum of £5,000,000 in respect of Key personnel in accordance with any legal requirement from time to time in force.
- F1.8 The Contractor shall give the Client, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- F1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- F1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause F1.2.

## **F2 Warranties and Representations**

- F2.1 The Contractor warrants and represents that:
  - (a) it has full capacity and Client and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into

and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all Information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any Contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

### **F3 Professional Indemnity**

- F3.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £1,000,000 for each individual claim or such higher limit as the Client may

reasonably require (and as required by Law) from time to time. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 12 Months thereafter.

- F3.2 Any excess or deductibles under the insurance referred to in Clause F3.1 shall be the sole and exclusive responsibility of the Contractor or the Contractor's agents, professional consultants or sub-contractors, as applicable.
- F3.3 The terms of any insurance or the amount of insurance cover shall not relieve the Contractor of any liabilities arising under the Contract.
- F3.4 The Contractor shall, on request, provide the Client with copies of all insurance policies referred to in Clause F3.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- F3.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Clause then the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

#### **F4 Tax Non-compliance**

- F4.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- F4.2 If, at any point during the Initial Contract Period, or any extension thereof, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
  - (a) notify the Client in writing of such fact within 5 Working Days of its occurrence; and
  - (b) promptly provide to the Client:
    - (i) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require.
- F4.3 Failure to comply with clauses F4.2 (a) and (b), or the occurrence of an occasion of Tax Non-Compliance or the warranty given by the Supplier at clause F4.1 is materially untrue, shall constitute Supplier Termination Events and the Authority may exercise rights of termination in accordance with clause G2.

#### **F4.4 A Prohibition of use of Offshore Tax Structures**

Subject to the principal of non-discrimination against undertakings based in member countries of the European Union or signatory Countries of the World Trade Organisation Agreement on Government Procurement, the Contractor shall ensure that throughout the contract term, that neither it or its affiliates have in place any arrangements which:

- (a) Involve the use of offshore companies or other offshore entities: and
- (b) Have as their main purpose or one of their main purposes the reduction of any UK taxes which would otherwise be payable by the Contractor, or its affiliates, on any payments made under this contract (a "Prohibited Transaction"), provided that a Prohibited Transaction shall not include transactions on terms are at arm's length and are entered into in the ordinary course of the transacting parties' business.

F4.4B Any failure by the Contractor to comply with Clause F4.4A shall constitute a non-remedial material Default for the purpose of Clause G2

## **G TERMINATION, DEFAULT AND DISRUPTION**

### **G1 Termination on insolvency and change of control**

G1.1 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or



- (h) any event similar to those listed in G1.1 (a)-(g) occurs under the Law of any other jurisdiction.

G1.2 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

G1.3 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or

- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets.

G1.4 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
- (e) a petition is presented for its winding up (which is not dismissed within 14 days or its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- (f) a receiver, or similar officer is appointed over the whole of any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

G1.5 References to the Insolvency Act 1986 in Clause G1.3 (a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

G1.6 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("Change of Control"). The Client may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or

- (b) where no notification has been made, the date that the Client becomes aware of the Change of Control,

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

## **G2 Termination on Default**

G2.1 Either Party may terminate the Contract by written notice to the other Party with immediate effect if the other Party commits a Default and:

- (a) has not remedied the Default to the satisfaction of the injured Party within 25 Working Days or such other period as may be agreed between the Parties, after issue of a written notice specifying the Default and requesting it to be remedied; or

- (b) the Default is not, in the opinion of the injured Party, capable of remedy; or

- (c) the Default is a material breach of the Contract.

G2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the reasonable costs of reconstitution of that data and shall reimburse the Client in respect of any reasonable charge levied for its transmission and any other reasonable costs charged in connection with such Default in accordance with Clause D1.

G2.3 If the Client fails to pay the Contractor any undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 30 days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under Clause B3 (Recovery of Sums Due).

## **G3 Termination for Convenience**

G3.1 The Client shall have the right to terminate the Contract or specific service elements of the Contract at any time by giving 1 (one) Months' written notice to the Contractor. The Client may extend this period of notice at any time before it expires subject to agreement on the level of performance to be provided by the Contractor during the period of extension.

G3.2 Termination of Contract in Accordance with Regulation 73(1) PCR 2015  
The Client can terminate the contract, providing one months' notice to the contractor if:

- I. The contract specification is subject to a Substantial Modification which would have required a new procurement procedure [pursuant to] Regulation 72 (9) 'Modification of Contracts during their Term'
- II. The Contractor has, at the time of the contract award, been in one of the situations referred to in Regulation 57(1) to 57 (3) PCR 2015

and should therefore have been excluded from the procurement procedure; or

- III. The contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and The Public Contracts Directive that has been declared by the Court of Justice of the EU in a procedure under Article 258 of Treaty on the Functioning of the European Union (TFEU).

G3.3 Up to 60 days from the Commencement Date the Parties shall have the right to terminate the contract with 14 days written notice.

G3.4 If, in accordance with clause E1.6 or E1.11, the Client assigns, novates or otherwise disposes of its rights and obligations under the Contract or any part thereof to any private sector body, then the Contractor shall have the right to terminate the Contract or specific service elements of the Contract at any time by giving ninety (90) days written notice to the Client.

#### **G4 Consequences of Expiry or Termination**

G4.1 If this agreement is terminated by the Client or the term expires, the only payments that the Client shall be required to make as a result of such termination will be payments in respect of unpaid charges for services received up until the termination date.

G4.2 The Client shall not be liable under Clause G4.2 to pay any sum which:

- (a) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (b) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

G4.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under Clauses B2 (Payment Terms and VAT), B3 (Recovery of Sums Due), C1 (Prevention of Corruption), D2(Data Protection Act), D3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989, Section 18 and Section 19 Commissioners for Revenue and Customs Act 2005), D4 (Confidential Information), D5 (Freedom of Information), D8 (Intellectual Property Rights), D9 (Audit and National Audit Office), E5 Remedies Cumulative), F1 (Liability, Indemnity and Insurance), G4 (Consequences of Expiry or Termination), G6 (Recovery upon Termination) and H1 (Governing Law and Jurisdiction).

G4.4 Where the Contract is terminated under G3.3 each of the Parties shall bear its own cost of termination.

## **G5 Disruption**

- G5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not unduly disrupt the operations of the Client, the Client's employees or any other Contractor employed by the Client.
- G5.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action is by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- G5.3 In the event of industrial action by the Key personnel, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- G5.4 If the Contractor's proposals referred to in Clause G5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.
- G5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **G6 Recovery upon Termination**

- G6.1 At the end of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Client upon request all Property (including all materials, documents, Information and access keys) used in the performance of its obligations under the Contract that are in its possession or under its control or in the possession or under the control of any permitted Contractors or sub-contractors and in the event the Contractor fails to do so, the Client may recover immediate possession thereof and the Contractor hereby grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any Premises of the Contractor where any such items may be held.
- G6.2 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall provide such assistance to the Client and the Replacement Contractor as the Client may reasonably require in order to ensure an effective handover of all work in progress at the material time. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance free of charge otherwise the Client shall pay the Contractor's reasonable costs of providing such assistance provided that the Contractor shall take all reasonable steps to mitigate such costs.

## **G7 Termination for Tax Non-Compliance (contracts above £5m)**

- G7.1 In the event that:

(a) the warranty given by the Contractor pursuant to Clause F4.1 is materially untrue; or

(b) the Contractor commits a material breach of its obligation to notify the Client of any Occasion of Tax Non-Compliance as required by Clause F4.2; or

(c) the Contractor fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Client, are acceptable

the Client shall be entitled to terminate this Contract in accordance with Clause G2.

#### **G8 Termination for Breach of HMRC Procurement Probity Policy**

In the event that the Contractor commits a breach of its obligations under the Client's Procurement Probity Policy (as set out in Schedule I) the Client may exercise the right to:

- (a) Terminate the contract in accordance with Clause G2; and/or
- (b) Exclude the contractor from any future related procurement competition

#### **G9 Termination for Breach of HMRC Policy**

In the event that the Contractor or any of its Key Personnel providing the Services under this contract are found to have breached any of the set out HMRC policies; Health and Safety, Travel and Subsistence, Equality and Diversity and The Civil Service Behavioural Framework, as set out in the appendices to Schedule A, the client may exercise the right to terminate the contract in accordance with Clause G2.

### **H DISPUTES AND LAW**

#### **H1 Governing Law and Jurisdiction**

- H1.1 Subject to the provisions of Clause H2, the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-Contractual obligations and other matters arising from or connected with the Contract are to be governed and construed according to English Law.

#### **H2 Dispute Resolution**

- H2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- H2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- H2.3 If the dispute cannot be resolved by the Parties pursuant to Clause H2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause H2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- H2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Key personnel shall comply fully with the requirements of the Contract at all times during the Contract Period.
- H2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or, if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days’ notice to either Party that the Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) or other mediation provider to appoint a Mediator.
  - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant Information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR or other mediation provider to provide guidance on a suitable procedure.
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
  - (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
  - (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

## **I SUPPLY OF SERVICES**

### **I1 The Services**

- I1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Specification and the HMRC Procurement Probity Policy (Schedule I) the provisions of the Contract in consideration of the payment of the Contract Price. The Client may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- I1.2 If the Client informs the Contractor in writing that the Client reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.

## **I2 Manner of Carrying Out the Services**

- I2.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- I2.2 The Contractor and its Key Personnel shall act in the Clients best interests at all times
- I2.3 The Contractor shall ensure that all Key personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- I2.4 The Contractor and its Key Personnel shall not do anything that may damage the reputation of the Client
- I2.5 The Contractor and its Key Personnel will cooperate with all existing HMRC suppliers in the delivery of the services
- I2.5 The Contractor will cooperate with all participants in any downstream process, as required in the delivery of the services under this agreement
- I2.6 The Contractor shall not discriminate or show favour to any existing or future HMRC supplier that they may be required to work with in the delivery of the services under this agreement

## **I3 Remedies in the event of inadequate performance**

- I3.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with Clause G2 (Termination on Default) of the Contract.



- 13.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under Clause G2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third Party to supply such part of the Services; and/or
  - (c) terminate, in accordance with Clause G2 (Termination on Default), the whole of the Contract.
- 13.3 This clause 13.3 is not applicable in relation to the Services detailed in Schedule [ A ] of this Contract, however the parties acknowledge that should the Contractor be required to provide any additional managed services to Client at some point in the future, then subject to mutual agreement, this clause 13.3 will be operable in relation to those additional managed services.
- Without prejudice to its right under Clause B3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third Party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 13.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may reasonably direct.
- 13.5 In the event that:
- (a) the Contractor fails to comply with Clause 13.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
  - (b) the Contractor persistently fails to comply with Clause 13.4 above,
- the Client may terminate the Contract with immediate effect by notice in writing.

#### **14 Key Personnel**

- 14.1 The Contractor shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Term. Schedule J (*Key Personnel*) lists the Key

Roles and names of the persons who the Contractor shall appoint to fill those Key Roles at the Effective Date.

14.2 The Client may identify any further roles as being Key Roles and, following agreement to the same by the Contractor and subject to Clause 14.4 (e) the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.

14.3 Subject to 14.4, the Contractor shall not remove, or replace any Key Personnel (including when carrying out Exit Management) unless:

- (a) requested to do so by the Client;
- (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
- (c) the person's employment or contractual arrangement with the Contractor is terminated for material breach of contract by the employee; or
- (d) the Contractor obtains the Client's prior written consent (such consent not to be unreasonably withheld or delayed).

14.4 The Contractor shall:

- (a) notify the Client promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Contractor shall ensure appropriate temporary cover for that Key Role);
- (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
- (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 30 Working Days' notice;
- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
- (e) ensure that any new role or replacement for a Key Role:
  - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
  - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and
  - (iii) will be, prior to appointment and at the Clients discretion, interviewed by the Client.
- (f) monitor and report on the performance of all Key Personnel to assure effective performance in line with their role and successful contribution

to Programme delivery. In the event of poor performance, in line with I4.3 (a), the Client may request the removal and/or replacement of any Key Personnel.

## **I5 Provision and Removal of Equipment**

- I5.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- I5.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- I5.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at the Contractor's sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the Property of the Contractor.
- I5.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- I5.5 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- I5.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Key personnel.

## **I6 Offers of Employment**

- I6.1 For the duration of the Contract Period and for a period of 12 Months thereafter neither the Client nor the Contractor shall employ or offer employment to any of the other Party's personnel who have been associated with either the procurement, the contract management or the delivery of the Services without that other Party's prior written consent.

## **I7 TUPE**

It is the belief of the Parties that this Agreement, the arrangements envisaged under it, and the commencement and the end (whether in whole or in part) of this Agreement do not constitute a relevant transfer for the purposes of the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as

amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014".

**J1 Contract Performance [To be read in conjunction with schedule D 'Service Levels and key Performance Indicators']**

J1.1 The Contractor shall perform its obligations under the Contract and in accordance with the Service Levels and Key Performance Indicators as set out in Schedule D:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in compliance with all applicable Laws.

**J2 Training and Skills Transfer**

J2.1 The Contractor shall ensure there are robust processes and procedures in place to ensure the transfer of skills and Know-How to the Client in line with the requirements of Schedule L.

J2.2 The Contractor will support the Client in the identification of Know-How and skills gaps in the Clients resources.

J2.3 Where indicated in the Specification, and where required, the Contract Price shall include the cost of training the Client in the delivery of the services and the transfer of any relevant skills.

## Schedules

Schedule A	Service Description
Schedule B	Pricing Schedule
Schedule C	Contract Management Plan and Management Information
Schedule D	Service levels and Key performance Indicators
Schedule E	Risk, Audit and Compliance
Schedule F	90 Day Plan and Delivery Schedule
Schedule G	Exit Management
Schedule H	Security Plan
Schedule I	Procurement Probity Policy
Schedule J	Key Personnel
Schedule K	Business Continuity
Schedule L	Training and Development

Annex J	Travel & Subsistence Requirements
Annex K	HMG Baseline Personnel Security Standard (BPSS)
Annex L	Health & Safety Requirements
Annex M	HMRC Behaviours
Annex N	Diversity and Equality
Annex O	CAESER & HADRIAN

## **Schedule A      Specification of Requirements**

### **1.      SPECIFICATION FOR PROVISION OF COMMERCIAL STRATEGIC DELIVERY PARTNER SERVICES FOR HM REVENUE & CUSTOMS.**

#### **SERVICE DESCRIPTION**

- 1.0      Background**
- 2.0      Current Commercial Capability**
- 3.0      Length and Value of Contract**
- 4.0      Services to be Provided**
- 5.0      Specific Roles & Responsibilities of the Contractor in each Functional  
Area**
- 6.0      Expected Outcomes**
- 7.0      Skills and Experience**
- 8.0      Behaviours and Relationships**
- 9.0      Role of the Client**
- 10.0      Outputs**
- 11.0      Location of Services**
- 12.0      Performance Monitoring Approach**
- 13.0      Liaison and Reporting (MI and Governance)**
- 14.0      Cost Model**
- 15.0      Contractual Considerations**
- 16.0      Supply Chain**
- 17.0      Policies**

## **1.0 BACKGROUND**

- 1.1 HM Revenue and Customs (the Client) is the UK's tax and customs authority, responsible for making sure that the money is available to fund the UK's public services and for helping families and individuals with targeted financial support. Through our customs service we facilitate legitimate trade and protect our economic, social and physical security.
- 1.2 The Client is transforming the way it works in order to meet changing times. The needs and expectations of our customers continue to change and increase, so we want to put them at the heart of everything we do and make it as easy as possible for them to get their tax affairs right.
- 1.3 Our priorities, set by the Government, are to maximise revenues and bear down on avoidance and evasion, transform tax and payments for our customers and design and deliver a professional and efficient and engaging organisation - and to do so while reducing our costs. We can only achieve these things by fundamentally changing the way we work. This means using new processes, new skills and new technology to build compliance into everything we do. By making things easier for our customers, we can focus our resources on more complex cases and those who deliberately try to cheat the system.
- 1.4 **The Clients Commercial Landscape**  
The Department's spend with 3rd parties is around £1.35bn per annum, the majority of which is through the legacy ASPIRE contract, government's biggest IT contract, with an annual spend of approximately £770m – now managed directly with 2 x key contractors. Other key areas of 3rd party spend include Estates (£330m) and Debt Management and Banking (£40m). The remaining spend is split across other strategic categories such as Forensics and Common Goods and Services including Office Supplies, Travel & Transport, Print, Post & Courier.
- 1.5 The Client has experienced a high degree of stability across its critical spend areas of IT and Estates, both having mature (although complex) contracts and suppliers with the commercial activity heavily focussed towards Contract Management – strategically and operationally. This stability is coming to an end as the Aspire (IT) deal terminates in 2017 and Mapeley (Estates) in 2021, both of which require significant organisational change and need to be understood in the context of the Clients digital agenda and the Building our Future programme. The transformational change that the Client need to deliver requires the organisation to increase its commercial capability to meet the future change.
- 1.6 The Clients commercial function provides comprehensive commercial and procurement services, from sourcing everyday commodities to complex procurements for innovative solutions to enable HMRC people to carry out their work effectively. They also provide contract management and commercial risk management services across the Client, as well as some operational support services. The scope of services provided are -

- Market Engagement
- Sourcing
- Creative commercial thinking and innovative solutions
- Contract Management
- Risk Management
- Benefits Management
- The Clients Capability Development
- Supplier Relationship Management

1.7 The commercial function is responsible for growing the Clients commerciality and improving commercial capability, including our understanding of what the market can and should offer, so that the Client accesses the market in the most effective way. Due to its scale, the Clients commercial decisions are market-shaping: we were a key player in the government's debt market integrator project and are leading the way, in central government, in reforming how we think about and purchase technology. Over the coming years, we want to develop our approach to how we best use the market and the size and shape of the Clients commercial footprint.

1.8 The Commercial function embed commercial best practice into the Clients procedures and processes, and are responsible for influencing and promoting Cabinet Office policies such as Value for Money, Centralised Category Management, transparency and support for the Government Growth agenda including a greater engagement with Small and Medium Sized Enterprises (SMEs) and supporting apprenticeships.

1.9 Commercial are also responsible for implementing key the Clients and cross-Government policies and initiatives including Civil Service Reform, Commercial Capability Review and NAO Review of Major Contracts recommendations.

#### **1.10 Organisational Fit**

The Commercial function sits within the Chief Finance Officer's (CFO) Group in the Client and is responsible for, or has influence over, all commercial arrangements covering the Department's £1.35 billion annual external spend. We provide our services to all our Lines of Business and corporate functions.

#### **1.11 Current Commercial Structure**

Commercial activity and capability currently resides in three functions. Each function operates autonomously however, the Chief Commercial Officer/Commercial Director has lead responsibility for all areas. Overall accountability is to the Chief Finance Officer and in the coming year it is expected that these functions will be brought together into a unified Commercial Directorate -

- Commercial Directorate (CD)
- IT Commercial
- Estates Commercial

#### **1.12 Commercial Directorate (CD) –**



CD work with the Clients key business areas and corporate functions to formulate the most effective and efficient commercial strategies to achieve business aims. We create strategies and develop requirements that support the Client in the procurement and selection of suppliers and solutions in the following areas –

- Banking & Financial Services
- Office Solutions & Machines
- Post & Courier
- Print
- Professional Services
- Specialist Goods & Services
- Travel and Transport

1.13 CD also plays a role in supporting the Government policy of centralised procurement of common goods and services and work closely with Crown Commercial Services (CCS) to maximise opportunities to deliver efficiencies and manage demand.

1.14 CD are structured into 3 x key disciplines – Strategic Sourcing, Commercial Contract Management & Strategic Relationship Management which also set commercial strategy, policy, systems and processes for the Client:

1.15 Strategic Sourcing

Strategic Sourcing support the Client and Efficiency Reform Group (ERG) targets; delivering value for money, embedding procurement best practice into the Client procedures and processes, providing support and guidance to the Clients stakeholders and implementing Cabinet Office policies such as transparency and greater engagement with SMEs through –

- Market Engagement
- Lean Sourcing (OJEU's / Frameworks / DPS)
- Creative commercial thinking and innovative solutions

1.16 Commercial Contract Management

Commercial Contract Management (CCM) has strategic responsibility for about 90 separate contracts with 82 external suppliers and annual spend in excess of £150m. Contracts range in scale and scope from large corporate contracts like Travel and Office Solutions to niche goods and services such as Fuel Marker Analyser and Sniffer Dogs.

1.17 CCM work to a strategic supplier contract management framework based on the segmentation of our top 100 suppliers within a 4-Box model, i.e. Strategic, Collaborative, Performance, Operational to determine the type of relationship needed. Central to this approach is cross-functional collaboration, with clear roles and responsibilities, between CCM, internal business owners / stakeholders and the supplier to ensure VfM, service performance and business objectives are achieved to ensure we deliver effective:

- Supplier Relationship Management
- Benefits Management
- Risk Management

- 1.18 **Strategic Relationship Management**  
A newly aligned function which will bring together existing capability within our Common Operations teams alongside new capability in Strategic Relationship Management to drive and deliver effective commercial outcomes for the Client.
- 1.19 The Strategic Relationship Management Team is responsible for the development, implementation and co-ordination of processes to support the delivery of CD's objectives and targets within the Clients and central government.
- 1.20 By working closely with internal and external stakeholders, the SRM team provide support on the delivery of the Clients Efficiency & Reform Group (ERG) targets, including delivery of value for money, represent the Client and ERG interests, reducing commercial risk exposures and follow best practice to support delivery of strategy, governance and commercial targets through:
- The Clients Capability Development
  - Performance & Reporting
  - Governance, Assurance & Change
- 1.21 **IT Commercial – Columbus programme**  
The IT landscape is complex and the Client faces a continuing challenge to obtain ever greater value for money as it transitions to a new operating model. Central to this (supported by the Cabinet Office) is the Department's intention to transform how it contracts for the provision of IT Services and move from a single source supplier to an environment where there is greater competition, greater innovation, use of shorter and more flexible contracting mechanisms and rapid adoption of new technologies.
- 1.22 The the Clients IT Contract Replacement Programme (Columbus) will deliver this Transformation by enabling the supply of digital, data engineering and other capabilities (underpinned by infrastructure and desktop transformation) to match demand and service expectations.
- 1.23 This presents a significant challenge for the Client, preparing the landscape to ensure that the market is ready to respond to our future needs and transitioning ourselves from the current arrangements. This multi supplier model (alongside increasing in-house capability) is new for the Client. Aligned to this is the Clients Digital Strategy (link below), which will ensure the UK has the best possible operating conditions going forward to ensure the collection of taxes, tax compliance and the Clients benefits administration.
- <https://www.gov.uk/government/publications/hmrc-digital-strategy-2014/hmrc-digital-strategy-2014>
- 1.24 Columbus is planning for and overseeing the transitional arrangements relating to expiry of the current contract and has already established an agreed strategy, business case and change programme.

**1.25 Estates Commercial – Estates & Support Services & the Building our Future (BoF) programme**

The purpose of Estates is to provide the Client with an estate which is the right size and shape to meet both the current and future needs of the business. The work that Estates do will ensure that the Client continues to have buildings that are safe and secure with services that support the delivery of business objectives.

1.26 As a corporate support area Estates role is to set the commercial strategy for Estates delivery by supporting business units to achieve their business goals. The services provided are an important part of this. Specifically, Estates manage the Clients commercial deals covering Property, FM, Utilities and infrastructure of the department's property portfolio including PFI's and non-PFI's. The cost of the Estate and of the Support Services represents a significant cost for the department.

1.27 The Estates commercial function set and deliver all current contracts including significantly sized PFI's and all other service arrangements and acquire new services and re-tender existing services as demanded.

1.28 The Client is transforming as an organisation to create a modernised tax authority that delivers better public services at lower cost to the taxpayer, meeting the government's challenge for all departments to do more with less, and has established a BOF Programme to co-ordinate the delivery of all aspects of this transformational change.

1.29 The Clients current workforce occupies 170 offices spread across the country. By 2021, it is anticipated that they will be based in a network of up to 13 Regional Centres, these will vary in size from 1,200 to 7,500 staff and will be a mixture of existing buildings and leasehold acquisitions. Our plans are still taking shape but we know that we want to bring multiple professions and lines of business together in new, modern buildings, creating exciting career opportunities and fresh ways of working. We want to re-think our working environments, so that when we move into our Regional Centres, they meet the needs of a modern, flexible and highly-skilled workforce.

1.30 The Estates commercial function provides the professional services needed to support future acquisitions.

## **2.0 CURRENT COMMERCIAL CAPABILITY**

2.1 There are a number of internal and external drivers that require the Client to develop its commercial capability both within the profession and across the wider department:

- The Clients commercial landscape and interaction with the market is changing significantly due to Columbus, BoF and SR15 (Spending Review) commitments
- Interim staff in several key commercial leadership roles

- Commercial capability development is a priority for civil service senior leadership
- Recommendations from the Clients Commercial Capability Review (CCR) were agreed and need to be implemented
- Future stability for the organisation

## **2.2 Commercial Directorate**

CD is a mature and, on some measures, an effective function within the Client - with considerable existing capability. But the commercial landscape is substantially changing and we need to respond. We want to ensure that we are fully prepared to be able to respond to the future challenges, continue to exploit changing and emerging market landscapes and design innovative commercial models that best support the department to effectively and efficiently deliver its obligations.

- 2.3 CD has implemented a number of strategic systems and activities to support emerging Government policy and, whilst it is not envisaged that the Client and CD will be looking to significantly change its systems and processes, there is scope to review, improve and exploit the way they are implemented and delivering –

- ERP - SAP
- Ariba eSourcing Suite
- Lean sourcing
- NAO major contracts review findings
- Strategic Supplier Relationship Management
- Recommendations from the Commercial Capability Review

- 2.4 There are also a number of key activities that are in development and/or implementation to further deliver CD's commercial strategy and continue to support central Government policy. Whilst this list is not exhaustive there are a number of priorities that CD would like to accelerate –

- Growing commerciality right across the Client
- Improving our capability and capacity to develop innovative commercial models and to deliver effective business outcomes and value for money
- Strategic Relationship Management (Customer)
- Commercial Intelligence
- Supply Chain assurance strategy
- Implementation and delivery of Commercial Capability Review findings
- Open book accounting
- Commercial performance planning, monitoring and reporting
- Growth Plans (including SMEs)
- CCS managed service and potential benefit of migration of the Clients common goods & services to CCS

## **2.5 Commercial Capability Review**

The objective of the joint Cabinet Office and HM Treasury Commercial Capability Reviews, which were conducted in ten departments, were to

identify actions to improve commercial capabilities across government – both within departments and at the ‘centre’. The Client review, which reported in April 2015, considered the full range of our commercial capabilities, from policy development to contract management to exit planning, and was forward-looking, not an audit of past actions.

## **2.6 Review findings**

The Clients had recognised the need to build commercial capability, both within the commercial function and across its wider business. It had put in place plans to address some of the underlying drivers of capability gaps, including: redesigning the workforce; increasing focus on learning and development in capability plans; developing consistent role profiles across the Client; introducing additional Executive Committee (ExCom) level commercial experience through recruitment of a new Chief Digital and Information (CDIO) and a new Non-Executive Director (NED); communicating the future vision of the Client through the Blueprint; and consolidating 128 approved projects and programmes into nine clusters with a DG-level Senior Responsible Owner (SRO) identified for each one.

- 2.7 CD had developed a Target Operating Model (TOM) that set out major changes to the way it was organised, introduced a sizeable increase in senior-level posts and aimed to promote earlier and more regular involvement in business strategy and policy decisions through improved engagement with the rest of the Department. This was in addition to increased commercial resource focused on the Columbus Programme.
- 2.8 The review found that the Clients commercial capability was not sufficient to meet its current and future requirements in a secure and sustainable manner. While the proposed changes were moving the Client in the right direction, these needed to be accelerated. The TOM suggested a ‘hybrid’ category and functional model, which appeared reasonable for the Client, the structure needed to be kept under review to ensure a coordinated approach between the major spend categories and value chain activities.
- 2.9 The Department’s capabilities were stronger during the procurement process, especially in areas such as office solutions and print. In areas that will require greater capability in the future, such as influencing strategy and policy, business need identification, market analysis and shaping, and contract and supplier relationship management the Department was weaker.
- 2.10 Progress has been made on a number of recommendations, although several of the timelines in the implementation plan have had to be revised due to our lack of senior commercial leadership restricting the ability to drive them forward. Attempts to recruit the expanded senior commercial leadership team have generally not been successful, although we have appointed an SCS 1 for Strategic Contract Management who is due to take up post in April 2016. The Contractor will be required to provide the necessary injection of senior commercial leadership.

## **2.11 Resourcing Senior Leadership**

A key area for development identified in both the CCR and CD revised TOM was the need for strengthened senior leadership. Attempts to do so through the usual routes have been unsuccessful:

- The Clients Commercial Director (Chief Commercial Officer) – role filled on Temporary Promotion (TP) for nearly two years and three attempts to recruit externally have failed.
- Columbus Commercial Director – the role is filled by an interim and our attempt to recruit a Fixed Term Appointment (FTA) through the recent cross Government commercial SCS2 exercise failed.
- Three Deputy Commercial Directors – one role successfully filled through a cross Government SCS1 exercise – 2 x roles outstanding.

### **3.0 LENGTH AND VALUE OF CONTRACT**

3.1 The contract will be awarded for 2 years with an option to extend by up to a further year.

3.2 The contract value is estimated at up to £4.5m over the 2 year period

### **4.0 SERVICES TO BE PROVIDED**

4.1 The Clients intention is to appoint the Contractor to quickly address the gaps in senior commercial leadership, and help drive broader commercial capability development both within the commercial teams and across the Client.

4.2 Whilst it is anticipated that the strategic oversight will be provided by ExCom and CFO SLT of the Client are seeking a partner to provide the leadership and management of the Commercial function, implement the operating model and develop the capability that will deliver the commercial strategy and SDM and allow the Client to respond to the immediate and future business requirements.

4.3 The Client requires a delivery partner with demonstrable experience of leading and delivering a programme of commercial activity within a large organisation and that can provide significant, hands-on, expertise in leading and managing an organisation, delivering a commercial strategy and the creation of a long-term sustainable in-house function.

4.4 The scope for the Contractor will be refined as the relationship develops but the current Core Services include the following areas:

4.5 The Contractor will immediately address the current gaps in senior commercial leadership to deliver the Commercial strategy.

4.6 The Client require the Contractor to provide an immediate (Day 1) injection of resource which we expect to be 5 people to deliver the existing commercial strategy and deliverables of the Strategic Deployment Matrix (SDM) for 16/17 working alongside the existing Clients commercial teams:

- 1 x Commercial Director
- 1 x Deputy Director - Sourcing

- 1 x Deputy Director - SRM
- 1 x Deputy Director - Estates
- 1 x Deputy Director - IT

Outline role profiles are provided to give an overview of the type of activity and capability required in these roles. The actual requirements will be refined and agreed during implementation.

- 4.7 Review and assure the Target Operating Model (TOM) to ensure it will create an integrated and sustainable 'fit for the future' in-house commercial function.
- 4.8 Effectively support the Clients to recruit permanent (Civil Service) resource into the Senior Leadership positions as outlined in the TOM and to the following timescales –
  - IT Commercial Director - Advertise by May 2016 and appoint by December 2016
  - Chief Commercial Officer/Commercial Director – Advertise by October 2016 and appoint by December 2017
  - Other identified senior key roles – TBC on review of TOM and future capability.
- 4.9 Provide strategic commercial capability and guidance to the CFO and the Clients Directors, particularly in IT and Estates, as part of the CFO Senior Leadership Team and wider the Clients Senior Leadership.
- 4.10 In addition we would expect a full delivery plan covering the longer term engagement and incorporating exit arrangements.
- 4.11 The fundamental approach required from the Contractor will be to –
  - Mobilise (phase 1) - immediate injection of senior leadership capability and capacity -possible further resource injections for short-term specific tasks or longer-term for substantive vacancies (to be determined)
  - Deliver (phase 2) – lead delivery against the Clients Commercial Strategy, CD Strategic Deployment Matrix (SDM) and the Client \CG corporate drivers
  - Sustain (phase 3) – build (recruit and develop) required future capability and capacity in-house
  - Exit (phase 4) – remove the Contractors resources in a controlled way
- 4.12 This four step, phased approach is required by the Contractor to fulfil the Clients longer term strategy on the transformation of the commercial function. The stages may run concurrently, overlap or be brought forward based on emerging the Clients strategy and priorities. Flexibility in the approach to stages will be required and at all times must be agreed by the Client.
- 4.13 The Client works in an agile environment, responding to both departmental and Government initiatives and policies, and we may require the Contractor to

scope and provide additional packages of work over and above the core requirements. The requirements and delivery model will be discussed and agreed on an individual basis and you will be expected to demonstrate how you would scope, cost and staff in line with the services outlined in the scope and principles of the cost model.

## **5.0 SPECIFIC ROLES & RESPONSIBILITIES OF THE CONTRACTORS IN EACH FUNCTIONAL AREA**

### **5.1 Commercial Directorate**

The role of the Contractor will be refined as current relationships and strategies are developed and to reflect emerging priorities but the fundamental approach required from the Contractor will be to drive the implementation and delivery of the Commercial Strategy and CCR, implement the TOM and work with key stakeholders across the business to influence and shape commercial strategies and plans –

- Full remit and responsibility (without Delegated Authority) for the function
- Implementing TOM - appointment of CCO and deputies and other identified key roles
- Build and develop a fully functional and resourced SRM function
- Driving SDM, commercial and business strategy
- Supporting customers
- Relationships & influence with Business areas
- Oversight & Assurance over other Strategic Delivery Partners
- Enhancement of Skills & capability

5.2 Advertise the Chief Commercial Officer/Commercial Director by October 2016 with permanent appointment completed December 2017 (see 10.6).

5.3 The Contractor will also advise the CFO on the direction, design and future of the Clients commercial function to ensure it can meet the current and future challenges.

5.4 The Chief Commercial Office/Commercial Director will be responsible for integrating the 3 current commercial teams over the period of the contract to create a unified commercial function to cover all commercial activity across:

- Commercial Directorate
- Estates
- IT

### **5.5 IT Commercial**

Advertise the IT Commercial Director role by May 2016 with permanent appointment completed December 2016 at which point the Contractor will take ownership and delivery of the IT commercial strategy.

5.6 Interim IT Commercial Director is focussed on closing the extensive negotiations with current suppliers. The Client does not envisage the Contractor being involved with these negotiations.



5.7 The Contractor will however work with the existing team to support the delivery of the IT strategy and develop a plan to appoint other key roles – currently staffed by interims – to maintain an effective commercial function to deliver the future IT commercial strategy.

5.8 In addition the Contractor will provide strategic advice and commercial assurance to the IT Commercial Director and CDIO as directed by the CFO.

#### **5.9 Estates Commercial**

Commercial Assurance and advice to Estates Director and Transformation Director to support development of the BOF procurement strategy.

5.10 Commercial expertise and support to Estates Director, Estates Transformation Director, Estates Services Director and the Estates Strategic Delivery Partner as required:

- Support to developing and agreeing new leases – for Regional Centres
- Support to developing, agreeing and managing construction / fit out contracts
- Support to developing and implementing a PFI negotiation and exit strategy
- Support to putting in place contingent arrangements in response to a PFI default
- Support to developing a facilities management (FM) strategy and procurement plan
  - Including some short term / trial solutions
- Support managing existing PFI and FM contracts
  - Including support to assurance activities
- Review of Estates commercial skills – what do we need / where are we now
- Planning and developing a programme of commercial training / up skilling

#### **6.0 EXPECTED OUTCOMES**

6.1 The Client will have an integrated, fit for purpose, Commercial function with the appointment of key identified leadership personnel and overall enhanced capability.

6.2 Appointment of Chief Commercial Officer/Commercial Director and other Key Senior personnel with appropriate/relevant experience and proven capability to deliver a unified Commercial function with responsibility and accountability for all commercial activity in the Client.

6.3 Improved relationships with business areas and ownership of commercial strategies.

6.4 Leading role within the Client, driving change across CFO, and across government through Commercial Director Leadership and Head of profession.

- 6.5 A fully resourced SRM function, staffed with permanent civil servants, with roles, responsibilities and accountabilities agreed with the Contractors Governance Board.
- 6.6 Delivery of recommendations of Commercial Capability Review.
- 6.7 Increased commerciality across the Client– the profession and the business.
- 6.8 Delivery against the Commercial Strategy and SDM.
- 6.9 Demonstrable uplift in capability.

## **7.0 SKILLS AND EXPERIENCE**

- 7.1 The Client is looking for a partner who can evidence experience in the following, who has a clear record of acting for corporate or public sector organisations and who can demonstrate an understanding of operating within a central Government context to:

### **7.2 Leadership**

Provide guidance, using public and/or private sector experience, on CD strategy and deliver the strategy as driven by CFO and Contractors Performance Board. Pro-actively shape, manage and deliver organisational and culture change to support the transition to the future commercial function.

### **7.3 People, Experience & Skills**

Provide resources and capability required to deliver business as usual requirements and drive delivery of the strategy in conjunction with existing the Client commercial leadership and staff.

- 7.4 The partner resources will be an integral part of the commercial organisation and of its Senior Leadership Team with specialist commercial experience and capability of –

- Commercial function leadership
- Strategic Sourcing
- Strategic Relationship Management
- IT
- Estates and Property

### **7.5 Enhancing Capability**

Identify the core commercial acumen to ensure the appropriate skills are embedded both within the profession and across the business areas.

- 7.6 Design, create and implement the roadmap to deliver an in-house commercial function with the capability and capacity to deliver the Clients future strategic goals.
- 7.7 Demonstrate ability to provide exposure outside of current Government commercial landscape / entrepreneurial thinking.

### **7.8 Strategic Influencing & Collaboration**

Build relationships with key internal and external stakeholders, working with, and across, other strategic partners (IT and Estates), Government agencies, key suppliers and the market to deliver effective outcomes.

- 7.9 Collaborative working to improve on things that aren't working well but nurturing those that do through aligned agendas, shared objectives, openness and trust.
- 7.10 Key Senior Client stakeholders:
- Chief Executive, Executive Committee (ExCom) and Board
  - Non-Executive Director leading on commercial capability
  - Chief Finance Officer
  - Chief Digital & Information Officer
  - Estates Directors
  - Operational Directors
  - Government Chief Commercial Officer
  - Cabinet Office

## **8.0 BEHAVIOURS / RELATIONSHIPS**

- 8.1 The relationship between CD and the Contractor will be based on trust, transparency, visibility of cost and mutual objectives.
- 8.2 The contractual arrangement with the Contractor will enable realisation of CD's vision, goals and strategy. In reciprocation the Contractor will commit to this form of collaborative working and work with CD to ensure an aligned agenda and shared objectives, characterised by openness, communication, mutual trust and a focus on business outcomes.
- 8.3 The Client is acutely aware that whilst we may be transferring the operational leadership and management of our Commercial function for the duration of the contract, we cannot delegate our accountability or the risk associated with its delivery. It is the Clients responsibility to assure tax payer's money is used wisely and that the services we deliver are according to agreed standards, within the agreed timescales and from an ethical supply chain. The Contractor will be expected to operate effectively within these parameters.
- 8.4 The Clients role of governance and commercial assurance of the Contractor, relationship and performance will ensure the element of risk is discussed and mitigated in proportion to the criticality of the requirement.

## **9.0 THE ROLE OF THE CLIENT**

- 9.1 The requirement for the Contractor is led and sponsored by , Chief Finance Officer and ExCom member. The recruitment is fully supported by the Clients ExCom and has also been shared and discussed with the Government Chief Commercial Officer (GCCO).
- 9.2 It is also seen as an innovative model and its performance is therefore under close scrutiny.

- 9.3 The drivers that require the Client to develop its commercial capability are essential to the Client being able to deliver its key transformation programmes, SR15 commitments and implementation of the CCR recommendations. The role of the Contractor is therefore a critical appointment and ExCom will be closely monitoring performance.
- 9.4 The Clients accept that the successful delivery of the Contractor is fundamentally linked to its ability to effectively discharge its responsibilities and it is therefore critical that the Contractor has the buy-in and commitment of the Client senior leadership and through into the wider organisation.
- 9.5 The Client will build an effective governance and management function to both support, and hold to account, the Contractors performance and delivery against agreed KPI's objectives and milestones.
- 9.6 Any recruitment exercises need to follow Civil Service policies and procedures. The Clients, Civil Service Resourcing and/or Crown Commercial Services resource and support will be provided to manage these in conjunction with the Contractor.

## **10.0 CONTRACTUAL CONSIDERATIONS**

### **10.1 Open Book**

Whilst HMRC do not consider the need to operate Open Book principles in Year 1. Should alternative commercial arrangements be in agreed in future years we reserve the right to vary the terms to adopt Open Book principles (as defined by the Cabinet Office) and this will be agreed through the appropriate variation mechanisms highlighted in C5/6 should it be required.

At the time of entering into this Agreement the Client has advised the Contractor that the principles of Open Book are in the process of being re-defined by the Cabinet Office. The Contractor therefore reserve the right, acting reasonably, to reject any Open Book request by the Client should it consider any revised principles to be onerous or outside the spirit of the Agreement.

### **10.2 Tender Validity**

The tender remains valid for 120 days from receipt of bids.

## **11.0 SUPPLY CHAIN (IF REQUIRED)**

- 11.1 In the event that any of the Services are to be sub-contracted, the Contractor will advise the Client of, and shall manage, all sub-contractors. The Contractor will make available to the Client a copy of its supply chain management plan covering items such as payment terms, audit results, references.

### **12.0 Sid4Gov**

Sid4Gov is an initiative that has been developed to create a single supplier registration portal that will provide Government buyers with a single place to access supplier related information in support of market engagement and procurement processes. Further details can be found at <https://sid4gov.cabinetoffice.gov.uk/>

HMRC requires all suppliers to register for Sid4Gov.

# The Clients Policies Appendices to Schedule A

## Appendix A

### Travel and Subsistence

- Travel to and from the Primary Locations will be met from the day rate. Primary locations are as follows:
  - London - Commercial Director
  - Manchester – Deputy Director Sourcing
  - Nottingham – Deputy Director Estates
  - London – Deputy Director Strategic Relationship Management
  - Manchester – Deputy Director IT (this role will locate to Telford at a date to be agreed between both parties and, for the purposes of T&S will become the prime location)
- Expenses are payable where travel to other locations is required as part of the assignment forming part of this agreement. Actual expenditure will be reimbursed within the current maximum limits detailed below. Receipts must be provided and will be checked by authorising Key personnel.

Overnight Subsistence Allowances Bed & Breakfast Capped Rates		
Location		Maximum Nightly Rate
London / within M25 (excluding Heathrow Airport)		£120 per night
Bristol; Heathrow Airport		£90 per night
Oxford; Portsmouth		£85 per night
Elsewhere in UK		£80 per night
Travel		
Mileage Allowances		25 pence per mile
Rail Travel		Standard Class
Air Travel		Economy Class
Day Subsistence Rates		
Provided you incur a cost that is more than you would normally have incurred at home or your office, actual expenditure will be paid within these limits:		
One Meal Allowance	Where away from home and permanent workplace for more than 5 hours	up to a maximum of £8.25
Two Meal Allowance	Where away from home and permanent workplace for more than 10 hours	up to a maximum of £17.75

Three Meal Allowance	Where away from home and permanent workplace for more than 13 hours	up to a maximum of £26.00
Unplanned late working	Where you have to buy a meal when you are unexpectedly required to work after 20:00 hours in addition to your normal day and more than 3 hours after the end of your normal day	up to a maximum of £8.25

3. Hotel Reservation and Travel Tickets shall be booked via the Clients travel and hotel booking service. Further information will be provided by the Director's Private Office. Bookings should always be made in line with the Clients travel policy and will be assured by the Director's Private Office.
4. All other expenses will be payable at the discretion of the Authorised Officer(s). The Contractor shall not incur any such expenses without the prior approval of the Director's Private Office. Any expense incurred by the Contractor without prior approval shall not be reimbursed.

## **Schedule B      Pricing Schedule**

1. The Services for the Core Team from the 4<sup>th</sup> April 2016 to 3<sup>rd</sup> April 2017 ("Year 1") will be charged at a fixed price and invoiced as per the schedule below. .

Year 1 invoice schedule

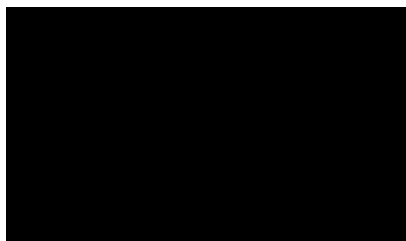


"Core Team" being defined as:

- 1 x Commercial Director
- 1 x Deputy Director - Sourcing
- 1 x Deputy Director - SRM
- 1 x Deputy Director - Estates
- 1 x Deputy Director - IT

The Core Team will each be deployed up to 220 days per annum

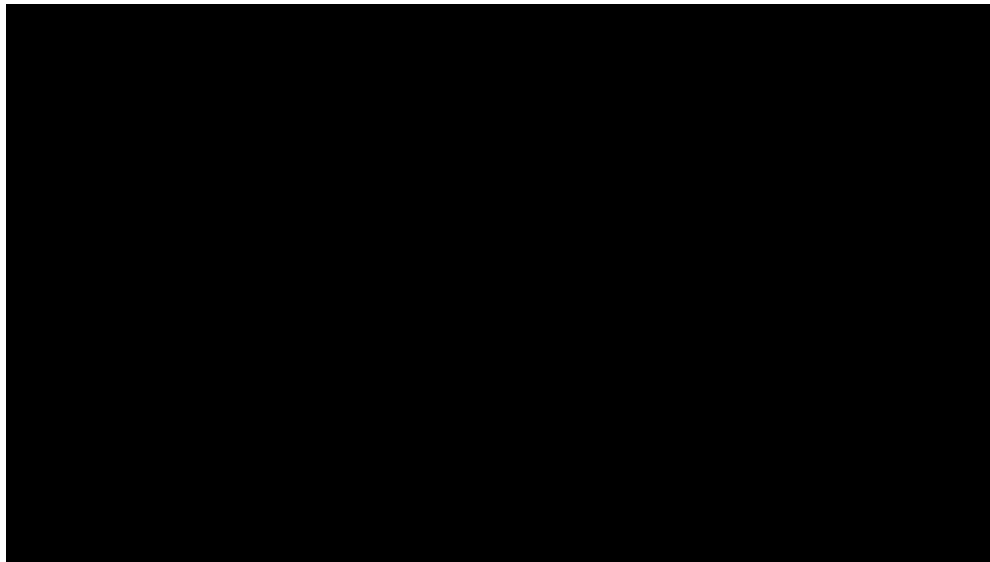
2. The Services for the Core Team from 4 April 2017 to 30<sup>th</sup> March 2018 ("Year 2") will be mutually agreed no later than 4 February 2017 and will be in line with the forecast, adhering to the broad principles and rates agreed for Year 1 costs. The Client may also consider the possibility of new roles and innovative commercial approaches, in whole or part, but which are subject to mutual agreement.



### **3. Additional resources outside Core Team – charge rates**

Additional roles, project resource or work packages over and above the Core Team will, unless otherwise mutually agreed, be charged on a time and materials basis using the rates detailed below.





### Additional Work Packages

Other additional work packages identified by the Client as part of the tender process, which may be required, are detailed below. The Contractor, as part of the tender response, has provided initial cost estimates, which are subject to agreed scope, excluding VAT and expenses.:

Commercial Intelligence function set up	
SCRA function set up	

Any additional requirements, services will be costed separately following the principles outlined below and will be agreed by both parties.

### Cost Model Principles:

- 1) The resource model to be deployed is designed to provide maximum value to the Client through the anticipated duration of this Agreement .
- 2) Increase(s) and decrease(s) to current Core Team or project resource requirements may be required throughout the course of the Agreement. Any such increase(s) and decrease(s) will be subject to prior, appropriate discussion and formal agreement via the Contractor Governance Board with ultimate approval from CFO.
- 3) The resources and future team structure will be reviewed monthly, with the CFO/CD Leadership Team and Governance Board, against the 90 day plan. (See Schedule D for further detail re: engagement)

### Notes

Year 1 invoices shall be issued monthly as per the invoice schedule detailed above.

Year 2 invoices will be issued on a monthly basis, in line with the agreed fee structure.

A day is defined as 7.5 working hours.

All rates exclude VAT.

All back office costs and general associated expenses, including but not exclusive to telephone calls, photocopying, travel to main site must be included in the day rate above.

No guarantees can be given to the number of days actually required under this contract. Volumes are for indicative purposes only.

## **Schedule C      Commercial Strategic Delivery Partner - Contract Management Plan and Management Information**

**The Contract management plan is a collaborative plan that is designed to formalise the partnership approach and is therefore expected to evolve as the relationship progresses. At all times it will be drafted collaboratively but will include the following aspects as a guide.**

### **C1      General Contract Management**

**C1.1**      This Schedule is intended to work alongside the 2 tier governance model to set out the contract management arrangements to be followed by the parties during the term of this Contract and to outline a structure to;

- a) provide direction for the relationship between the Client and the Contractor;
- b) provide for effective decision making;
- c) provide for oversight and monitoring for the contract;
- d) represent key stakeholders;
- e) ensure transparency of decision; and
- f) balance the commercial requirements of the Contractor with the Clients need for control, regulation and delivery of Service

- C1.2 The parties must perform their contract management obligations in accordance with the following partnership principles;
- a) Work in a collaborative manner in order to ensure successful delivery of the Services;
  - b) Bring issues (including incidents, dissatisfactions and complaints) to the attention of the other Party at the earliest opportunity (rather than wait for a formal service review), and maintain an open and honest dialogue on both Parties' issues to facilitate resolution of such issues to the other Party's satisfaction;
  - c) Ensure sufficient seniority of management to attend review meetings in order that all issues can be addressed, and to agree and implement strategy and change going forward, and the Contractor will provide management information reports (in a pre-agreed format) for this purpose;
  - d) Agree a rolling agenda to review the Services and/or Future Services, to ensure that the Client is making appropriate use of all services available from the Supplier, and that the Client has the opportunity to raise and discuss development of processes which are relevant to the Services;
  - e) the Contractor must bear all costs reasonably associated with Contract Management including any direct costs associated with attendance at Contract Management meetings (travel, subsistence), which may be held at either the Client's or the Contractor's premises.; and;
- C1.3 The Contractor must offer access to relevant documentation requested by representatives from the Client for the purpose of commercial assurance, risk assessment, security assurance, familiarisation on procedures etc. Full details of the Client's requirement and timescales for the provision of management information reports are set out in Clause C9.
- C1.4 The Client reserves the right to conduct site audits as part of the contract management activity.
- C1.5 The Contractor must offer access to any relevant part of their premises to representatives from the Client for the purpose of commercial assurance, risk assessment, security assurance, familiarisation on procedures etc.
- C1.7 The Contractor must ensure all correspondence regarding contractual issues is appropriately referenced and sent to the Client as appropriate.
- C1.8 The Contractor must ensure that a Contractor's representative is available to the Client at all times during normal working hours (Mon – Fri 08:00 to 18:00) in order to discuss operational matters. All contractual matters will be dealt with directly by the Contractors and the Client's representative.
- C2 Efficiency Savings**
- C2.1 As part of routine Contract Management activities the Contractor will be required to work with the Client to realise any possible efficiency savings during the term of the contract. Possible efficiency savings will be reviewed

during Performance Review meetings and any savings realised annually will be distributed between the Contractor and the Client as agreed in advance.

### C3 Reviews

C3.1 After the commencement of the Agreement, the Contractor must attend performance review meetings in line with the Clients governance model to consider the progress of the contract, discuss the MI reports and to review any operational issues that have arisen in the preceding review meetings as per the Clients established SRM model for Tier 1 Suppliers:.

Forum	Role / Function	Frequency	Attendees
Strategic Review	<ul style="list-style-type: none"> <li>• Strategic direction and priorities for commercial functions and the Client</li> <li>• Strategic review and direction of the relationship</li> <li>• Performance against the rolling 90 day plan <ul style="list-style-type: none"> <li>○ Delivery of key milestones</li> <li>○ Resourcing</li> </ul> </li> <li>• Quality assurance of service delivery</li> <li>• Organisational Design</li> <li>• Ownership &amp; management of high level risks and strategic issues</li> <li>• Escalation route for issues/ Risks/legal challenges</li> <li>• Overall development of the commerciality within the Directorate and across the Client</li> </ul>	Monthly	Contractors Steering Board Contractors CD
Performance Review	<ul style="list-style-type: none"> <li>• Build a strong relationship with the Contractor, maintaining an open and honest dialogue with them and resolving issues in a subtle way;</li> <li>• Monitor the contract to ensure that performance standards are met, governance is compliant and that value for money is being achieved in Contractor's day to day delivery</li> <li>• Investigate any potential breach of agreements;</li> <li>• Ensure that the Contractor complies with government controls and remains within the governance and controls set by the Client (eg: data security);</li> <li>• First point of contact for any disputes between the Client and the Contractor</li> <li>• Maintain a strong relationship with the Steering Board, escalating contentious or unresolved issues as appropriate;</li> <li>• Provides support to the Board in</li> </ul>	Monthly	Contractors CMF Contractors CD Contractors Commercial Lead / Director

	<p>the event of significant strategic changes which could impact the delivery of the Business Plan or the solvency of the Company; and</p> <ul style="list-style-type: none"> <li>• Ensure effective planning for the end of the contract, recognising that the partnership relationship is likely to change over time</li> </ul>		
Operational Review	<ul style="list-style-type: none"> <li>• Review MI and approve invoices</li> <li>• Track spend vs forecast &amp; budget</li> <li>• Monitor 3 &amp; 6 month forecast</li> <li>• Monitor performance against SLA's / KPI's</li> <li>• Tracking resource mix / volume</li> <li>• Operational risks &amp; Issues</li> </ul>	Monthly	<p>Contractor CMF</p> <p>CD contract manager</p> <p>Contractors Commercial Lead</p>

The nature of the meetings (face to face, telephone conference) is to be agreed between the Contractor and the Client in advance.

- C3.2 The Contractor must provide the Client with the most up to date programme reports and management information relating to the contract at least 5 working days before any meeting or as agreed.

#### **C4.0 Supplier Relationship Management**

- C4.1 The Clients aim is to create a strong, shared Supplier Relationship Management (SRM) approach which engenders, encourages and rewards the implementation of innovative solutions to achieve objectives.
- C4.2 The Clients intention is, through innovative thinking, to work with Contractor to produce better solutions at a lower cost, without compromising customer service, than would otherwise be achieved without change.
- C4.3 Contractor will take a pro-active approach to the Clients Supplier Relationship Management (SRM) activity to ensure the strategic aims are achieved through the use by the Contractor of an effective Client Account Management structure.
- C4.4 The Contractor will be required to provide a Client Account Manager with the necessary authority to influence any operational activities that may be necessary to help strategic objectives and initiatives to be achieved.
- C4.5 The Contractor must ensure they can commit to Client Account Management in support of Supplier Relationship Management activity. The Contractor will be required to provide a Contractor's representative who will be responsible for Client Account Management and is available to the Client at all times during normal working hours (Mon – Fri 08:00 to 18:00).
- C4.6 The Contractor may be required to complete a Client Supplier Performance Management (SPM) questionnaire using the e-sourcing portal at any time during the life of the contract.

C4.7 The Contractor may be required to complete supplier chain risk management questionnaires such as CAESER where requested. Details of CAESER can be found at [https://nqc.com/files/downloads/caeser\\_brochure.pdf](https://nqc.com/files/downloads/caeser_brochure.pdf)

C4.8 The Contractor may be required to complete a HADRIAN questionnaire. Details of HADRIAN can be found at [https://nqc.com/files/downloads/hadrian\\_brochure.pdf](https://nqc.com/files/downloads/hadrian_brochure.pdf)

## **C5 Change Control Procedure**

C5.1 Either party may propose a Change and each party shall consider in good faith any proposal for Change from the other party and neither party shall unreasonably withhold its agreement to any Change proposed by the other party. Any discussions between the parties about a proposed Change prior to any agreement to such Change being reached shall be without prejudice to the rights of either party, and such agreement to be in writing and signed by the representatives of both parties using Standard Document SD 23, 'Variation to Contract' form as set out at Appendix A of this Schedule.

## **C6 Variation**

C6.1 This Contract can be varied at any time by mutual agreement of the parties subject to a notice period of 30 working days, such agreement to be in writing and signed by the representatives of both parties using Standard Document SD 23, 'Variation to Contract' form as set out at Appendix A of this Schedule.

## **C7 Extension**

C7.1 This Contract contains the option to extend for a further period of up to 12 months subject to the agreement of both parties. The Contract terms and conditions will apply throughout any such extended period

## **C8 Contract Management Roles and Dispute Escalation Points**

C8.1 The Client and the Contractor must assign personnel with the appropriate skills and experience to perform the Roles and Responsibilities listed in the table below and where indicated as a Key Role, the Terms and Conditions of Schedule I4 Key Personnel will apply.

Role	Key Role	Responsibilities	Contact Name, Title & Contact Details (to be completed on Contract Award)	
			Client	Contractor
Senior Responsible Owner	No	Overall responsibility for delivery of the contract. Escalation point for issues Level 3 escalation point		
Commercial Director	No	Overall responsibility for the Commercial integrity of the		

		contract. Level 2 escalation point	
Commercial Lead	No	Responsible for overseeing the Contract Review process. Level 1 escalation point	
Commercial Manager	Yes	Responsible for monitoring the performance of the Contract and managing the change control process.	
Contract Manager	Yes	Responsible for the day to day management of the contract.	

## **C9 Specific Contract Management Requirements**

**C9.1** The Contractor shall supply detailed monthly, quarterly and annual management information and performance dashboards including but not limited to:

- a) Programme Delivery
- b) Progress against agreed Programme Plans
- c) Performance against agreed KPIs and SLAs (Schedule D)
- d) Programme Risks
- e) Programme impacts
- f) Market impacts / changes (if appropriate)
- g) Customer Service Levels (if appropriate)
- h) Contractor invoicing – Day Rates
- i) Contractor invoicing – Travel & Subsistence
- j) Spend against budget (if appropriate)
- k) Issue / incident reporting
- l) Business Continuity (if appropriate)
- m) Key Personnel performance



## Schedule C - Appendix A VARIATION TO CONTRACT FORM

**CONTRACT TITLE:**

**CONTRACT REF:**

**VARIATION No:**

**DATE:**

**BETWEEN:**

The Commissioners of HM Revenue & Customs (hereinafter referred to as "the Client")  
& **(Insert Contractor name)** (hereinafter referred to as "the Contractor")

1. The Contract is varied as follows:

- a) **Title of Change:**
- b) **Originator:**
- c) **Reason for the Change:**
- d) **Description (giving full details, including any specifications):**
- e) **Acceptance testing and criteria (if applicable):**
- f) **The cost of the Change:**
- g) **Timetable:**
- h) **Impact on the Contract**
- i) **Agree to proceed (Yes/No):**

1. Words and expressions in this Variation shall have the meanings given to them in the Contract.

2. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**SIGNED:**

Signed for and on behalf of the Client	Signed for and on behalf of the Contractor
Name:	Name:
Signature:	Signature:
Title/Role:	Title/Role:
Date of Signature:	Date of Signature:

## **Schedule D Service Levels and Key Performance Indicators**

### **a) Joint Approach to the Engagement**

Our joint approach will be as follows, at all times referring to the original objectives and available approaches to management and measurement of the engagement as set out in sections b) to d) below:

- 1) The Client and the Contractor to agree a baseline scope of work within the first month of the engagement
- 2) Develop a rolling 90 day plan, with tangible deliverables and milestones within 4 weeks of commencement
- 3) Develop an exit plan with report and review within first 3 months following commencement of the contract
- 4) Determine and specify the resources required
- 5) Carry out reviews of work completed against agreed deliverables and report success against baseline
- 6) Review forward plan focussing on a rolling 90 day plan to inform ongoing deliverables, outcomes and associated resources
- 7) Deploy agreed performance management reporting mechanisms and input into the progress reviews to ensure reach out to the wider stakeholder group to inform the agreed Client Side Relationship Management function a view of performance overall

### **b) Success of Engagement**

Definition: The Client will have an integrated, fit for purpose, Commercial Directorate with the appointment of key identified leadership personnel and overall enhanced capability.

Measures:

- Key leadership roles filled with established permanent personnel which become full time civil servants
  - IT Commercial Director - Advertise by May 2016 and appoint by December 2016
  - Chief Commercial Officer/Commercial Director – Advertise by October 2016 and appoint by December 2017
  - Other identified senior key roles – TBC on review of TOM and future capability.

Adherence to the above times scales are subject to market availability, and suitability of candidates, and the Clients own internal processes and procedures. Any changes to the above dates are subject to final agreement by the Client's CFO, such agreement not to be unreasonably withheld.

- Successful transformation in line with Governance Board direction and agreement;

- Effective delivery against the Commercial Strategy and Strategic Deployment Matrix
- Increased commerciality across the Client – the profession and business
- Successful/timely delivery of recommendations of the Commercial Capability Review
- Improved relationships with Business lines and increased ownership of commercial strategies
- Demonstrable uplift in capability

Exceptions:

- Change in commercial strategy through no fault of the Commercial Strategic Delivery Partner that impacts on delivery;
- Change in policy or funding outside the control of the Partner that impacts on the ability to deliver;
- Client completing all dependent necessary actions in a timely manner

#### **c) Joint Approach**

Definition: The Contractor is felt and seen to be working collaboratively, sharing information appropriately and building supportive, trusting and professional relationships with the Clients Commercial Functions, Business Stakeholders, Suppliers and representatives from the wider Civil Service.

Measures:

Monthly review of progress and delivery plans by Steering Board and CMF leadership teams

#### **d) Prompt, appropriate response to request for additional resources and/or services**

Definition: Requests for additional resources and/or services are dealt with quickly by appropriately skilled staff.

Measures:

- Speed of provision of resources and/or services,
- Quality of service and appropriate grade of resources provided,
- Feedback from the Clients Governance Board and CFO/CD leadership teams to effectiveness of services and contribution made by resources provided.

Targets:

- 100% resources and/or services provided within agreed timescales;
- level of resources made available to required grade and services provided to standard required, as agreed in each instance;
- Positive feedback from stakeholders to Governance Board.

## **Schedule E      Risk, Audit and Compliance Function**

**THE PARTIES AGREE THAT SCHEDULE E IS NOT APPLICABLE**

### **E1      Introduction**

- E1.1 This Schedule sets out the Client's risk management, audit and compliance requirements for the prevention of financial crime and the Client's rights to inspection and audit.

### **E2      Risk Strategy**

- E2.1 The Contractor must implement a risk management policy that is compliant with industry standard best practice and where applicable it should comply with the FCA Handbook, ISAE3402 and future equivalent certification standards.
- E2.2 The Contractor must implement a set of operational risk management policies which shall capture all risk types across the Services, which must be formally communicated to the Contractor's personnel involved in the Service delivery.
- E2.3 The Contractor's risk management policy must define the roles and responsibilities (including suitable training and specific separation of roles where applicable) to manage the Risk, Audit and Compliance Function for the prevention of financial crime.

### **E3      Risk Appetite**

- E3.1 The Contractor must have an established and documented appetite for risk as set out in a Risk Management Framework policy document for Commercial Strategic Delivery Partner which must be aligned to the Client's risk appetite.
- E3.2 The content of the Risk Management Framework policy document must be agreed with the Client prior to implementation and be the subject of further review during the term of the contract.

### **E4      Risk Assurance**

- E4.1 The Contractor must implement a risk assurance process in accordance with Industry Best Practice which shall include systems and controls to identify early warning indicators, mitigate risk and shall regularly report on such systems and controls.
- E4.2 The Contractor's risk assurance processes must include:
- a) Risk Control Self-Assessment (RCSA). RCSA processes will capture the results of 1st line risk identification, assessment and control processing in a consistent format which will define and test the effectiveness of the controls in mitigating the risks to the business;
  - b) An independent risk based annual assurance plan to review and consider key controls and activities. To be based on an annual risk

assessment taking account of inherent risks of the service, changes to people systems and process and emergence of external threats and regulatory challenges; and

- c) A full audit trail of the assurance undertaken, together with the results, issues and actions arising and the progress of any remedial action.

E4.3 The Contractor must procure an independent annual ISAE3402 audit which encompasses all Services, concluding with an annual attestation as to the quality of the design and implementation of the internal control environment. The annual ISAE3402 report must be made available to the Client.

## **E5 Inspection and Audit Rights**

E5.1 The Contractor must permit, must fully co-operate and must use reasonable endeavours to ensure that its Sub-contractors cooperate, with the Client, their third party representatives or Regulatory Bodies, to audit or otherwise inspect for any purpose relating to the delivery of the Services.

E5.2 The Client will use reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Contractor or delay the provision of the Services.

E5.3 The Client will at any time carry out a security audit of the Services, including in relation to the Assets used, the Information System or any component of it or the Sites, and the Contractor must facilitate such audit.

E5.4 If the Client suspects the Contractor or any person is in breach of Prevention of Corruption or Security Requirements clauses, the Client and its third party representatives have the right to immediately access and take copies of any records and any other information held at the Contractor's premises and to meet with the Contractor Personnel to audit the Contractor's compliance with its obligations under Prevention of Corruption and Security Requirements. The Contractor must give all necessary assistance to the conduct of such audit during the term of this Contract and for a period of three (3) years after termination of this Agreement.

E5.5 The Contractor must not withhold information or delay access unreasonably and must provide the Client (and/or the Client's agents or representatives) with all reasonable co-operation and assistance in relation to each audit.

E5.6 Save as provided elsewhere in this Schedule, the Client will use reasonable endeavours to provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.

E5.7 The Client agrees that it shall bear all costs and expenses incurred by it in respect of compliance with its obligations under this Schedule. Should the audit identify a material Default by the Contractor, the Contractor must reimburse the Client for all the Client's reasonable costs and expenses incurred in the course of any activities required to resolve such Default.

E5.8 The Contractor must meet with the Client no less than four (4) times, at the Client's invitation per annum from the Effective Date to discuss the on-going

Service Provider internal audit needs assessment for the Contractor and the Contractor must provide a business update to the Client.

## **E6 Internal Audit Follow Up**

- E6.1 The Contractor must, on a monthly basis, provide the Client with an update on all outstanding audit issues relative to the services, detailing their progress and must provide any evidence requested by the Client to satisfy that outstanding Audit issues have been resolved to the agreed tolerance.

## **E7 Compliance Scope**

- E7.1 The Contractor must maintain an internal control environment appropriate to ensure compliance with current and future regulation and legislation, including:
- a) Data Protection Act 1998;
  - b) Freedom of Information Act 2000 (FOIA) and Environment Information Regulations 2004 (EIR); and
  - c) Money Laundering Regulations 2007 and Terrorism Act;

## **E8 Complaints Management.**

- E8.1 The Contractor must ensure that the risks of non-compliance with the Standards and Law have been defined and documented for all processes related to the delivery of the Services.
- E8.2 In the event of the risk materialising the Contractor must mitigate any impact upon the Client and the Customers to within agreed tolerances.

## **E9 Breach Reporting**

- E9.1 The Contractor must report any breaches of the Client's Requirements to the Client immediately or in any case within twenty four hours of a breach being identified or known and shall record and investigate such breaches and take any remedial action within timescales agreed by the Client. Records of breaches shall include classification of significance of the issue in accordance with the Contractor's Risk Management Framework Policy and Appetite for Risk, the root cause of the breach, where the breach originated, any financial and non-financial impact on Customers, the number of Customers impacted, any remedial action required or undertaken, as directed and agreed with the Client and the remedial action owner.
- E9.2 In all circumstances, the Contractor must ensure that the Client is the first notification point when a breach is identified which could result in a reputational risk to the Client, so as to allow the Client to prepare corporate communications in respect of the matter.
- E9.3 Under no circumstances should the Contractor or any its personnel, contractors etc. make public any breach identified, without the prior agreement of the Client.

- E9.4 The Contractor must monitor the occurrence of regulatory breaches to identify trends and, report such trends and actions to the Client on a monthly basis and, where the Client requires, take remedial action.
- E9.5 The Contractor must ensure all its personnel have adequate understanding to enable them to identify regulatory breaches within their area of responsibility and the wider business, and to report, investigate and address the issues.
- E9.6 The Contractor must provide a summary of all compliance, fraud, security and business continuity breach reports to each of the relevant Governance committees, summarising all known breaches occurring since the previous committee sitting. The Contractor must, as requested by the Client, submit a report detailing all breaches that are deemed by the Client to be significant in nature.

## **E10 Financial Crime**

- E10.1 The Client as the Accounting Officer is responsible for ensuring that there are sufficient risk profiling and business rules in place to both prevent and monitor suspicious activity, including money laundering attempts, and in return, the Contractor is responsible for providing to the Client all necessary assurance that such controls are in place as is agreed in advance between the Parties
- E10.2 The Service Delivery Solution must be aligned with current guidance from the Financial Conduct Authority (FCA) (PS11/15 Financial Crime - A Guide for Firms) and advice from the Joint Money Laundering Steering Group (JMLSG). This will be managed by a financial crime unit responsible for the oversight of fraud and anti-money laundering.

## **E11 Fraud Investigation**

- E11.1 The parties shall work together to agree a framework and will document the agreed processes and procedures for the investigation of internal and external fraud and for loss recovery.
- E11.2 This framework will take into consideration the differing powers of the respective parties, particularly the powers of prosecution that the Client has in this case.



## **Schedule F      90 Day Plan and Delivery Schedule**

### **F1      General Principles**

F1.1    Delivery is in relation to;

- a) services to be delivered as outlined in the rolling 90 day plan, with tangible deliverables and milestones

The parties acknowledge the importance of detailed planning and delivery to successfully achieve the requirements under this Agreement.

F1.2    Progress against the 90 day Plan will be reported to both parties at the appropriate level as outlined in Schedule C and D.

### **F2      Approval of 90 Day Plan**

F2.1    Within the first month of the Agreement, the Contractor and Client will work in good faith to agree the 90 day plan and agree a baseline scope of work:

- a) The 90 day plan is to be modified to take reasonable account of any reasonable comments which the Client may have. The plan must cover at least the first 90 days of the contract with a view to refresh the plan every 90 days with tangible deliverables, objectives and milestones.

- b) The parties will work in good faith to agree a range of KPIs that the Contractor will be measured against including mechanisms for managing performance and delivery as outlined in Schedule C and D

F2.2    The Contractor must not refuse to make any reasonable changes to the 90 Day plan requested by the Client.

F2.3    After approval of the 90 day plan ;

- a) both parties must perform all respective obligations under the 90 day plan with a view to ensuring that the Contractor is in a position to provide the Services on and following the Service Commencement Date; and
- b) such plan/schedule must be maintained and updated on a rolling 90 day basis (or as otherwise specified by the Client) by the Contractor and progress, or otherwise, towards successful implementation/delivery reported to the Client.

F2.4    The Client must have the right, at any time, to review the documentation produced by the Contractor and to request any reasonable and mutually agreed amendments to ensure effective service delivery.

### **F3      Milestones/ Deliverables**

F3.1    The Contractor must perform its obligations so as to achieve each Milestone / Deliverables by the agreed date subject to the Client completing all its actions necessary in a timely manner/ by agreed dates such that the Contractor can meet the Milestone Date.

- F3.2 The Contractor must notify the Client within five working days upon becoming aware of any delay or likely delay which might cause the Contractor to fail to perform a Delivery Milestone by the Due Date. In these circumstances, without prejudice to the Client's rights and remedies, the Client will consider, in consultation with the Contractor what steps (if any) might be taken to remedy the situation.

**Schedule F - Appendix A –90 Day Delivery Plan**

## **Schedule G      Exit Management**

### **G1      Exit Planning**

- G1.1 The Contractor must, within three (3) Months after the Service Commencement Date, deliver to the Client a plan (the "Exit Plan") which sets out the Contractor's proposed methodology for achieving orderly transition of the provision of the Services from the Contractor to the Client and/or the Replacement Contractor on the expiry or termination of this Contract.
- G1.2 The Contractor must ensure that an initial assessment is undertaken of any Intellectual Property Rights issues that may exist that will impact on the migration of the Services to the Client or a Replacement Contractor, then these must be summarised and included in the plan.
- G1.3 Within thirty (30) Working Days after submission of the draft Exit Plan the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute will be referred to the Dispute Resolution Procedure.
- G1.4 The Contractor must review and update the Exit Plan within one (1) Month of each anniversary of the Service Commencement Date.

### **G2      Assistance on Expiry or Termination**

- G2.1 The Contractor must include in their Exit Plan details of how the Commercial Strategic Delivery Partner will be maintained for Customers/the Client during any Exit Phase as a result of the Contract expiring or being terminated.
- G2.2 In the event that this Contract expires or is terminated, the Contractor must, where so requested by the Client, provide assistance to the Client to migrate the provision of the Services to the Client or a Replacement Contractor.

## Schedule H Security Plan

The Contractor is required to prepare a Security Plan pursuant to Clause D6.2 of the Contract and in accordance with the Client's Security Policy.

The requirements set out in this Security Plan also apply to any sub-contractors engaged by the Contractor to perform any of the services under the Contract. The Client has developed a standard set of questions and recommendations (see attached Appendices) to ensure consistency across relevant contracts. The Contractor is required to provide answers to the standard set of questions contained within this questionnaire to formulate the initial Security Plan.

Where an eSourcing event has been used as part of Competitive Procurement Exercise to establish the terms for the contract, then, where required, the standard set of questions will have been included as part of the eSourcing event.

This Security Questionnaire covers the principles of protective security to be applied in delivering the services in accordance with the Client's Security Policy and Standards

The Contractor's response to this questionnaire, with any subsequent amendments as may be agreed as part of a clarification process, will be included in the signed version of any resulting agreement, as confirmation that the content of the Security Plan has been agreed with the Client.

1 Policy & Standards
<b>1a</b> Please confirm that you understand that your responses to this questionnaire will form the initial Security Plan and will be included in the final signed version of any resulting agreement.
<b>1b</b> Please confirm your organisation and any subcontractors' will conform to the requirements set out in the <a href="#">Government Security Policy Framework (SPF)</a> , Client security and business continuity policy standards (attached), any Security Requirements recorded in the schedules and/or Order Form.
<b>1c</b> If you believe that the <a href="#">Public Sector Network (PSN)</a> Code of Connection will apply to your organisation and any sub-contractors, please provide details of how you will conform to this.
<b>1d</b> Please confirm that your organisation and any sub-contractors will handle Client assets in accordance with legislation including the <a href="#">Data Protection Act</a> and in accordance with Clause D2 of the Contract.
<b>1e</b> Please also confirm your Data Protection registration number. More information can be found via the following link: <a href="#">Information Commissioners Office</a>

**1f** Please provide details of your organisations Security Policy (or include as an attachment), which should be approved and issued in the name of Senior Management.

**1g** If you are successful in the tender process, your Security Manager (or appointed person), will be required to sign a Security Aspects Letter (SAL) as part of the Contractual documentation. The SAL will define the [Government Security Classification](#) carried by the Client data; for information, the blank SAL template can be viewed at page 37 of the [Contractual Process](#).

Please provide the name of your Security Manager, who will act as a first point of contact and conduct ongoing management of security risks and incidents (including identification, managing, and reporting in line with agreed procedures for actual or suspected security breaches).

**1h** If you intend to involve sub-contractors at any stage during the Contract please list them and provide details of how you will ensure their compliance with all aspects of this Security Plan.

## **2 Physical Security** (For requirements please see Appendix A – Physical Security)

**2a** Please provide details of the procedures and security in place to control access to the site perimeter.  
Detail measures such as fencing, CCTV, guarding, and procedures and controls in place to handle staff and visitors requesting access to the site.  
Please also provide details of the maintenance schedule of your security controls to ensure their effectiveness.

**2b** Please provide details of the procedures and security in place to control access to premises and any secure areas.  
Detail measures such as automated access controls, locks, alarms, CCTV coverage and how the building structure meets the standard required for handling Client assets.  
Please also provide details of the maintenance schedule of your security controls to ensure their effectiveness.

<b>3 IT Security</b> (For requirements please see Appendix B – IT Security)
<b>3a</b> Please provide details of the controls and processes you have in place covering patching, malware (anti-virus), boundary/network security (intruder detection), content checking/blocking (filters), lockdown (prevention), and how regularly you update them.
<b>3b</b> Please provide details of the overall security and access control policy of your systems covering physical and electronic assets (including communications connection equipment, e.g. bridge, routers, patch panels). You should record details of the formal registration/deregistration process, how users are Authorised, Authenticated and held Accountable for their actions. Also Include details of the measures in place to manage privilege access e.g. System Administrators and remote users.

<p><b>3c</b> Please provide details of how your security and access control policy, including User Access Monitoring, complies with the Client's Security Policy (including where necessary, use and control of back-up systems, network storage and segregation of Client data (including 'cloud' solutions), and additional security for more sensitive information assets).</p>
<p><b>3d</b> Please describe how you ensure all software and data is approved before being installed, and how your information systems are reviewed for compliance with security implementation standards (e.g. penetration testing).</p>
<p><b>3e</b> Please provide details of the controls and processes (including level of encryption and controlled access procedures) you have in place for the use of portable media and storage devices exceptionally loaded with Client data.</p>
<p><b>3f</b> Please provide details of how all equipment (e.g. hardware, portable media) that holds or has held data will be destroyed or decommissioned, and how all data will be rendered unreadable and irretrievable in line with HMG Infosec Standard No. 5.</p>
<p><b>4 Personnel Security</b> (For requirements please see Appendix C – Personnel Security)</p>
<p><b>4a</b> Have all staff who will have access to, or come in to contact with Client data or assets undergone pre-employment checks as necessary? Please provide details of the measures you have in place.</p>

**4b** Please provide details of how you will ensure that all staff accessing Client data are aware of the confidential nature of the data and comply with their legal and specific obligations under the Contract?

**4c** Please provide details of your procedures for on and off boarding staff? (Including removing access rights from staff).

**4d** Please provide details of the ongoing training you provide to staff in respect of data security, including risk awareness and the identification and reporting of security incidents. Please also provide details of your documented information security procedures and processes that are available to all staff who will have access to, or come in to contact with Client data.



**4e** The Client may request that the Contractor's personnel who have access to Client data, and/or are directly involved in the service provision, sign a copy of the Client's Confidentiality Agreement. Please confirm that, in the event that your bid is successful, you will provide signed hard copies of the Confidentiality Agreement for all personnel involved in this Contract if requested.

**5 Process Security** (For requirements please see Appendix D – Process Security)

**5a** Please provide details of the format in which Client data will be held i.e. electronic and/or paper records, how you will ensure segregation of Client data, the locations where this data will be processed, the purpose for maintaining records (specifically in hard copy format) and how records will be stored,

**5b** Please confirm your understanding and agreement that the transfer of any data to third parties (any individual or group other than the main Contractor including any associates/sub-contractors) is prohibited without prior written consent from the Client. If you anticipate transferring data, especially using portable media during the delivery of this project, please set out your proposed transfer procedures for consideration.

**5c** Please confirm that you understand that Client Data should not be accessed, processed or stored outside the United Kingdom without the express permission of the Client.  
If you intend to store data outside of the UK, please provide details on how and where the data will be stored and also provide details of how you comply with Cabinet Office policy for offshoring.

**5d** Client data must only used as necessary for the performance of your obligations under the Contract, or as otherwise expressly authorised in writing by the Client. In order to protect against loss, destruction, damage, alteration or disclosure, and to ensure it is not stored, copied or generated except as necessary and authorised, please provide details of the technical and organisational measures you have in place (including segregation of duties and areas of responsibility) to protect against:

1. Accident, or;
2. Malicious intent (including theft, attempted theft, misuse or inappropriate accessing of data), within your organisation, and any subcontractors or partners you may use to deliver the contract.

**5e** Please set out your proposed incident handling procedures in the event of any of the above happening, and detail the remedial action (including a documented reporting process) you would implement to mitigate any data loss.

**5f** Please describe your disciplinary procedures in the event of a security breach involving Client data.

**6 Business Continuity** (For requirements please see Appendix E – Business Continuity and Schedule I Business Continuity )

**6a** Please provide an overview of your organisation's business continuity and disaster recovery plans in terms of the Client data under the Contract, or attach a copy of your Business Continuity Plan. Please specify if you operate business continuity or disaster recovery from offshore.

Also, please provide details on when and how frequently these plans are tested and advise when they were last tested and confirm that results of testing exercises are available for review if requested.

Please provide details on how you will meet recovery times recorded in the schedules and/or Order Form.

**7 Cryptography**

**7a** Please provide details of processes and procedures in place for handling cryptographic material.



## **Schedule I    The Clients Procurement Probity Policy and Ethical walls**

1.     The Client is under a duty to treat economic operators equally and without discrimination and act in a transparent and proportionate manner.
2.     The Client is under a duty to ensure that the design of any procurement shall not be made with the intention of artificially narrowing competition by unduly favouring or disadvantaging certain economic operators.
3.     This policy is in pursuance of the duty on Client to take appropriate measures to effectively prevent, identify and remedy conflicts of interest, actual and perceived as arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
4.     This policy sets out how the Client will approach unavoidable forms of exclusion from competition in procurement to maintain fairness in the treatment of all economic operators according to the principles of equal treatment, transparency, non-discrimination and proportionality.
5.     **ISSUE**
6.     The Contractor may be at a material advantage in any tender for a future contract by virtue of:
  - a)     The access to privileged information about the Client's IT estate, the setting, influence and understanding of the Client's finances, IT and procurement strategy;
  - b)     The strategic role in managing the Clients estate transformation;
  - c)     The potential to influence the outcome of downstream procurements and transition strategy for any new contracts.
7.     **OBJECTIVES**
- 7.1    To prevent, identify and remedy an occurrence of actual and/or perceived conflict of interest in the conduct of any procurement process due to the strategic position of the Contractor.
8.     **MEASURES**
- 8.1    In pursuance of the Client's overarching responsibility to design a process which is fair for all economic operators, the Client will:
  - a)     require potential Contractors to implement physical and organisational barriers that create a robust ring-fence between personnel involved in provision of services to the Client and any team bidding for future related procurements;
  - b)     require the Contractor to deliver services at all times in the best interests of the Client, with professional skill, care and due diligence;

- c) require the Contractor to work openly and equally with all participants in the downstream procurement processes;
- d) ask Contractor to demonstrate an understanding of and show how they will implement effective plans to manage any probity issues that may be associated with the work they undertake as the Contractor;
- e) identify other specific controls to be put in place, for example but not limited to, the categories of information to be shared and the processes for agreeing transition.

## 9. **COMPLIANCE**

- 9.1 The Client will monitor compliance with the Procurement Probity Policy in any future related procurement process, reserving the right to remove advantaged economic operators from the process, at any stage, for failure to comply with the policy.
- 9.2 The Client will actively monitor situations where work commissioned from a Contractor may be of a nature and type that may create a direct conflict of responsibilities, that is a conflict between the duty to deliver services in the best interests of the Client and the Contractor's own commercial interests by:
  - a) applying additional management oversight and assurance to ensure that the approach adopted is independent, impartial and consistent with commitments made in the contract;
  - b) if there are concerns that a Contractor is not acting consistently with agreed commitments, escalate the matter to senior representatives within the Contractor and potentially exercise the rights of removal from future competition and formal breach of contract remedies.

## 10. **EXCLUSIONS**

- 10.1 The Client may exclude a contractor:
  - a) where a conflict of interest within the meaning of regulation 24 of the Public Contract Regulations 2015 ("**PCR**") cannot be effectively remedied by other, less intrusive, measures; and
  - b) where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in regulation 41 PCR, cannot be remedied by other, less intrusive, measures."

## 11. ETHICAL WALLS

The Contractor acknowledges that, in the event that the Client decides to procure the New Service through a public competition, any information it may have obtained in connection with its discussions with the Client could give the Contractor and/or other bidder an unfair advantage.

To assure the Clients that the Contractor will avoid this potential unfair advantage and/or conflict, the Contractor has agreed to provisions set out in this Schedule.

### 1. Definitions

In this Schedule the following terms shall have the following meanings:

<b>"Affiliate"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Bid"</b>	any activity which involves the Contractor, including any involvement as a subcontractor, in any direct or indirect participation in a Procurement Process;
<b>"Bid Team"</b>	any team from time to time comprising the Contractor Personnel for the purpose of responding to a Procurement Process (or any part thereof);
<b>"Control"</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
<b>"Ethical Walls"</b>	the set of management processes, barriers and disciplines that create a zone of non-communication and physical and organisational separation between Members of the Service Proposal Team and the Contractor Personnel, to ensure conflicts of interest do not arise that could otherwise give an unfair competitive advantage to the Contractor in a Procurement Process;
<b>"Member of the Service Proposal Team"</b>	any person, including (but not limited to) officers, employees, agents, its Affiliates or Sub-contractors who is or has been involved in the Service Proposal;
<b>"Procurement Process"</b>	the process by which the Client shall procure the provision of the New Service if it

does not procure such service through the Contract;

**"Service Proposal"** the proposal to provide the Service through the Contract with the Contractor;

**"Sub Contractor"** a third party which the Client has authorised the Contractor to discuss the Service with in accordance with paragraph 2.2.3 below;

**"Contractor Personnel"** all employees, agents, consultants, sub-contractors and contractors of the Contractor (or any Affiliate of the Contractor) and/or of any its sub-contractors but not including any Member of the Service Proposal Team.

## 2. Ethical Walls

2.1 The Contractor shall comply with this Schedule without prejudice to any of its own internal policies and procedures which relate to conflicts of interest or ethical walls. The Contractor shall promptly inform the Client of any conflict between this Schedule and any of its own relevant internal policies and procedures and the Client shall consider the purported conflict and instruct the Contractor accordingly, at the Clients discretion.

2.2 The Contractor shall ensure that no Member of the Service Proposal Team:

2.2.1 discusses or provides any information gained about the New Service with any members of the Bid Team;

2.2.2 discloses or make available to any members of the Bid Team any information in relation to the New Service that is not in the public domain;

2.2.3 without the Clients prior written consent, discusses the New Service with any third party (other than the Contractor's Affiliates for the purpose of the Service Proposal only), whether or not permitted by existing confidentiality obligations; and

2.2.4 becomes a member of the Bid Team, unless the Contractor has obtained the Clients prior written consent.

2.3 Upon becoming aware of any instance of non-compliance with this Schedule, the Contractor shall, without prejudice to the Clients rights under this Schedule:

2.3.1 carry out a review to ascertain the reasons for and extent of such non-compliance;

2.3.2 take such steps as are necessary to minimise the risk of such non-compliance occurring again;

2.3.3 immediately report to the Client such non-compliance; and

2.3.4 implement procedures for the reporting of any unexpected or unusual requests for access to or copies of documents.

2.4 The Contractor shall at all times ensure separation between Members of the Service Proposal Team and members of the Bid Team and in particular shall:

2.4.1 ensure that all Members of the Service Proposal Team are, so far as reasonably practicable:

2.4.1.1 located in different offices of the company or else on different floors of the same office to the members of the Bid Team;

2.4.1.2 have separate reporting, supervision and management lines to the members of the Bid Team; and

2.4.1.3 in particular remain separate to the members of the Bid Team at organisational levels where any commercial decisions relating to either team can be made;

2.4.2 ensure that where a single point of supervision for both teams exists this is notified to the Client;

2.4.3 ensure that:

2.4.3.1 all electronic information (including all files and databases) relating to the Service Proposal cannot be accessed by any the Contractor's Personnel except to the extent necessary to comply with the Contractor's information technology and security policies and any such access shall be strictly limited to IT security and administrative personnel; and

2.4.3.2 that no Contractor IT security and administrative personnel do anything with any such electronic information they access and in particular do not provide access to any member of the Bid Team;

2.4.4 ensure that all information and documentation held in hard copy is stored securely and separately from that relating to any Procurement Process so that it cannot be accessed by any Contractor Personnel.

2.5 At the Clients request, the Contractor shall procure that the relevant Contractor Personnel specified in the Clients request sign a declaration stating that they have read, understood and will comply with the obligations placed on them by this Schedule and the Ethical Walls policy.

2.6 Where a member of the Bid Team has previously been or is currently involved in the previous negotiations with the Client, the Contractor shall notify HMRC of this fact in writing and the Client may request (and the Contractor shall provide) further written information from the Contractor regarding that member of the Bid Team's involvement in the provision of such negotiations. Following receipt of this information, if the Client (in its sole discretion) deems that there exists an actual or potential conflict between the member of the Bid Team's previous involvement in the negotiations with the Client and their involvement in a Procurement Process, the Contractor shall immediately cease that person's involvement the Procurement Process.



2.7 The Contractor shall monitor and ensure enforcement by all relevant Contractor personnel of its obligations in this Schedule and in particular shall:

- 2.7.1 implement strict and carefully defined procedures for advising the Client of and dealing with a situation where it is felt that the Ethical Walls have been crossed and maintain proper records of such an event;
- 2.7.2 monitor the effectiveness of the Ethical Walls and take all necessary steps where it is found that the Ethical Walls have not been effective;
- 2.7.3 implement or procure the implementation of disciplinary sanctions within its, its Affiliate's or Sub-contractor's organisation where there has been a breach of the Ethical Walls;
- 2.7.4 provide the means when requested for the Client to inspect, review and ensure that this Schedule has been and is being complied with and adhered to; and
- 2.7.5 make relevant personnel with the sufficient level of authority within its organisation available when requested to discuss concerns arising from any inspection and/or review as described above, and revise measures or implement additional measures to address these concerns.

2.8 The Contractor shall maintain records to show that effective Ethical Walls have been put in place and that the Contractor has implemented measures to prevent themselves from gaining any advantage over other prospective bidders or suppliers in any Procurement Process.

2.9 The Client may, on five (5) days' prior written notice, audit the Contractor's compliance with this Schedule, including (but not limited to) visiting the Contractor, its Affiliates' and/or relevant Subcontractors' sites. The Contractor shall (and shall use all reasonable endeavours to ensure that its Affiliates and relevant Sub-contractors shall) take all necessary steps to assist the Client to carry out this audit.

### **3. Enforcement**

3.1 In the event of breach of this Schedule by the Contractor, the Client may (at its sole discretion) do one or more of the following:

- 3.1.1 exclude the Contractor from any Procurement Process;
- 3.1.2 seek injunctive or other equitable remedy to restrain disclosure or further disclosure of any information relating to the Procurement Process or the New Services or the existing services; and/or
- 3.1.3 pursue any other remedy that may be available to the Client.

### **4. General**

4.1 The obligations in this Schedule shall continue until the date thirty (30) days after the execution of the contract for the New Service.

- 4.2 This Schedule shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.
- 4.3 This Schedule is for the benefit of and may be enforced by any public authority involved or interested in the procurement of the New Services under the Contracts (Rights of Third Parties) Act 1999.
- 4.4 This Schedule may be amended or terminated by the agreement of the parties without notice to or consent from any third party.

## Schedule J Key Personnel

The parties agree on the following list of personnel as comprising the Contractor team 'Key Personnel' (as defined at I4). The list may be updated with the mutual consent of the parties from time to time.

Role	Key Personnel
Commercial Director	
Deputy Director - Sourcing	
Deputy Director - IT	
Deputy Director – Strategic Relationship Management	
Deputy Director - Estates	

Other roles that will be provided are listed below and, during the course of the engagement, additional key personnel may be identified as performing these roles (as defined at I4 Terms and Conditions) subject to agreement with both parties.

Key roles – eg:
Directors
Associates

For the avoidance of doubt all persons employed by the Contractor together with the Contractor's servants, agents, Contractors and sub contractors used in the performance of its obligations under the contract are subject to the conditions of Clause A10.

### Account Management Personnel

Role	Key Role	Responsibilities	Contact Name, Title & Contact Details (to be completed on Contract Award)	
			Client	Contractor
Senior Responsible Owner	No	Overall responsibility for delivery of the contract. Escalation point for issues Level 3 escalation point		
Commercial Director	No	Overall responsibility for the Commercial integrity of the contract. Level 2 escalation point		
Commercial Lead	No	Responsible for overseeing the Contract Review process. Level 1 escalation point		

Commercial Manager	Yes	Responsible for monitoring the performance of the Contract and managing the change control process.	
Contract Manager	Yes	Responsible for the day to day management of the contract.	

## **Schedule K Business Continuity**

The Parties agree that this Schedule K is not applicable to the Services as detailed in section 4.0 of Schedule A, but may apply to any future services that Contract provides to the Client.

### **K1 Introduction**

- K1.1. This Schedule K (Business Continuity) sets out the Client's requirements for the production, maintenance, testing and invocation of the business continuity strategy and plans to respond to a Business Continuity Event.
- K1.2. For the purposes of this schedule a Business Continuity Event is defined as an operational incident that requires the invocation of the Business Continuity Plan.
- K1.3. The requirements set out in this document (Business Continuity) relating to business continuity includes information communications technology continuity management.

### **K2 Policies and Standards**

- K2.1. The Contractor shall develop, implement and continually improve the business continuity and disaster recovery procedures and plans as set out in this Schedule K (Business Continuity) in accordance with Industry Best Practice
- K2.2. The Contractor shall conform to the agreed Standards and, in particular, the following standards in meeting the requirements of this Schedule:
  - a) The Contractors Business Continuity and Disaster Recovery Policy
  - b) Any other relevant guidelines/ standards

### **K3 Business Continuity Management Strategy.**

- K3.1. The Contractor shall implement a business continuity management strategy that:
  - a) covers all of the Services and Personnel;
  - b) shall be subject to business changes, risks, threats and vulnerability reviews and any requirements for staged recovery;
  - c) shall be sufficiently flexible to respond to any unforeseen disruption.
- K3.2. The Contractor shall ensure that any Changes to the Services or the Service Delivery Solution (including Changes to organisational functions, processes and systems) will not weaken the business continuity management arrangements unless the Client expressly agrees otherwise.

### **K4 Business Impact Analysis**

- K4.1. The Contractor shall undertake a Business Impact Analysis ("BIA"), to identify

risk, threats and vulnerabilities that may lead to potential loss of, or disruption to, the Services.

K4.2 The BIA shall include, as a minimum:

- a) analysis of all activities that support the Service delivery / continuity;
- b) the identification of business functions, systems and processes that support the delivery of specific elements of the Services and their associated risks, threats and vulnerabilities;
- c) scenarios which could cause disruption and the implications for Service delivery/ continuity ;
- d) identification of single points of failure;
- e) the timeframes and order of priority for the full recovery of the Service delivery and the associated Maximum Tolerable Period of Disruption, including staged recovery.

K4.3 The Contractor shall complete the BIA and submit a report setting out its findings (the "BIA Report") for the Client's approval no later than four (4) weeks following the Service Commencement Date.

K4.4 The Contractor shall undertake a BIA annually, on each anniversary of the Service Commencement Date, or additionally as may be determined by the Client, acting reasonably, and, following the implementation of any Changes to the Services, or the Contractor's Service Delivery Solution.

K4.5 The Client shall be entitled to review, assure and provide comments on the relevant components of the BIA within ten (10) working days of its receipt. The Contractor shall action and provide written responses to the Client within ten (10) working days of receiving the comments.

## **K5 Business Continuity Plans**

K5.1 The Contractor shall produce and maintain a plan (the "Business Continuity Plan") which shall incorporate all elements of each BIA.

K5.2 The Business Continuity Plan shall be submitted to the Client for Assurance within twenty (20) Working Days of the Client's written approval of the BIA Report.

K5.3 The Business Continuity Plan shall set out the timescales for each element of the Services to be fully recovered for all services to be delivered, including business functions, systems and processes on the occurrence of a Business Continuity Event (the "Recovery Time Objectives").

K5.4 The Business Continuity Plan shall clearly set out those Services which the Contractor will relocate on the occurrence of a Business Continuity Event, the proposed Work Area Recovery Site and the timescales for relocation.

K5.5 The Contractor shall ensure that the Business Continuity Plan as minimum:

- a) Is up to date and covers all aspects of the Services
- b) align with any supporting Operational Incident management

procedures and documentation and include cross references to such documentation;

- c) are updated to take account of any Changes including any resulting from the BIA; and
- d) include a communications strategy that shall be implemented on the occurrence of a Business Continuity Event.

K5.6 The Client shall be entitled to reasonably request, review and assure the Business Continuity Plan. It is understood that any sensitive information may be redacted. Changes to Business Continuity Plans shall be subject to the Change Control Procedure.

## **K6 Business Continuity Incident Management**

K6.1 In the event of any invocation of the Business Continuity Plans the Contractor shall keep the Client fully informed as the Client requires.

K6.2 The Contractor shall notify the Client of all Business Continuity Events immediately. Where the Contractor cannot notify the Client immediately, it shall notify the Client within twenty four (24) hours.

## **K7 Business Continuity Exercises and Tests**

K7.1 The Contractor shall undertake a regular programme of exercises and tests (the "BC Exercises and Tests") in accordance with Industry Best Practice and shall set out in a report, to be delivered to the Client, the duration, scope, aims, programme and frequency of the BC Exercises and Tests.

K7.2 The Contractor shall ensure that any risks posed to the live environment arising from BC Exercises and Tests are minimised and documented.

K7.3 Within (20) working days of completion of any BC Exercises and Tests, the Contractor shall provide the Client with a report setting out as a minimum:

- a) the objectives of the BC Exercises and Tests;
- b) the details and outcome of the BC Exercises and Tests;
- c) any BC Exercises and Tests objectives not achieved, including lessons learnt and a root cause analysis;
- d) the corrective actions and improvement opportunities, including a timetable for implementation, for remedying any failures and process improvements.

K7.4 The Contractor shall amend the Business Continuity Plan where the BC Exercises and Tests identify any gaps in the resilience.

## **Schedule L Training and Development**

The Training and Development plan is a collaborative plan that is designed to identify the activities, deliverables and roles and responsibilities of both parties in support of delivering increased commerciality across the Client– the profession and business (See Schedule D) - and is therefore expected to evolve as the relationship progresses.

At all times it is will be drafted collaboratively but will include the following aspects as a guide.

- Delivery against the recommendations of the Commercial Capability Review (CCR)
- Mentoring, coaching and up-skilling as appropriate
- Business Planning – Quarterly Reviews
- Performance Management System – talent management, succession planning
- Ownership, delivery against and continuous improvement of learning within Commercial Directorate and the Wider Business
  - Experts and Practitioners Workshops
  - Training Strategy and Plan
  - Continuous Professional Development
  - CIPS relationship