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Protect Commercial

FORMAL FRAMEWORK AGREEMENT

between

HM Revenue & Customs

and

\*\*\*\*\*\*\*

for the provision of

Auctioneer Services in the areas :-

|  |  |
| --- | --- |
| Version: |  |
| Contract Workspace |  |
| Ariba Sourcing Project Ref: |  |
| Common Procurement Vocabulary (CPV): |  |
| Start Date: |  |
| Expiry Date: |  |

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Form of Agreement

This Agreement is made between Her Majesty’s Revenue and Customs, acting as part of the Crown, “the Client”, of (insert address) and (insert name of Contractor) “the Contractor” whose main or registered office is at (insert address), together referred to as “the Parties” and is effective as of (insert date) (“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:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **HM Revenue & Customs**: |  | **(insert Supplier Name)** |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Capacity: |  | Capacity: |  |
| Date: |  | Date: |  |
| Address: |  | Address: |  |
| Telephone: |  | Telephone: |  |
| email: |  | email: |  |

Terms and Conditions

A GENERAL PROVISIONS

### A1 Definitions and Interpretation

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

**“Audit Agent”** means the Client’s internal and external auditors; the Client’s statutory or regulatory auditors; the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; HM Treasury or the Cabinet Office; any party formally appointed by the Client to carry out audit or similar review functions; and successors or assigns of any of the aforementioned.

“**Approva**l” means the written consent of the Client.

“**BPSS**” means the HMG Baseline Personnel Security Standard staff 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:

1. 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:
	1. are supplied to the Contractor by or on behalf of the Client; and/or
	2. the Contractor is required to generate, process, store or transmit pursuant to this Agreement; and/or
2. any Personal Data for which the Client is the Data Controller.

**“Client Software”** means software which is owned by or licensed to the Client (other than under or pursuant to this Contract) and which is or will be used by the Contractor for the purposes of providing the Services”

“**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:

1. which is provided by the Contractor to the Client in confidence; and/or
2. that constitutes a trade secret.

“**Confidential Information**” means all Information:

1. however it is conveyed or on whatever media it is stored;
2. which comes (or has come) to the attention of or into the possession of a Party before, on or after execution of the Contract; and
3. which has been designated as confidential by either Party in writing or which ought to be considered as confidential (whether or not it is marked at the time of provision to show that it is imparted in confidence);
4. including but not limited to Information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;
5. and which Information is not:
6. in the public domain at the time of disclosure (otherwise then by breach of Clause D4 (Confidential Information); or
7. received from a third Party (who has lawfully acquired it) without restriction as to its disclosure; or
8. independently developed without access to the Confidential Information

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

“**Contracting Authority**” means any Contracting Authority 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 as named in the Form of Agreement;

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

1. the date of expiry set out in Clause A2 (Initial Contract Period); or
2. 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).

**“Contractor Software”** means “software which is proprietary to the Contractor (or an affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services.“

“**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 Staff 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.

“**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.

“**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.

“**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.

“**Goods**” means the goods to be supplied as specified in the Specification

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

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

“**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.

“**Installation Works**” means, as the context so requires,

1. collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or
2. where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of Installation Works

“**Intellectual Property Rights**” 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 or equivalent rights or obligations or forms of protection 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 those persons named in the Specification as being Key Personnel.

“**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 with which the Contractor is bound to comply.

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

“**Month**” means calendar month.

“**Occasion of Tax Non-Compliance**” means:

1. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
	1. a Relevant Tax Authority 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;
	2. the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
2. 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.

**“Open Book Data”** means complete and accurate financial and non-financial information which is sufficient to enable the Client to verify the charges already paid or payable and charges forecast to be paid during the remainder of the term of the Contract.

“**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 Schedule containing details of the Contract Price.

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

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

“**Relevant Transfer**” 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.

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

“**Services**” means the Services to be supplied pursuant to the Contract as specified in the Specification.

**“Specification”** means the description of the Services to be supplied under the Contract.

“**Staff**” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

“**Tender**” means the document(s) submitted by the Contractor to the Client in response to the Client’s invitation to suppliers for formal offers to supply it with the Services.

**“Third Party Software”** means software which is proprietary to any third party (other than an affiliate of the Contractor) or any Open Source Software which in any case is, will be or is proposed to be used by the Contractor for the purposes of providing the Services).

“**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.

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

1. Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
2. Words importing the masculine include the feminine and the neuter;
3. Unless otherwise provided references to Clauses and Schedules are references to clauses and schedules of this Contract;
4. Reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
5. 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;
6. 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;
7. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A1.3 The Contractor will carry out all activities in strict accordance with all relevant Taking Control of Goods Regulations.

### A2 Initial Contract Period

#### A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on 31/07/2016, unless it is 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 given by electronic mail, confirmed in either case in writing by letter (sent by hand or post, registered post or recorded delivery). Where for legal or any other reasons, this is not possible, notice shall be given by letter sent by hand or post, registered post or recorded delivery) or be transmitted by facsimile, confirmed in writing by letter ((sent by hand, post, registered post or by the recorded delivery service). 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

#### A6.1 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 pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

### A7 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 Staff 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 or any member of the Staff and the duties owed to the Client under the provisions of the Contract. 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 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.

#### A7.3 Clauses A7.1 and A7.2 shall apply during the continuance of the Contract.

### A8 Inspection of Premises

#### A8.1 Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

### A9 Access to Client’s Premises

#### A9.1 The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises to:

1. any member of the Staff; or
2. any person employed or engaged by any member of the Staff,

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

#### A9.2 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.

#### A9.3 The Contractor and the Staff, 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.

#### A9.4 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.

#### A9.5 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.

### A10 Licence to occupy Premises - NOT APPPLICABLE TO THIS CONTRACT

### A11 Staff Vetting and Government Baseline Security Standard

#### A11.1 The Contractor shall comply with the HMG Baseline Personnel Security Standard (BPSS) in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor have been vetted and recruited in accordance with the BPSS.

#### A11.2 The Contractor hereby warrants and represents that the checks specified in the BPSS have been carried out in respect of each person assigned to access Premises, Property or Information belonging to the Client and that the results of those checks are satisfactory.

#### A11.3 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.

#### A11.4 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.

#### A11.5 The Client may require the Contractor to ensure that any person employed in the provision of the Goods or 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 Goods or Services.

### A12 Security of Premises

#### A12.1 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 Staff comply with such requirements.

#### A12.2 The Contractor shall take all steps reasonably required by the Client to prevent unauthorised persons from being admitted to the 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 of 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.

#### A12.3 Where Staff 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.

#### A12.4 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.

### A13 Property

#### A13.1 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 all sub-contractors and 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.

#### A13.2 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.

#### A13.3 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.

#### A13.4 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 Goods or Services, in accordance with the Client’s reasonable security requirements as required from time to time.

#### A13.5 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.

### A14 Due Diligence (Option – see guidance)

#### A14.1 The Contractor acknowledges that:

1. the Client has made available to the Contractor all information, documents and Due Diligence Information that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;
2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
3. it has satisfied itself of all relevant details relating to:
4. the Client’s requirements;
5. the processes and procedures and working methods of the Client
6. the ownership, functionality, capacity, condition and suitability for use in the delivery of the Contract of any Client Property provided.

#### A14.2 The Contractor shall not be excused from the performance of any of its obligations under the Contract on the grounds of, and shall not be entitled to recover any additional costs or charges arising as a result of, any failure by the Contractor to satisfy itself as to the accuracy and adequacy of the Due Diligence Information.

B PAYMENT TERMS AND CONTRACT PRICE

### B1 Contract Price

#### B1.1 The Contract Prices shall remain firm for the initial Contract Period, but not including any extension of that period.

#### 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 sums due to the Contractor within 30 days from the date on which an invoice, submitted in accordance with the Client’s reasonable instructions, has been determined by the Client as being valid and undisputed.

#### B2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services or Goods 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 supplier or sub-contractor for the purpose of performing its obligations under the Contract, it shall (in fulfilment of the obligations expressed in Regulation 113 of the Public Contracts Regulations 2015) 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 that the invoice is determined as being valid and undisputed and shall require the subcontractor to include in any subcontract that it in turn awards provisions to the same effect.

#### 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 Goods or 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), 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, supplier or sub-contractor of the Contractor prior to the commencement of any work under this Contract by that agent, supplier or sub-contractor. Upon a request by the Client, the Contractor shall not employ or will cease to employ any agent, supplier 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 Staff or anyone acting on the Contractor’s behalf, engages in conduct prohibited by Clauses C1.2 or C1.3, or that constitutes an offence under the Bribery Act 2010, the Client may:

1. 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
2. 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 Staff and the Contractor (including its shareholders, members and 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 any member of the Staff commits Fraud in relation to this or any other Contract with the Crown (including the Client) the Client may:

1. 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
2. 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 Staff.

### 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 Staff 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 Staff 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 preserve 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:

1. 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
2. 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 Staff) 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:

1. 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);
2. Comply with all applicable Laws;
3. 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;
4. 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;
5. Take reasonable steps to ensure the reliability of Staff and agents who may have access to the Personal Data;
6. Only disclose Personal Data to Staff to the extent necessary to provide the Services and obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
7. Not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Client;
8. Ensure that all Staff 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;
9. Ensure that none of the Staff 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; and
10. 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.

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

1. A request from or on behalf of a Data Subject to have access to that person’s Personal Data; or
2. Any other complaint, communication or request relating to the Client’s obligations under the DPA or any other disclosure obligations of the Client;

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

1. Providing the Client with full details of the complaint, communication or request;
2. Assisting the Client to comply with any such request in accordance with the Client’s reasonable instructions; and
3. 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 indefinitely after its expiry.

### D3 Official Secrets Acts and related Legislation

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

1. the Official Secrets Acts 1911 to 1989; and
2. Section 182 of the Finance Act 1989; and
3. Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005

#### D3.2 In the event that the Contractor or its Staff 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:

1. treat the other Party's Confidential Information as confidential and safeguard it accordingly;
2. not disclose the other Party's Confidential Information to any other person without the Information owner's prior written consent;
3. not disclose the other Party’s Confidential Information in any way except for the purposes anticipated under this Contract; and
4. immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party’s Confidential Information.

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

1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause D5 (Freedom of Information);
2. such Information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the Information owner;
3. such Information was obtained from a third Party without obligation of confidentiality;
4. such Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
5. 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 Staff who are directly involved in the provision of the Goods and Services and who need to know the Information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality of this Clause D4.

#### D4.4 The Contractor shall not, and shall procure that the Staff 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 Staff 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):

1. to the Crown or any other Contracting Authority. 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 Authority;
2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
3. to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
4. on a confidential basis to a professional adviser, consultant, supplier 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;
5. for the purpose of the examination and certification of the Client's accounts; or
6. 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.
7. 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 person 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:

1. 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;
2. 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
3. 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 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:

1. consider whether the information is, in fact, exempt and;
2. 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;
3. consult with the Contractor prior to disclosure of the information whenever reasonably practicable.

### D6 Security Requirements (D6.2 to D6.8 option – see guidance)

#### D6.1 In the performance of this Contract, the Contractor shall comply with (and shall ensure that its Staff 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 Staff, 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 Goods or 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:

1. 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
2. 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:

1. make any press announcements or publicise this Contract or its contents in any way; or
2. 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, suppliers, professional advisors and consultants comply with Clause D7.1.

### D8 Intellectual Property Rights – NOT APPLICABLE

### 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 Goods or Services supplied under it, the Open Book Data, all expenditure reimbursed by the Client, and all payments made by the Client. Subject to each party’s obligations of confidentiality (to each other and to third parties) the Contractor shall on request afford the Client, the Audit Agent or the Client’s representatives all reasonable cooperation and assistance including:

##### All information requested by the Client which the Client is permitted to access pursuant to this Contract or Law;

##### Reasonable access to any premises and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

##### Reasonable access to the Contractor system; and

##### Access to the Staff.

D9.2 The Client shall ensure that the conduct of each audit pursuant to this clause D9 does not unreasonably disrupt the Contractor or cause the Contractor to be in breach of its obligations under the Contract.

D9.3 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with this Clause D9.

D9.4 The Client acknowledges that Clause D9.1 shall not permit its personnel to have routine operational access to the Contractor system. If at any time the Client requires such access the Parties shall agree the associated costs and document the additional charges payable by the Client in a Variation to 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, 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 The Contractor shall not sub-contract any of its obligations under the Contract without the prior written consent of the Client, not to be unreasonably withheld or delayed. At the Client’s discretion it may require the Contractor to provide information on the proposed sub-contractor’s identity, the services it is proposed it will provide and any further information reasonably required to inform its decision, including a copy of the proposed sub-contract. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own and shall include in each sub-contract provisions which will enable the Contractor to meet its obligations under the Contract.

#### 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:

1. deduction of any sums in respect of which the Client exercises its right of recovery under Clause B3 (Recovery of Sums Due); and
2. 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 in accordance with Clause A5.1. 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:

1. any Contracting Authority; or
2. 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
3. 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 Authority 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 Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as the “Transferee”):

1. 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;
2. 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:

1. to any Contracting Authority; or
2. to any successor Client following a reorganisation within government or to any body (including any private sector body) other than a Contracting Authority which substantially performs any of the functions that previously had been performed by the Client provided that
3. there will be, in the Contractor’s reasonable opinion, no change to the risks and their allocation within the Agreement; and
4. 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

(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 Authority 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

#### 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. 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:

1. allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
2. terminate the Contract with immediate effect, 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; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause H2.

### 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 (Option - see guidance)

#### 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 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:

1. the Clauses;
2. the Schedules;
3. any other document referred to in the Clauses; and
4. any other document referred to in the Schedules.

F LIABILITIES AND WARRANTIES

### F1 Liability, Indemnity and Insurance

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

1. death or personal injury caused directly or indirectly by its negligence; or
2. Fraud; or
3. Fraudulent misrepresentation; or
4. any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

#### F1.2 Subject to Clauses F1.3 and F1.4, the Contractor shall indemnify the Client and keep the Client indemnified against 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 Goods or Services, or the performance or non-performance by the Contractor of its obligations under the Contract, or the presence of the Contractor or any Staff 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 solely 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:

1. the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the premises or other property or assets of the other under or in connection with the Contract shall in no event exceed one million pounds; and
2. 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 the greater of one million pounds or 100% of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises;
3. The aggregate liability of the Contractor under Clause D8.4 (Intellectual Property Rights) where applicable shall in no event exceed three million pounds.

#### F1.5 Subject always to Clause F1.1, in no event shall either Party be liable to the other for any:

1. loss of profits, business, revenue or goodwill; and/or
2. loss of savings (whether anticipated or otherwise); and/or
3. 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 Staff 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.

#### F1.11 The Contractor shall effect and maintain with a reputable insurance company a fidelity insurance policy or policies to cover the loss, theft or misappropriation of moneys held on behalf of the Client up to the sum equivalent to the estimate established during appraisement whilst in the custody or possession of the Contractor, or its Staff.

### F2 Warranties and Representations

#### F2.1 The Contractor warrants and represents that:

1. it has full capacity and authority 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;
2. in entering the Contract it has not committed any Fraud;
3. 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;
4. 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;
5. 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;
6. 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;
7. 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;
8. in the 3 years prior to the date of the Contract:
9. 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;
10. it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
11. 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 [NOTE – Indemnity value will be aligned to tenderers’ existing policies] 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 NOT APPLICABLE TO THIS CONTRACT

G DEFAULT, DISRUPTION AND TERMINATION

### 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:

1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
2. a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors’ meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
7. 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
8. 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:

1. an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
2. a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
3. 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
4. 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
5. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or
6. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
7. 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:

1. 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
2. it is for any reason dissolved; or
3. 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
4. a receiver, or similar officer is appointed over the whole or any part of its assets; or
5. 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
6. any of the following occurs in relation to any of its partners:
7. 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
8. a petition is presented for his bankruptcy; or
9. 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:

1. 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
2. it is for any reason dissolved; or
3. (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
4. 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
5. 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
6. a receiver, or similar officer is appointed over the whole of any part of its assets; or
7. it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
8. 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:

1. being notified that a Change of Control has occurred; or
2. 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, or terminate a provision of any part of the Contract by written notice to the other Party with immediate effect if the other Party commits a Default and:

1. 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
2. the Default is not, in the opinion of the injured Party, capable of remedy; or
3. 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 cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other 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 90 Working 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 Break

#### G3.1 The Client shall have the right to terminate the Contract or to terminate a provision of any part of the Contract at any time by giving 3 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.

### G4 Consequences of Expiry or Termination

#### G4.1 Where the Client terminates the Contract under Clause G2 (Termination on Default) and then makes other arrangements for the supply of Goods or Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause G2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (for Goods or Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this Clause.

#### G4.2 Subject to Clause F1, where the Client terminates the Contract under Clause G3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause G3 (Break).

#### G4.3 The Client shall not be liable under Clause G4.2 to pay any sum which:

1. was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
2. 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
3. is a claim by the Contractor for loss of profit, due to early termination of the Contract.

#### G4.4 Save as otherwise expressly provided in the Contract:

1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
2. 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 19Commissioners for Revenue and Customs Act 2005), D4 (Confidential Information), D5 (Freedom of Information), D8 (Intellectual Property Rights), D9 (Audit and National Audit Office), D10 (Client’s Right to publish the Contract), E5 Remedies Cumulative), F1 (Liability, Indemnity and Insurance), G4 (Consequences of Expiry or Termination), G6 (Recovery upon Termination) and H1 (Governing Law and Jurisdiction).

### 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 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 Staff, 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 suppliers 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 NOT APPLICABLE FOR THIS CONTRACT

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 in accordance with 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 Staff 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:

1. a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within10 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.
2. The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant Information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR or other mediation provider to provide guidance on a suitable procedure.
3. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
4. 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.
5. 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.
6. 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

#### 11.1 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 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.

#### I1.3 Subject (where applicable) to the Client providing written consent in accordance with Clause I5 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

### 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 shall ensure that all Staff 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.

### 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.

#### I3.2 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:

1. 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;
2. 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
3. terminate, in accordance with Clause G2 (Termination on Default), the whole of the Contract.

#### I3.3 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.

#### I3.4 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 direct.

#### I3.5 In the event that:

1. the Contractor fails to comply with Clause I3.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
2. the Contractor persistently fails to comply with Clause I3.4 above,

the Client may terminate the Contract with immediate effect by notice in writing.

### I4 Key Personnel

#### I4.1 Where Key Personnel are essential to the proper provision of specific Services to the Client, those Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

#### I4.2 Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

#### I4.3 The Client shall not unreasonably withhold its agreement under Clause I4.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

### I5 NOT APPLICABLE TO THIS CONTRACT

### 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 Staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

### I7 TUPE

**Definitions and Interpretation**

#### I7.1 In this Clause I7 (except where context otherwise requires) the following words and expressions will have the following meanings:

“**Disclosure Letter**” means the disclosure letter communicated between the Parties

“**Fair Deal Policy**” means a non-statutory government policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services

“**Participation Agreement**” means an agreement which describes the terms on which Transferring Employees are eligible for a Civil Service Pension scheme under the Fair Deal policy

“**Service Provider**” means whosoever will provide the Services after the Transfer Date

“**Subsequent Transfer Date**” means the date from which the Replacement Contractor will provide the Services

“**Transferring Employees**” means all those employees of the Outgoing Contractor wholly and/or mainly engaged in the Services immediately before the Transfer Date save for those who object to their transfer pursuant to Regulation 4(7) of TUPE.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

#### I7.2 The Parties hereby acknowledge that, pursuant to TUPE, there will be a Relevant Transfer on the Transfer Date and the contracts of employment for the Transferring Employees made between the Outgoing Contractor and the Transferring employees, together with the collective agreements listed in the Disclosure Letter (save insofar as such contracts and such agreements relate to benefits pertaining to age, invalidity, or survivors under any occupational pension scheme), will take effect as if originally made between the Service Provider and the Transferring Employees (or the relevant trades union as the case may be).

#### I7.3 The Client shall indemnify and keep indemnified and hold the Service Provider harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Service Provider may suffer or incur as a result of or in connection with:

1. any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature in each case arising directly or indirectly from any act, fault or omission of the Client or Outgoing Contractor in respect of any Transferring Employee on or before the Transfer Date;
2. any failure by the Client or Outgoing Contractor to comply with their obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Transferee to comply with its duties under Regulation 13 of TUPE;
3. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union, body, or person representing any Transferring Employees arising from or connected with any failure by the Client or Outgoing Contractor to comply with any legal obligation to such trade union, body or person.

#### I7.4 The Service Provider shall indemnify the Client (for both itself and the Outgoing Contractor) against all costs, claims, liabilities, and expenses (including reasonable legal expenses) incurred by the Client or Outgoing Contractor in connection with or as a result of:

1. any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault, or omission of the Service Provider or any sub-contractor in respect of any Transferring Employee on or after the Service Transfer Date;
2. any failure by the Service Provider or any sub-contractor to comply with its obligations under Regulation 13 of TUPE;
3. any claim (including any individual entitlement of a Transferring Employee under or consequent on such claim) by any trades union or other body or person representing the Transferring Employee arising from or connected with any failure by the Service Provider or any sub-contractor to comply with any legal obligation to such trade union, body or person;
4. any change or proposed change in the terms and conditions of employment or working conditions of the Transferring Employees on or after the Transfer Date, or to the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) TUPE on or before the Transfer Date as a result of any such changes.

#### I7.5 The Client shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Transfer Date (including bonuses or commission which are payable after the Transfer Date but attributable in whole or in part to the period on or before the Transfer Date), and will indemnify/keep indemnified and hold the Service Provider (both for itself and any sub-contractor ) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses (including reasonable legal expenses) and other liabilities which the Service Provider or any sub-contractor may incur in respect of the same.

#### I7.6 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Transfer Date but which are attributable in whole or in part to the period after the Transfer Date and will indemnify/keep indemnified and hold the Client (both for itself and the any Outgoing Contractor) harmless from and against all actions, suits, claims, damages, costs and expenses (including reasonable legal expenses) and other liabilities which the Client may incur as a result of the same.

#### I7.7 The Service Provider shall provide the Transferring Employees with access to a Public Service pension scheme, where those employees are covered by the Fair Deal policy, and shall comply with the Participation Agreement provided by the scheme under the Fair Deal Policy. Failure to enter into or comply with the Participation Agreement shall entitle the Client to terminate the Contract in accordance with clause G2.

#### I7.8 The Contract envisages that, subsequent to the commencement of the provision of the Services by the Contractor, the identity of the provider of the Services may change (whether as a result of termination or expiry of this Contract, or part, or otherwise) resulting in Services identical or substantially similar to the Services (or any part thereof) being undertaken by the Client or a Replacement Contractor in substitution. Such change in the identity of the supplier of such Services shall be a "Subsequent Transfer". The parties acknowledge that a Subsequent Transfer will be a Relevant Transfer within the meaning of TUPE and in such event, the Client, or a Replacement Contractor, would inherit liabilities in respect of the Transferring Employees.

#### I7.9 Not later than 12 Months prior to the end of the Contract Period or if earlier within 28 days of notice being given of termination of the Contract (or any other reasonable time indicated by the Client), the Outgoing Contractor, shall fully and accurately disclose to the Client all Information that the Client may reasonably request in relation to the Contractor’s Staff including the following:

1. the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
2. the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in Clause I7.9 (a);
3. the terms and conditions of employment/engagement of the Staff referred to in Clause I7.9 (a), their job titles and qualifications;
4. details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
5. a list of agency workers, agents and independent contractors engaged by the Contractor and any sub-contractor;
6. details of any employees who may be regarded as a key employee in the context of the maintenance of the Services; and
7. details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

#### I7.10 At intervals to be stipulated by the Client (which shall not be more frequent than every 30 days) and immediately prior to the end of the Contract Period the Outgoing Contractor shall deliver to the Client a complete update of all such Information disclosed pursuant to Clause I7.9.

#### I7.11 At the time of providing the Information disclosed pursuant to Clauses I7.9 and I7.10, the Outgoing Contractor shall warrant the completeness and accuracy of all such Information and the Client may assign the benefit of this warranty to any Replacement Contractor.

#### I7.12 The Client may use the Information it receives from the Outgoing Contractor pursuant to Clause I7.9 and I7.10 for the purposes of TUPE and/or any re-tendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Outgoing Contractor shall provide the Client and/or Replacement Contractor with such assistance as it shall reasonably request and shall allow the Client and/or Replacement Contractor to communicate and meet with the Staff and/or their representatives.

#### I7.13 If the Outgoing Contractor becomes aware that any Information it has provided pursuant to Clause I7.9 and/or I7.10 has become untrue, inaccurate or misleading, it shall notify the Client immediately and provide the Client with up to date Information as soon as reasonably practicable.

#### I7.14 The preceding Clause I7.13 applies during the Contract Period and indefinitely thereafter.

#### I7.15 The Outgoing Contractor undertakes to the Client that during the 12 Months prior to the end of the Contract Period or, if earlier, at time after notice has been served to terminate the Contract and in respect of that part of the Services which will be ceased to be provided by the Outgoing Contractor at the Subsequent Transfer Date, the Outgoing Contractor shall not and shall procure that any sub-contractor shall not without the prior consent of the Client (such consent not to be unreasonably withheld or delayed):

1. amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement) (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Outgoing Contractor and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
2. terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
3. transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal:
4. was planned as part of the individual's career development;
5. takes place in the normal course of business; and
6. will not have any adverse impact upon the delivery of the Services by the Contractor, (provided any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services);
7. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

Schedules

### Schedule A Specification of Requirements

**A1 OVERVIEW OF REQUIREMENTS**

**General Overview**

A1.1The Auction Services that can be provided from this Framework Agreement have resulted from a formal tender using, and in compliance with, the ‘Open Procedure’ as defined in the Public Contracts Regulations 2006. (The Regulations)

A1.2 In accordance with the Regulations, the tender was published in the Official Journal of the European Union on XX/XX/XXXX under reference XXXX.

A1.3 As outlined in the Contract Notice and as fully detailed in Schedule A of this Agreement, the Framework Agreement is with multiple Service Providers and will run for the duration of 3 years, with an option to extend for a further 1 year.

A1.4 HMRC will use this Framework Agreement to provide Auction Services across England and Wales. The relevant business units in HMRC will nominate designated staff who will be authorised to ‘Call Off’ services from the framework.

A1.5 Whilst HMRC are deemed to be the Contracting Authority for this Framework Agreement/Contract, it is individual business units within HMRC that will act as the ‘Client’ for this Framework Agreement. the services provided under this Framework Agreement are unique to HMRC as a consequence of the legislation under which this work is enacted it is not our intention for it to be enabled for use by Central Government Departments, Executive Agencies and Non-Departmental Public Bodies.

**A1.6 REQUIREMENTS BACKGROUND**

**A1.6.1 Overview**

A1.6.2 HMRC is a central Government Department with responsibility for the collection of direct and indirect taxes.

A1.6.3 ‘The enforcement power enabling HMRC to take control of goods is Section 127 Finance Act 2008 (S127FA08). This says:

*“Section 127 Enforcement by taking control of goods: England and Wales. This section applies if a person does not pay a sum that is payable by that person to the Commissioners under or by virtue of an enactment or under a contract settlement. The Commissioners may use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) to recover that sum. This section extends to England and Wales only”*

***Compliance***

Whilst the main focus of activity shall fall within the scope identified above there may in addition be requirements arising for the disposal of assets seized by HMRC in connection with compliance activity for alcohol, tobacco and oil.

**A2 Regional Coverage**

A2.1 This Framework Agreement is awarded to the Contractor for the provision of the required services in the specific regions of (delete as appropriate):

1. North of England (North East, North West, Yorkshire and the Humber)
2. Midlands (East Midland, West Midlands, East of England)
3. South of England (South East, South West)
4. London
5. Wales

**A3 Form of Contract**

A3.1 This Framework Agreement defines the relationship between the participating parties, which allows 'Call Offs' for the actual services required to be made more readily by the Client’s nominated personnel.

A3.2 The Framework Agreement pre-determines the Terms & Conditions for any Service or Purchase Orders issued as instructions to proceed with an assignment.

A3.3 The establishment of the Framework Agreement entitles, but does not oblige, the Authority to 'Call Off' any services from the Framework Agreement.

**A4 Volume of work**

A4.1 Throughout the period of the Framework Agreement the Contractor(s) shall accept that the demand for Auction Services will coincide with HMRC Debt Management activities and available funding.

A4.2 The Authority therefore shall be entitled, but not obliged, at any time during the term of the Framework Agreement to order services for an assignment from the Contractor(s) and cannot be held responsible if any expectations of volumes are exceeded or not realised.

**A5 Insurance**

A5.1 In addition to the Insurance requirements detailed at F1, Contractors must also have in place adequate insurance for the retail value of goods whilst in their possession prior to sale to cover accidental damage, theft or loss. Possession is determined by the Client as being from the point the Contractor uplifts the goods up until the point the goods are either no longer in your possession or under your control.

**A6 Travel & Subsistence Costs**

A6.1 The hourly rate included in Schedule J (Pricing Schedule) for Appraisal/ Appraisement Fees in respect of the Contractor’s Senior Personnel will include all travel & subsistence costs, it is therefore not expected that the Contractor would need to charge separately above that amount.

A6.2 Any expenses incurred in excess of the hourly fee, which the Contractor expects to be reimbursed, must have the prior agreement of the Client's Representative.

**A7**  **Invoicing**

A7.1 For assignments which will not result in a net payment to the Client, the Client will not pay for any services provided by the Contractor, unless the Contractor has previously advised the Client, in the form of a written quotation, the extent of costs likely to be incurred, the Client has agreed in writing, such as issuing a Service or Purchase Order, to pay such costs, and the Contractor has invoiced the Client.

A7.2 As a minimum invoices will be required to show

1. The Client’s unique Purchase Order / Sales Order / Service Order number as applicable; and
2. An itemised breakdown of the services provided.

A7.3 Contractors must ensure that the Client will only be charged for time actually spent on an assignment at the correct rates and that any appropriate discounts will be applied.

A7.4 Invoices, on conclusion of the assignment, should be addressed to the Client’s representative as per instructions received on the individual Purchase Order/Service Order for each assignment.

A7.5 Invoices should be sent to the Client no later than 7 calendar days following completion of an assignment.

**A8 Sales Remittance**

A8.1 For services rendered in respect of a sale of items, the Contractor will only retain disbursements allowable in accordance with Regulations 8, 9 & 10 of The Taking Control of Goods (Fees) Regulations 2014. In the event of a co-ownership, a share of the proceeds of those goods proportionate to this interest must be provided to any co-owner. Any balance to be sent to the client with their sales statement.

A8.2 The Sales Remittance Note must as a minimum provide a

1. a description of the item sold;
2. the date and venue where the item was sold;
3. the sale price for the item; and
4. details of any costs associated with the sale, such as appraisal, removal and commission;
5. have VAT deducted on the fees and charges if he is a “taxable person”;
6. have VAT deducted on the sale proceeds if the defaulter is a “taxable person”. This is to be processed through the Contractor’s normal accounting process and not included in any return to the client;
7. have the cost of any electrical safety check(s) deducted.

A8.3 The Contractor must make payments due to the Client following the sale of an item within 10 days of the sale.

A8.4 The Contractor should agree with the Client the reference number to be included with the payment such as assignment or Purchase Order number.

A8.5 The Contractor should make payment to the Client using the following method:

1. The Contractor should make payment of the net proceeds of sale to the client by cheque.

The Client may move to electronic payment at some point in the duration of the contract. This will be brought about via an agreed contract variation.

**A9 TECHNICAL SPECIFICATION OF REQUIREMENTS**

**General**

A9.1 The Contractor will be required to provide a range of skills and auction services including removal, storage, appraisal and sale of goods.

A9.2 The Client has identified that there is likely to be a wide variance in the value of the items involved. The Client’s expectation is that some individual items will be valued in thousands of pounds while many items will be of a lesser value.

A9.3 The demands on the Contractor will vary and will be dependent on the different types and values of the items that are seized.

A9.4 The Client gives no guarantees can be given to the number of individual items or total assignments that will require any of the services that will be available under this Framework Agreement.

A9.5 Whilst no guarantees can be given by the Client in respect to the volume of work that will be generated by the Framework Agreement, previous usage of Contractors by HMRC during the Calendar Year 2016, approximately 1350 cases were raised under this framework and therefore the belief is that the work generated will be similar over the period of the Framework.

A9.6 The Contractor may be able to provide upon request a more specialist service in respect of;

1. High value Motor Vehicles;
2. Specialised machinery and Equipment;
3. Computers and Accessories;
4. Electrical Goods and
5. Goods that need a special licence or permit,

A9.7 As detailed as part of their tender response and the Client reserves the right to award the work to a Contractor who has demonstrated expertise in these specialist services regardless of regional coverage.

A9.8 Whilst the sub-section above details examples of ‘specialist’ type services where the Client may decide to award work to a Contractor, the list should not be seen as exhaustive.

**A10 Contractor Requirements**

A10.1 The Contractor and any sub-contractor will be required to retain the full range of auction skills and experience relevant to removal, storage and sale of a wide variety of goods including Certification in accordance to statutory law for Enforcement, England and Wales (The Certification of Enforcement Agents Regulations 2014); Taking Control of Goods Commercial Rent Arrears Recovery.

A10.2 The Contractor will be required to retain or be able to access as a minimum the vehicles, facilities and premises as detailed in their tender response to conduct removals, store goods and conduct public auctions. If these services are to be met by sub-contracting the work or by hiring/leasing premises and vehicles, they will need to advise/seek agreement from the Client of these arrangements.

A10.3 The Contractor must have the ability to conduct a sale on the Debtor’s premises (a “sale on site”) upon request where appropriate and after assessment of Health and Safety and associated risks.

A10.4 The Contractor will comply with the Code of Conduct of any professional body of which they are a member, such as the National Association of Valuers and Auctioneers (NAVA).

A10.5 The Contractor’s personnel and their agents will be expected to comply with the duty of confidentiality imposed by Section 18 of the Commissioners for Revenue and Customs Act 2005.

A10.6 The Contractor will be expected to carry out additional duties as required such as conducting immediate removals or acting as ‘possession man’.

A10.7 The Contractor will be expected to sign a declaration that neither they nor any personnel employed directly by them have criminal records.

A10.8 The Contractor shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes

A10.9 Subcontractors engaged by the Contractor will be expected to comply with the requirements set out in section A10.1 through to A10.8.

**A11 Assignments**

A11.1 At a date following the debtor’s failure to comply with the terms of a Controlled Goods Agreement, the Client will, at its discretion, refer the assignment to the Contractor.

A11.2 The Contractor should contact the Debtor in accordance with the process provided by the Client to:-

1. Inform them of the consequences of non-payment as detailed in Schedule B
2. Carry out a full check and formal appraisal of the items which were seized. This should be completed from the details on the inventory in the majority of cases. Appraisal may be carried out after removal dependent upon the circumstances;
3. Undertake a full risk assessment to ensure that the items seized conform to relevant safety standards where appropriate and can be safely removed;
4. Liaise with the Client by telephone to ensure the debt is still unpaid and the details of the assignment have not changed;
5. Conduct removal and sale, unless it is more appropriate for the goods to be sold “on site”.

**A12 Debtor Payments**

A12.1 If the Client becomes aware of a payment onto the Debtor’s record then the Client will notify the Contractor of the revised debt and provide any necessary instructions on how to proceed. If the Debtor contacts the Contractor direct to advise they have paid all or some of the debt then the Contractor must ask the Debtor for evidence of payment and once produced, they should make contact with the Client immediately to discuss the position.

A12.2 If the Debtor pays the debt plus all costs, fees and interest after the Contractor has accepted the assignment but prior to the sale, then the Client will release the goods.

A12.3 Where the Debtor contacts the Contractor to make payment of the debt to avoid removal and sale they should be referred to the Client to make payment direct.

A12.4. Where the Contractor has made arrangements via a third party to remove goods and this is no longer required as the Debtor has discharged their liability, any costs and charges incurred in making those arrangements are considered as included in the reasonable costs of removal and may be charged by the Contractor to the Client. The Contractor must provide the Client with the invoice from the third party to support the cancellation fee.

**A13 Payment Card Industry Data Security Standard (PCI DSS) Compliance**

A13.1 Where the Contractor intends to accept payments, **restricted to at sale only**, by debit/credit card the Contractor must have either:

1. Been certified by a Qualified Security Assessor [and Approved Scanning Vendor (as applicable)] as being compliant with the PCI DSS version 1.1; or
2. completed an internal self-assessment and will adhere at all times to the terms of the PCI DSS and will notify the Client promptly in writing of any changes in the Contractor’s certification.

A13.2 The Contractor must validate compliance in the manner deemed appropriate by the card scheme industry on an annual basis and provide the Client with written evidence of compliance annually.

A13.3 The Contractor will be responsible for any costs incurred to attain and maintain compliance with PCI DSS.

A13.4 The Contractor must meet all PCI DSS requirements, on a continuing basis, including but not limited to any subsequent versions of the PCI DSS.

A13.5 The Contractor must be responsible for the security of all Cardholder Data in their possession and must protect data by the card scheme industry standard on an annual basis and provide HMRC access hosted environment and data when necessary.

A13.6 The Contractor must notify the Client and the card scheme industry immediately if it knows or suspects that there has been, or will be, a breach of the security of Cardholder Data or of the PCI DSS.

A13.7 The Contractor must indemnify the Client, its subsidiaries, affiliates, officers, employees and agents from and against all actions, demands, costs, losses, penalties, damages, liability, claims and expenses (including but not limited to reasonable legal fees) whatsoever incurred by it or them arising from the Contractor’s non-compliance with, or breach of, the PCI DSS or breach of Cardholder Data security.

A13.8 The Contractor must cease taking payments, by debit/credit card, on behalf of the Client in the event that the Contractor becomes non- compliant with, or suffers a breach of, the PCI DSS or breach of Cardholder Data security.

A13.9 As mentioned in A8.5 the Client may move to electronic payment from the Contractor (rather than cheque payment) at some point in the duration of the contract. This will be brought about via an agreed contract variation.

**A14 Returning the Debtor’s Goods**

A14.1 Where the goods have been removed from the Debtor’s premises before payment is made and the action was legally sound, it is the Debtor’s responsibility to recover and transport the goods back to their premises.

**A15 Professional and Technical Advice**

A15.1 The Contractor will provide a professional consultancy and advisory service to the Client as necessary to enable the Client and their representatives to better understand the value of goods seized through action.

A15.2 Where it is identified that it would be in the best interest of the Client to sell an item through a specialised auction, advice may be required on what the Contractor considers to be the most appropriate auction format to be used to provide the maximum return whilst trying to ensure that the sale of the item is ensured.

A15.3 The Contractor must provide the most cost effective:-

1. Storage for the item (s);
2. Method of transportation for the item (s) to the Auction House or place of sale; and
3. Type of packing for the selected storage and transport types.

A15.4 The Contractor must demonstrate that the service and advice given is in the best interest of the Client and that any potential conflicts of interest, such as a commission being earned through the sale of an item, is avoided.

**A16 Immediate Removal**

A16.1 The Client will give advance notice to the Contractor wherever possible but in cases where immediate removal is necessary the Contractor must have the ability to carry this out without notice, providing sufficient transport and personnel:-

1. Whenever required (Taking Control of Goods actions must commence between 06:00am and 9:00pm, or where trading is wholly or partly outside those hours, so removal may be any time after commencement);
2. At the Debtor’s premises or wherever the goods are held;
3. Within any part of the Contractor’s designated area or region.

A16.2 The Contractor must have the ability to conduct immediate removal simultaneously where goods are held at a number of premises owned or used by the Debtor. This exceptional situation will be managed in close liaison with the Client.

**A17 Auction Planning**

A17.1 The Contractor must ensure that,

1. items will be included into auctions in which there will be maximum interest;
2. catalogues and auctions are marketed to generate the required levels of interest so as to ensure the best level of return is obtained for the Client.

A17.2 The Client requires that all goods shall be sold at public auction, unless the Client gives express instructions that an alternative method of sale is permissible for a specific assignment.

A17.3 Contractors must be able to provide the most appropriate type of auction platform for the various types of items provided by the Client. Auction platforms are likely to include, but not be exclusive to, “saleroom” auctions and cannot be solely by internet. Internet bidding may be accepted but to run alongside a public “face to face” sale

A17.4 Contractors must retain market awareness and be able to advise the Client on the most appropriate times and types of auctions that should be used for the sale of items so as to ensure the maximum return.

A17.5 Contractors must have access to specialist auction sales where this is deemed to be the most appropriate method of sale for specialist items.

A17.6 Where specialist auction sales are used, the Contractor will be required to manage the process on behalf of the Client so as to ensure that any commission or costs incurred in the sale can be deemed to be cost effective.

A17.7 The Contractor must ensure that potential bidders are allowed access to view and collect the goods and that all Health & Safety and Insurance requirements are adhered to.

A17.8 The Contractor will be required to make use of all options, including the Internet and specialist publications to advertise and illustrate the goods to best advantage to maximise the sale value. This is particularly relevant where realisations are improved by viewing articles in an assembled condition.

A18.9 The Contractor must arrange sale “on site” where it is sensible to do so and more advantageous to the Client.

**A18 Saleroom Services**

A18.1 The Contractor is required to provide a variety of saleroom services to prospective buyers including, but not exclusive to, proxy bidding, telephone bidding and commission services.

A18.2 Telephone bidding and commission bids must be readily available as part of the auction process, to a wide customer base and be user-friendly.

A18.3 The role and performance of the Contractor is seen by the Client as being a key enabler in ensuring the sale of the items for the highest possible return. The Contractors must have previous experience in holding auctions for the types of items seized as part of the Client’s action.

A18.4 Contractors must demonstrate a track record for obtaining sale prices in line with current market values although no reserve should be set.

**A19 Documentation and Security**

A19.1 The Client will arrange for the following documents to be delivered to the Contractor using a Fully Tracked Service:-

1. The notice and inventory (C204 TCoG). The Contractor must have a signed copy in their possession before attending the Debtor’s premises for appraisal and removal;
2. A calculation showing the daily rate of interest accruing on the unpaid balance; and
3. Details of any co-owners.

A19.2 The Contractor must use a fully tracked delivery for all movements of HMRC documentation between sub-contractors.

A19.3 The Client will not pay a claim to charges or expenses for subsistence or travel to and from the Contractor’s place of business.

A19.4 Where the Contractor is a “taxable person” for VAT purposes they should provide the Client with their VAT Registration Number and advise of any subsequent change in status.

**A20 Governance and Assurance**

A20.1 The Contractor will be required to provide a status report in respect of the sale of items starting with the collection by them or delivery to their sale room up until the point where a payment has cleared.

A20.2 For audit purposes, such records must be maintained and made available for a period of six years following the sale of an item.

**A21 Progress Reports**

A21.1 The Client will not contact the Contractor while the assignment is in their hands unless there has been a change in circumstances. It will be the Contractors responsibility to telephone or contact the Client to check the payment status at key points in the process prior to carrying out an intervention ie calling at premises, removal and sale of goods.

A21.2 The sale should be completed promptly and within 4 weeks of being handed the assignment. Exceptionally, if the Contractor has not completed the sale within 4 weeks of being handed the assignment, they should provide a report to the Client giving the reason for the delay. For the avoidance of doubt, 4 weeks is considered by the Client to be the maximum timescale and the Client will expect the Contractor to have concluded proceedings in a shorter time period in the vast majority of cases.

A21.3 The Contractor will return assignments to the Client within 10 days of the sale.

A21.4 The Contractor must ensure that they sell no more than is sufficient to cover the full debt plus all costs.

A21.5 The Contractor should account for any VAT charged to the buyer at time of sale. This should be charged to the buyer and accounted for by them through their normal VAT accounting process.

A21.6 At any point during the progression of an assignment, the Contractor is of the opinion that the case is no longer viable to continue, they should advise the client in writing, including a full explanation with potential costs, and the Client will advise the Contractor, in writing, as to how to proceed.

A21.7 At all points of contact during the case the Contractor will be required to use an unidentifiable case reference which will be provided by the Client at the start of each case.

**A22 Removal, Transport and Display Services**

A22.1 The Contractor will arrange the removal and transportation of items from the Debtor’s premises where appropriate.

A22.2 If the Debtor or a responsible person is not present at the time of intended removal the Contractor will leave a letter (supplied by the Client) for the Debtor demanding payment and advising that a further visit will be arranged to remove the goods. Removals should be pre-arranged with the Debtor wherever possible.

A22.3 If, following a return visit, the Debtor or a responsible person is still not present then the Contractor will not make repeat visits after that without the Client’s express permission.

A22.4 The Contractor will store items on the Clients behalf prior to sale in an appropriate and secure storage facility.

A22.5 The Contractor will issue a Notice that goods have been removed for storage or sale in accordance with Regulation 32 of the Taking Control of Goods Regulations 2013.

A22.6 Items will be regarded as “held in trust” by the Contractor and all receipt paperwork must acknowledge that ownership of the item remains with the Debtor until the time that receipts from the sale have been received and cleared.

A22.7 The Contractor must have security systems in place to assure the safety of items in their possession.

A22.8 As set out in A5.1, Contractors must also have in place adequate insurance for the retail value of goods whilst in their possession prior to sale to cover accidental damage, theft or loss. Possession is determined by the Client as being from the point the Contractor uplifts the goods up until the point the goods are either no longer in your possession or under your control.

**A23 Administration**

A23.1 The Contractor will be required to provide all the administrative support required to fulfil the specification in the Framework Agreement, which will include but may not be limited to the following:-

1. Maintaining records for all items held by the Contractor on behalf of the Client;
2. Arranging for collection, storage and sale of items as and when required within the Client’s deadline and
3. Providing efficient and timely secretarial and administrative support.

A23.2 The Client will reimburse the Contractor for courier charges if the Client deems these to be reasonable and has agreed the use of such services.

**A24 Place of Performance for the Service**

A24.1 The service will be performed away from the Client’s premises. The Contractor, subject to approval, shall provide the services at such place or places as to be the most cost effective, taking into account the nature and circumstances of the assignment.

A24.2 The Client reserves the right to carry out a site visit at any premises proposed by the Contractor in the performance of the service.

A24.3 The Contractor will ensure that any individual required to work on the Debtor’s premises shall, at all times comply with:-

1. All relevant legislation in respect of security;
2. All decisions, requirements, regulations, orders, instructions, directions or rules of the Client relating to security including any modification, extension or replacement thereof then in force.

**A25 Monitoring of Contractor’s Performance**

A25.1 The Contractor’s nominated Contract Manager shall, at no additional cost to the Client, provide basic management information reports to the Client from the commencement of the contract.

A25.2 The Contractor will supply all invoicing and reporting schedules as set out in Schedule J, Pricing Schedule.

A25.3 The Client will, at their discretion, monitor and review the Contractor’s performance including:-

1. Periodically attending auctions;
2. Checking invoices submitted to ensure accuracy of the fees and charges claimed;
3. Ensuring the Contractor is meeting their legal obligations in respect of direct and indirect taxes;
4. Ensuring the Contractor has adequate insurance in place to cover seized goods during transit and storage;
5. Meetings with the Contractor for audit and control purposes.

**A27 Third Party Interventions**

A27.1 The Contractor may need to react to a number of events that may occur following action being taken. The most common are detailed below but other incidents may arise:-

1. Complaints against the Field Force Agent, Contractor or allegations that the TCoG is unlawful, irregular or illegal should be referred to the Client immediately;
2. A Debtor may complain that the Client has seized their necessary “tools of trade”;
3. Third Party Claims may arise including Retention (or reservation) of Title (ROT), Bills of Sale, Hire Purchase (HP), Conditional Sale, Lease Agreements and Debentures (fixed and floating charges);
4. Another creditor such as a landlord or execution creditor may claim a prior action, or lien over the goods or an execution creditor through the court may claim priority;
5. The Debtor or his agent may take an injunction out to prevent the sale proceeding;
6. Insolvency (through Company Administration, compulsory or voluntary liquidation, bankruptcy, CVA, IVA or PVA may occur.

A27.2 In all the above cases, the Contractor should:-

1. Suspend, but not abandon, the TCoG;
2. Contact the Client immediately and advise them of the circumstances;
3. Not admit to liability as a matter of routine (unless the circumstances suggest that is the appropriate response) or give the impression that costs will be waived;
4. Retain the assignment papers unless the Client requests that they should be returned;
5. Be prepared to make a statement if a complaint alleges improper/unprofessional behaviour by the Contractor;
6. Liaise with the Client (even when the matter can be resolved by the Contractor, in view of the Client/Agent relationship the Client should be made aware of any difficulties;
7. Ask for documentary evidence of a third party claim but this should not delay making contact with the Client.

**A28 Scale of Costs, fees and charges**

A28.1 The scale of costs, fees and charges can be found in Schedule J, Pricing Schedule.

**A29 Taking Control of Goods (TCoG) fees**

A29.1 The fees charged are in accordance with the Taking Control of Goods (TCoG) fees regulations 2014.

**A30 Primary actions fee**

A30.1 A primary actions fee is payable to the Contractor in return for carrying out the preliminary work on a case. The basic duties which make up the preliminary work are;

1. Receiving papers and signing for same as necessary;
2. Carrying out a brief risk assessment (i.e. to ensure that the item is not something which cannot be removed);
3. Set up a record;
4. Within 24 hours of receiving the assignment making contact with the Debtor by telephone and issuing a letter warning of visit and removal after 7 days if full payment not made direct to the client.
5. Assessing the appropriate course of action for the case;
6. Cost of returning the papers to the Client by tracked delivery on conclusion of the case;

A30.2 It is the Client’s expectation that a percentage of cases will be resolved following initial contact from the Contractor and this will be used as a measure of their effectiveness.

**A31 Senior Personnel (Appraisal/Appraisement Fee)**

A31.1 Where a visit to the debtors address to formally appraise is unavoidable the Contractors Senior Personnel costs will be recovered as an hourly rate and not as a percentage of the debt.

A31.2 A paper appraisal should be carried out from the inventory in the majority of cases to establish the value, size and fragility of the items, which will dictate the removals methodology in terms of personnel and types of vehicle required

A31.3 The hourly rate should include any administration costs associated with the appraisal such as telephone contact costs with the Client, Debtor or removal firms

A31.4 For each assignment the Clients expectation is that the appraisal costs will be the equivalent of one hours work for the Contractors Senior Personnel as detailed in Schedule J, Pricing Schedule.

A31.5 Where the Contractor believes that a more detailed (formal) appraisal or valuation is required which will take more than one hour then this must be agreed with the Client prior to any additional costs being incurred.

A31.6 Where the Client agrees that a more detailed appraisal should be made then Timesheets must be kept and the time recorded rounded to the nearest 15 minutes.

A31.7 For the majority of assignments the Contractors appraisal costs will be paid by the Client at a rate equivalent of one hours work for the Contractors Senior Personnel, unless the Client has previously agreed in writing to pay the Contractor for a more detailed appraisal.

**A32 Removal and Storage Charges**

A32.1 The Removal charges are an hourly rate and are for the cost of the Contractor’s personnel to remove goods from the Debtor’s premises to the Contractor’s premises. If the Contractor needs to attend the Debtor’s premises they will be paid for their time alone with no additional amounts based upon the size of debt or their mileage. As there will have been dialogue with the Debtor in the majority of cases, a time and date will have been arranged to pick the goods up. The Debtor should always be given the chance to deliver the goods themselves to save costs to the Client. Any third party should be paid direct by the Contractor and a copy of the invoice submitted with the paperwork on conclusion of the assignment. There is an expectation that on occasions the Contractor will need to hire the appropriate vehicle, dependent upon the circumstances. All vehicles used by the Contractor must be roadworthy, suitably tested and insured and operated in an environmentally friendly manner.

A32.2 The Client’s expectation is that it should be possible to advertise and sell within 14 days of removal in the majority of cases. If goods need to be stored at the Contractor’s premises then this should be up to a maximum of 14 days and at the agreed daily rate detailed as part of the Contractors tender submission. Charges will be based upon occupied space and not the value of the goods stored

**A33 Sale Costs**

A33.1 ‘If the sale is undertaken at the Contractor’s premises then no more than 15% of the sum realised shall be applied plus other disbursements that legislation allows.

A33.2 If the sale is undertaken at the Debtor’s premises then no more than 7.5% of the sum realised shall be applied plus other disbursements that legislation allows.

**A34 Conclusion of Assignment**

A34.1 On conclusion of each assignment the Contractor will, on a case by case basis, send their sales statement and any appropriate invoice

A34.2 On conclusion of the assignment the case papers should be returned by a tracked delivery service, or an equivalent medium, to the Client.

**A35 Debtor Complaints**

**A35.1 The Client defines a complaint as a written or verbal expression of dissatisfaction that is not resolved at initial contact.**

A35.2 The Contractor must interpret ‘Resolved at initial contact' as meaning that, the

matter can be sorted out quickly and informally with the Debtor, usually at the point of contact. Expressions of dissatisfaction which should be recorded as complaints will include those where:

1. the Debtor says they are making a complaint; and
2. there may be no mention of the word complaint but it is clear that the customer is unhappy with the way their affairs have been handled.

A35.3 The Client’s complaints guidance is provided in Schedule L and defines the procedures for dealing with a complaint. The Contractor must ensure that 100% of complaints are dealt with and documented in accordance with the procedure

### Schedule B Specific Responsibilities of the Parties

**B1 The Client shall be responsible for:**

B1.1 The Client remains responsible for the whole process of Taking Control of Goods until conclusion by sale even though the assignment has been handed to the Contractor.

B1.2 Making requests for any services using the processes outlined in Schedule A. Ensuring that they have funding to pay for the services prior to instructing the Contractor to proceed.

B1.3 Making payment to the Contractor following the completion of assignments within the timescales.

B1.4 Ensuring they have resources available to respond in a timely manner to any Issues raised as a consequence of contact from the Contractor.

**B2 The Contractor shall be responsible for:**

B2.1 The Contractor will act as Agent on the instruction of the Client.

B2.2 The Client reserves the right to intervene in the assignment or amend their instructions at any time in the process.

B2.3 The Contractor and any third parties employed by them to assist in removal or auction activity will need to demonstrate that they are capable of carrying out the Client’s instructions quickly, professionally and to a high standard.

B2.4 All personnel employed by the Contractor engaged on activity for the Client and who have access to relevant documentation must sign the declaration of confidentiality.

B2.5 The Contractor should ensure that any personnel employed by them who have not signed the declaration of confidentiality do not have access to sensitive and confidential material and documentation relating to the Client.

B2.6 Providing the service so as to meet the specification detailed in this contract and as per their response to the ITT;

B2.7 Ensuring that any cheques collected at sale are cleared by Contractor and funds sent to HMRC within ten days of cheque clearance;

B2.8 Ensuring that all payments collected from sale will be sent to HM Revenue & Customs within 10 working days;

B2.9 Ensuring that timesheets, statements and invoices for disbursements will be available for audit purposes whenever HMRC require them and that a copy will be enclosed with invoicing on conclusion of the case;

B2.10 Ensuring that at the conclusion of each assignment, sales statements and any invoice will be provided to the Enforcement Unit Support Office showing;

1. The costs charged to HMRC where the assignment did not go to sale due to the poor value of goods
2. Separate invoice for the primary actions fee

B2.11 Providing management information to the level agreed in Schedule D and

B2.12 Adhering to the Service Level Standards and KPI’s detailed in Schedule D.

### Schedule C Contract Management Plan and Management Information

**C1 General Contract Management**

C1.1 This Schedule is intended 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;

1. provide direction for the relationship between the Client and the Contractor;
2. provide for effective decision making;
3. provide for oversight and monitoring for the contract;
4. represent key stakeholders;
5. ensure transparency of decision; and
6. balance the commercial requirements of the Contractor with the Client’s need for control, regulation and delivery of Services.

C1.2 The parties must perform their contract management obligations in accordance with the following principles;

1. the Contractor must bear all costs 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;
2. any Dispute between the parties arising from an action or decision made during contract management activity must be resolved in accordance with the Dispute Resolution Procedure set out in Clause C8

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 part of their premises to representatives from the Client for the purpose of commercial assurance, risk assessment, security assurance, familiarisation on procedures etc.

C1.6 The Client reserves the right to attend meetings between the Contractor and any subcontractors it utilises to provide the service to ensure proper oversight, management, delivery and performance of the Services.

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 accessible 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 Contract, the Contractor must attend performance review meetings with the Client 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 on the following basis:

|  |  |
| --- | --- |
| Contract Review  | Annual  |

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 management information relating to the previous two quarters at least 5 working days before any meeting.

**Annual Review**

C3.3 An annual review meeting will be held, on a date to be agreed between the parties, each Contract Year throughout the Term of the contract or, in the absence of such agreement, within **XX(XX)** Working Days of the anniversary of the Operational Services Commencement Date. The annual review meeting will be attended by the Client’s Senior Responsible Owner or their representative and any appropriate Contract Management Team representatives from both parties or other such persons notified by the Client considered to be necessary for the review.

C3.4 In respect of the period under review, the Client will take into account any matters it considers necessary, including:

1. the Contractor’s performance in respect of the Service Levels and KPI’s as detailed at Schedule D (including any relevant Service Level trends analysis and whether the Service Levels reflect improvements in the Services over the Term and any efficiency gains made by the Contractor);
2. consideration of any Changes which may need to be made to the Services; and
3. a review of future requirements in relation to the Services.

C3.5 The Client will produce a report containing its findings from the annual review and discuss with the Contractor how any changes to the Contract and/or to the Services shall be addressed. Any Changes to be implemented in accordance with this clause C3.5 shall be implemented in accordance with the Clause C4 of this Schedule - Change Control Procedure.

**C4 Change Control Procedure**

C4.1 Either party may propose a Change in accordance with the Change Control Procedure as set out in this Schedule. 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.

C4.2 If either party wishes to propose a Change ("Change Proposer"), it must submit to the other party ("Change Recipient") a written request detailing the proposed Change ("Change Request") specifying, in as much detail as is reasonably practicable, the nature of the proposed Change. Within ten (10) Working Days of receipt or issue of a Change Request (as the case may be) the party responsible for implementing the Change ("Change Implementer") must submit to the other party a Change Proposal in accordance with paragraph ‎C4.3 below.

C4.3 If paragraph ‎C4.2 of this schedule applies, the Change Implementer must provide the other party with a written proposal in relation to the relevant Change ("Change Proposal") which must include the following information (except where such information is not relevant to the proposed Change):

1. details of the proposed Change and its impact on the Services or other variations to this Contract;
2. which of the Services and Service Levels will be affected and how;
3. the cost of developing the proposed Change;
4. an initial estimate of the cost of implementation and on-going operation of the relevant Change, including any proposed increase or decrease in the Charges;
5. details, if relevant, of the proposed Change's compliance with any applicable Laws;
6. a high level of implementation plan and timetable for the proposed Change;
7. an assessment of the possible risks of introducing the proposed Change;
8. a review of the likely impact of the proposed Change on the timetable for the operational processes in this Contract including the Implementation Plan; and
9. a review of the resources required to implement the proposed Change.

C4.4 Within ten (10) Working Days of receipt of the Change Proposal, the receiving party must notify the Change Implementer whether or not it agrees to the proposed Change. If the receiving party notifies the Change Implementer that it does not wish the proposed Change to be implemented, then no further action shall be taken unless either party wishes to challenge this decision through the dispute resolution procedure. If the receiving party notifies the Change Implementer that it accepts the proposed Change, then the parties shall agree a ‘Variation to Contract Form’ (set out in Appendix A to this schedule) as soon as reasonably practicable and must then implement the Change in accordance with the terms of the agreed Change Control Record.

C4.5 Until such time as both parties have agreed a proposed Change in accordance with this Change Control Procedure, both parties must, unless otherwise expressly agreed in writing, continue to perform their obligations under this Contract and any Order in accordance with its terms and will be under no obligation to perform any work in relation to a proposed Change except for complying with the obligations set out in this Change Control Procedure, including the production of a Change Proposal.

C4.6 Notwithstanding paragraph C5.‎12 of this schedule, any additional work undertaken by either party, its Sub-contractors or agents which has not been authorised in advance by a Change shall be undertaken entirely at the expense and liability of that party and the other party will have no obligation to make any payment in connection with such work.

C4.7 Without prejudice to the Contractor's obligations, if Change is required as a result of a change in applicable Laws or a Force Majeure Event, then the parties must comply with the procedures set out in this Change Procedure in so far as they are reasonably able in the circumstances. However, under no circumstances should a party seek to hold the other party to the Change Control Procedure, if to do so would result in either party failing to comply with the change in applicable Laws or the impact of the Force Majeure Event not being mitigated.

**Fast Track Changes**

C4.8 The parties acknowledge to ensure operational efficiency that there may be circumstances where it is desirable to expedite the processes set out above.

C4.9 If both parties agree in relation to a proposed Change that:

1. the Change does not involve any alteration to, or deviation from the contractual principles set out in the Agreement; and
2. the total number of Changes in relation to which this fast track procedure has been applied does not exceed four in any 12 month period (or such higher number as the Client may from time to time agree in writing); and
3. the value of the proposed Contract Change does not exceed £5,000 and the proposed Change is not significant (as determined by the Client acting reasonably),
4. then the parties must confirm to each other in writing that they will use the process set out in paragraphs C4.‎2‎, C4. 3, C4.‎4, C4.‎5, C4.‎6 and C4.‎7 above but with reduced timescales, such that any period of ten (10) Working Days is reduced to three (3) Working Days.

C4.10 The parameters set out in paragraph ‎C4.9(d) may be revised from time to time by agreement between the parties in writing.

**Emergency Changes**

C4.11 If the Client believes:

1. a Change is required to respond to an emergency whether by virtue of a change in Law or operational circumstances (in either case as the Client reasonably determines); and
2. that it would not be practicable to agree the content of a Change Record prior to the implementation of the Change,
3. the Client may require the Contractor to commence work immediately to implement the Change (without, therefore, a formal Change Request or Change Proposal) and the parties will subsequently agree the detail of the appropriate Change Record. In such a situation, the Contractor will use its best endeavours to comply with the Client's request as soon as possible.

**Business as Usual Changes**

C4.12 The parties agree that Business As Usual Changes shall not be subject to the Change Procedure. "Business As Usual Changes" for the purpose of this schedule means a Change which the parties agree is sufficiently small in the effort required to process it, such that it does not need to be processed in accordance with the Change Control Procedure (such a Change shall not exceed 5 man days of effort and cumulatively, such Changes shall not exceed 20 man days of effort in any Contract Year).

**Disputes**

C4.13 In the event of any dispute arising under this Change Control Procedure which cannot be resolved within ten (10) Working Days, either party will be entitled to refer the dispute for resolution in accordance with the Dispute Resolution provisions set out at clause C8 of this Schedule.

C4.14 The parties must meet as required and on request by either party to discuss the order in which agreed Changes are implemented and to monitor the implementation of such Changes.

**Charges for Changes**

C4.15 Each party will be responsible for any costs they incur as a result of making a change request or submitting a change proposal.

C4.16 Both parties must take all reasonable steps to avoid or minimise additional charges arising from the implementation of any Change, including where possible using resources already deployed in providing the Services at no additional cost. If additional resources or costs will be required then the parties must calculate the cost of the Change in accordance with Schedule J, Pricing Schedule.

**C5 Variation**

C5.1 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.

**C6 Extension**

C6.1 This Contract contains the option to extend for a further period of up to **xx** (**1234-**) years subject to the agreement of both parties. The Contract terms and conditions will apply throughout any such extended period

**C7 Dispute Resolution**

C7.1 In the event of a dispute regarding the contract and delivery of services that cannot be resolved informally or through the agreed governance procedures, the dispute may be referred to the Dispute Resolution Procedure in accordance with the following procedure (the “Dispute Resolution Procedure”):

1. The party originating the issue or dispute must draft a written summary of the issue or dispute, circulate the written summary and then begin discussions between the outlined at level 1 in the table set out at Clause C8.2.
2. If unresolved at level 1 after ten (10) Working Days, having regard to the urgency of the matter, the issue or dispute will be escalated the people holding the posts at level 2, and then to level 3 (in each case if unresolved for ten (10) Working Days, in the table set out at Clause C8.2.
3. If unresolved at level 3 after ten (10) Working Days, having regard to the urgency of the matter, the issue or dispute will be settled in accordance with the direction of the Client’s Chief Executive officer and the Contractor , whose decision shall be final.

**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 I4 Key Personnel will apply.

|  |  |  |  |
| --- | --- | --- | --- |
| **Role** | **Key Role** | **Responsibilities** | **Contact Name, Title & Contact Details** |
| **Client** | **Contractor** |
| Senior Responsible Owner | No | Overall responsibility for delivery of the contract. Escalation point for issuesLevel 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.Recipient of Notices as referred to in Clause A5 (Notices).  |  |  |

**C9 Specific Contract Management Requirements**

**List of Management Information required**

Note: The final scope of requirements may vary according to the category of spend, and will be agreed with the Contractor at the time of engagement and listed in the Schedule to the Contract

|  |
| --- |
| Line item Amount |
| Invoice Line Description |
| Invoice Line Number |
| Currency Code |
| Order date |
| VAT Inclusion Flag |
| VAT Rate |
| List Price |
| Number of Items |
| Unit of Purchase |
| Unit of Purchase Quantity |
| Price per Unit |
| Supplier Product / Service Code |
| Product Description |
| Product / Service Level 1 (Product or Service Name) |
| Product / Service Level 2 |
| Product / Service Level 3 |
| Product / Service Level 4 |
| Product / Service Level 5 |
| UNSPSC Code |
| Taxonomy Code |
| Taxonomy Name |
| Geographical |
| Project Code |
| Project Description |
| Project Start date |
| Project Delivery date (estimate and actual) |
| Total Project CostProject Stage |

**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”) |
| The Contract is varied as follows: |
| **Title of Change:** |  |
| **Originator:** |  |
| **Reason for the Change:** |  |
| **Description (giving full details, including any specifications):** |  |
| **Acceptance testing and criteria (if applicable):** |  |
| **The cost of the Change:** |  |
| **Timetable:** |  |
| **Impact on the Contract:** |  |
| **Agree to proceed (Yes/No):** |  |
|  |  |
| 1. Words and expressions in this Variation shall have the meanings given to them in the Contract.
 |
| 1. 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: |

(SD 23)

### Schedule D Service levels and KPIs

|  |  |
| --- | --- |
| **Service and Service level standard required** | **Contractors method for monitoring and controlling Service Level Standard** |
| % of assignments cleared within four weeks of receipt. |  |
| % of assignments that go to sale resulting in proceeds not covering all the costs plus an amount against the principal debt. |  |
| Provide ad hoc management Information in the requested format by the agreed date. |  |

### Schedule E Delegations

**E1 Background**

E1.1 The powers and functions of the Commissioners of HM Revenue and Customs are set out in the Commissioners for Revenue and Customs Act 2005 (‘CRCA’)  and under this legislation the Commissioners carry out a wide range of activities to collect debt owed to HMRC, including handling data.

E1.2 The legislation also says the Commissioners can delegate specified functions and this means the Commissioners are able to delegate their power of collection to third parties.

E1.3 "Specified Function" means the provision of any service in connection with the collection and management of revenue for which the Commissioners of HMRC are responsible.

E1.4 Only the Commissioners, and those to whom they have delegated their collection power, are able to collect HMRC debt.

E1.5 The Commissioners have the absolute discretion to make, not make, or revoke delegations, or to set out specific requirements in relation to the delegation of their functions.

E1.6 This means internal briefings are prepared for the Commissioners explaining why they are being asked to delegate functions, who will be carrying out their functions, what functions are to be delegated and what safeguards are proposed (including Monitoring and Assurance – see below).

E1.7 As the Commissioners have the absolute discretion in considering a requested delegation they may ask for additional information about what is being proposed.

E1.8 Gathering the information about proposed third parties, carrying out checks and preparing papers for the Commissioners mean the process of seeking a new delegation may take up to 3 months.

**E2 Delegated Authority**

E2.1 It is only the Commissioners who have power to delegate performance of their functions.

E2.2 The Commissioners for HMRC may delegate functions to a third party but those powers cannot be sub-delegated (for example by a contractor to a sub-contractor).

E2.3 This means that the Commissioners have to directly delegate functions, without regard to a supplier’s subcontracting arrangements (their supply chain).

E2.4 Requirements which apply to the Commissioners in the exercise of their functions and powers will continue to apply following delegation of a function or power: this means that,

1. a supplier/sub-contractor would be subject to the same strict duty of confidentiality that applies to HMRC staff under s18 CRCA, including the criminal sanctions under s19 CRCA for the unlawful disclosure of HMRC’s information,
2. a supplier/sub-contractor will be required to adhere to stringent standards and follow strict rules on data security.

E2.5 Where functions are delegated, the Commissioners are still able to exercise those functions themselves. This might occur, for example, where functions have been delegated to a supplier/sub-contractor to provide additional capacity to HMRC.

**E3 Who needs a Delegation?**

E3.1 Any part of the supply chain to which HMRC data is entrusted must hold a Delegation in order to work on behalf of HMRC.

E3.2 The main Delegation documents go down to supplier level and each sub-contractor to the supplier is identified in an Annex to the main Delegation document.

E3.3 Suppliers and sub-contractors are authorised to carry out only the specified functions as detailed in the Delegation document or its Annexes.

E3.4 Suppliers, or their sub-contractors, are not entitled to sub-delegate any specified function.

**E4 Key points**

E4.1 All parties to the contract acknowledge that the Commissioners remain accountable for the exercise of the Specified Functions under the CRCA, the delegation of which to the supplier/sub-contractor may be necessary for the supplier to comply with the provisions of the contract.

E4.2The supplier/sub-contractor shall only carry out a Specified Function where it has a delegation in place in respect of such Specified Function.

E4.3 The supplier shall procure that a sub-contractor will only perform a Specified Function where that sub-contractor has a delegation in place.

E4.4 The supplier acknowledges and agrees that the issue and content of a delegation shall be determined by HMRC at its sole discretion.

E4.5 Only the Commissioners of HMRC will be entitled to issue a Delegation and the supplier and its sub-contractors shall not be entitled to sub delegate any Specified Functions;

* 1. any such sub-delegation or attempt to do so by the supplier shall constitute a Supplier Termination Event in respect of which HMRC shall be entitled to terminate the contract,
	2. any such sub-delegation or attempt to do so by a sub-contractor shall entitle HMRC to require the supplier to terminate that sub-contract.

E4.6 Where a sub-contractor requires a delegation the supplier will notify HMRC in writing and provide the following information:

1. Name and address (and company registration number, if appropriate) of the sub-contractor;
2. Details of the sub-contractor's group structure, including company names and registered office for each entity;
3. Name and contact details of the sub-contractor's nominated representative;
4. Description of the activities comprising the Specified Function to be carried out pursuant to the Delegation and the sub-contractor’s position and role within the supplier’s supply chain;
5. The anticipated start date and duration of the Specified Function to be carried out pursuant to the Delegation;
6. Such other information as HMRC requests from time to time.

E4.7 Following issue of a Delegation the supplier (or the sub-contractor, if applicable) shall be entitled to carry out the Delegated Functions as set out in any associated Delegation Document.

E4.8 The supplier shall procure that its sub-contractors shall, in the exercise of any Delegated Functions, comply with any directions issued by the Commissioners from time to time.

E4.9 If a sub-contractor proposes to perform or is likely to perform any Specified Function, the supplier shall procure that such sub-contractors comply with the Delegation Process.

E4.10 The supplier shall procure that all sub-contractors comply with any Delegation Documents that have been issued to them.

E4.11 The supplier shall not permit any sub-contractor to perform a Specified Function unless the sub-contract with such sub-contractor includes appropriate provisions which require compliance with any applicable Delegation Documents.

E4.12 Any:

1. carrying out of a Specified Function by the supplier without a corresponding Delegation covering all of that Specified Function; or
2. failure by the supplier to comply with a Delegation,

             shall constitute a Supplier Termination Event and HMRC shall be entitled to terminate the contract,

and;

any such corresponding act or omission by a sub-contractor shall entitle HMRC to require the supplier to terminate that sub-contract.

E4.13 The supplier shall monitor its own activity and the activities of its sub-contractors to ensure compliance with the Delegation Process and each Delegation.

E4.14 The supplier shall make available to HMRC such reasonable and proportionate management information which is agreed from time to time including details of any remedial action taken to ensure ongoing compliance with the Delegation Process and each Delegation.

E4.15 HMRC shall be entitled to revoke any Delegation held by the supplier and its Delegate sub-contractors with immediate effect by notice to the supplier where the contract is terminated or expires.

E4.16 Following revocation of a Delegation HMRC shall liaise with the supplier in relation to any Delegations which are required in order to enable the supplier to provide any services which are agreed to be provided following termination or expiry.

E4.17 The supplier agrees that HMRC can revoke all or any Delegation with immediate effect at any time where the Commissioners consider it reasonable and proportionate to do so.

E4.18 The supplier shall promptly, and in any event within 2 Working Days, notify HMRC if a Delegate sub-contractor ceases to be a sub-contractor.

E4.19 The supplier shall promptly, and in any event within 5 Working Days, notify HMRC if an entitlement to terminate the sub-contract of any Delegate sub-contractor has arisen.

E4.20 The supplier shall ensure that each Delegate sub-contractor has in place appropriate and proportionate anti-bribery policies and procedures.

**E5 Monitoring and Assurance**

E5.1 Monitoring & Assurance (M&A) is tied directly to the Commissioners for Revenue & Customs Act (CRCA) 2005.

E5.2 CRCA 2005 states Commissioners can authorise third parties to undertake their functions for them – in this case, the function being debt collection – but if they do, the CRCA also says the Commissioners must monitor how that function is being executed.

E5.3 To ensure the Commissioners’ statutory duty to monitor delegated functions are carried out, suppliers are subject to a robust M&A process that includes discretionary assurance visits carried out by HMRC staff on behalf of the Commissioners.

E5.4 Each supplier receives a Monitoring & Assurance visit at least once per year.

E5.5 The M&A plan carries a wide ranging list of assurance checks to confirm the supplier is complying with HMRC policies related to the delivery of an Auctioneer Service.

E5.6 After each visit, the supplier is rated Green, Amber or Red and it’s this RAG Status that determines Assurance Frequency & Remedial Action.

E5.7 HMRC expects suppliers to monitor risks in their own supply chains; and the Monitoring & Assurance regime includes checking for evidence this actually occurs.

E5.8 If sufficient concerns are identified, HMRC reserves the right to visit sub-contractors.

### Schedule F Delivery Schedule

**F1 Approval of Delivery Schedule**

F1.1 At the outset of an assignment, the Contractor must start work with the Client and any/the other Client contractors to agree an appropriate Delivery Schedule including Delivery Milestones.

F1.2 The Contractor must not refuse to make any reasonable changes to the Delivery Schedule requested by the Client.

F1.3 After approval of the Delivery Schedule;

1. both parties must perform all respective obligations under the Delivery Schedule with a view to ensuring that the Contractor is in a position to provide the Services/Goods on and following the Service Commencement Date; and
2. such schedule must be maintained and updated as required (or as otherwise specified by the Client) by the Contractor and progress, or otherwise, towards successful delivery reported to the Client.

**F2 Delivery Milestones**

F2.1 The Contractor must perform its obligations so as to achieve each Milestone by the agreed Milestone Date.

F2.3 The dates by which the Implementation Milestones shall be performed are as specified in the Delivery Schedule and will be referred to as the Due Dates.

F2.4 Each Delivery Milestone must be performed by the Due Date.

F2.5 The Contractor must notify the Client immediately 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.

F2.6 In the event that not all of the Services/Goods are delivered by the relevant Milestone Dates specified in the Delivery Schedule then the Client shall be entitled to withhold payment of the Contract Charges for any Services/Goods that were not delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Services are delivered.

F2.7 Where missing the Milestone has resulted in the Client incurring additional operational or management costs, then the Client reserves the right to recover such costs from the Contractor.

F2.8 The provision of Progress Reports as referred to at A21.2 will be considered as a Delivery Milestone in relation to this agreement.

### Schedule G Exit Management

G1.1 The cessation of this Framework will not automatically result in the cessation of assignments initiated under the auspices of the Framework and responsibility for exit management will need to be agreed between the Client and the Contractor.

G1.2 There may be a requirement at the end of the Framework Agreement to continue providing the service where assignments are in progress. At the end of this period the Contractor will co-operate to ensure a smooth transfer back of assignments and associated paperwork at no additional cost.

G1.3 The Client expects that no obligations will be created in respect of the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006.

G1.4 Where the Contractor believes that TUPE obligations may exist if the services provided are subject to re-tender, then the Contractor must ensure that Section I7 TUPE in the terms and conditions are adhered to.

### Schedule H Security Plan

**H1. Background**

H1.1 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 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. 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.

H1.2 In providing a response to the questions The Contractor is required to:

1. Primarily provide responses in the ‘Security’ questionnaire provided within the e- sourcing event as part of a formal tender exercise; or
2. Alternatively enter its proposals in the text boxes provided within this template.

H1.4 The Contractor must agree the content of the Security Plan with the Client:

1. Primarily by ensuring that the plan is agreed during a formal tender process and included in the signed version of the formal contract; or
2. Alternatively signing this template at Section 12 to be held by the Client’s Contract Manager where the plan is agreed as a Contract variation.

**H2 Transfer of Client Data**

|  |
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|  |

H2.1 Please confirm that data transfers will use specific arrangements using a tracked delivery service.

**H3 Sub-Contractors**

H3.1 Please confirm your understanding and agreement that the transfer of any data to third parties is prohibited.

**H4 Data Records**

H4.1 Please provide details of any database you anticipate using in the delivery of this Contract. Please identify the precise data to be held, in what format/medium and the locations where this data will be processed.

|  |
| --- |
|  |

H4.2 Please provide details of any paper records and files you anticipate using in the delivery of this contract that will include personal information relating to an individual. Please identify the precise data to be held, in what paper format and the locations where this data will be stored, managed and processed. Please also set out the means of secure storage and retrieval.

|  |
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**H5 Contractor personnel**

H5.1 Please provide details of the measures you have in place to ensure your staff are vetted to the standard required by HMRC.

H5.2 How will you ensure that all your staff requiring access to the Client Data are aware of the confidential nature of the Client Data and comply with their legal and specific obligations under the Contract?

H5.3 Please provide details of the ongoing training you provide to staff in respect of data security, including the identification and reporting of security incidents.

**H6 Client Data Security and Data Protection**

H6.1 Please provide details of your organisation’s business continuity and disaster recovery plans in terms of the Client Data under this Contract.

H6.2 Please provide details of the overall security and access control of your systems (including use and control of back up systems) and how they meet Client requirements as per the Client’s Security Policy.

H6.3 Please provide details of the technical and organisational measures you have in place, or are proposing to implement in order to protect Client data from unauthorised or unlawful use or processing.

H6.4 Please describe how you will protect Client data against accidental loss, destruction, damage, alteration or disclosure

H6.5 Please describe how you will ensure that Client data is not stored, copied, disclosed, generated or used except as necessary for the performance of your obligations under the Contract or as otherwise expressly authorised in writing by the Client.

H6.6 Please confirm your data Protection Commissioner registration number and details of how you ensure that your organisation and personnel comply with the Data Protection Act 1988 in accordance with Clause D2 of the Contract.

H6.7 Please confirm that Client Data will not be processed or stored outside the United Kingdom without the express permission of the Client.

**H7 Confidentiality**

H7.1 The Client has identified that this Contract requires all personnel involved to sign confidentiality agreements in accordance with Clause D4.5. A template is provided at Appendix A and, in the event that your bid is successful, you must provide signed hard copies for all personnel involved in this Contract.

**H8 Other Security Requirements**

H8.1 Premises - Please provide details of the security measures in place for restricting access to premises owned or rented by you including alarm systems and security staff etc.

**H9 Incident handling**

H9.1 Please set out your proposed incident handling procedures in the event of data loss. Such loss to include theft, attempted theft, misuse or inappropriate accessing of data within your organisation. This must include any remedial action to mitigate the data loss, outline a documented reporting process and identify and provide contact details for a nominated member of your staff with responsibility for investigating the incident.

**H10 Disciplinary Procedures**

H10.1 Please describe your disciplinary procedures in the event of a security breach involving Client Data.

**H11 Exit Requirements**

H11.1 All Client Data must be returned or destroyed at the end of the project or when access to that data is no longer required, whichever is earliest. When equipment that holds or has held data is disposed of or destroyed, all data must be rendered unreadable and irretrievable. Please set out how you will meet these requirements.

**H12 Signed Undertaking**

This document is signed in acceptance that the signatory’s organisation, and any other organisations accessing Client Data on behalf of the Contractor, will comply with all requirements herein unless specifically agreed in advance with the Client.

Signed:

Print Name:

Position in Organisation:

Full address of Organisation:

### Schedule I NOT APPLICABLE

### Schedule J Pricing Schedules

**J1 Introduction**

J1.1 This Framework Agreement uses a standardised pricing structure which, subject to Schedule K Instructions for Assignment, allows the Client to order the services they require.

J1.2 The charging structure was established as part of a competitive procurement exercise where the Cost Effectiveness award criteria weighting was 50% and the prices contained in these charging schedules therefore contributed significantly to the award decision.

J1.3 The Contractor must ensure that the competitive charges offered submitted as part of the competitive procurement exercise, resulting in the award to the Framework Agreement, are sustainable for the agreement term.

J1.4 The Contractor must ensure it retains the capability to provide all aspects of the service and must have in place a complete charging structure for the Lots they are awarded to for the Framework Agreement, whereby a price is provided for every bid field throughout the term of the Framework Agreement.

J1.5 At the outset or during the Framework Agreement it will be permissible for the Supplier to sub-contract aspects of the service provision to ensure a complete charging structure is maintained, but this will be subject to agreement with the Authority.

**J2 General Information**

J2.1 It is intended that this Charging Structure format will allow the Client intending to make use of the Framework Agreement to more readily identify all of the costs associated with the service provision.

J2.2 No guarantees can be given to the actual use that will be made of the services available in the Framework Agreement.

J2.3 All Prices are EXCLUSIVE of VAT.

J2.4 The Contractor’s proposed charges established as part of the formal tender process are provided in this schedule of this Framework agreement.

**J3 Open Book**

J3.1In submitting your tender, and throughout the life of the contract, you will be expected to follow the principles of Open Book Accounting and contract management. This means that you will provide a level of transparency in your pricing schedules to enable both parties to be clear about your charges, costs and planned return. Open Book provides a basis for reviewing performance, monitoring the impact of change and agreeing efficiency improvements to the mutual benefit of the parties.

|  |  |  |
| --- | --- | --- |
| **Item** | **Description** | **£** |
| **Primary actions fee** | A sum will be paid to cover initial assessment of case and contact by telephone to Debtor to warn that in absence of immediate payment to HMRC they will be removing goods and selling. A letter (supplied by the client) should then be issued to the Debtor advising of date of removal allowing seven working days, after which if the debt remains unpaid removal and sale should proceed. This fee also includes the returning of papers by tracked delivery. | £In accord with bid pricing |
|  |
| **Contractor’s Senior Personnel (Appraisal/Appraisement Fee)** | This should be an hourly rate for the Contractor’s senior personnel to work the case, including all aspects such as telephone contact, appraisal and removal. The figure quoted should include all travel & subsistence costs. Brief timesheets will need to be kept to account for the time spent working the assignment; time should be rounded to the nearest 15 minutes. Appraisals should be carried out. Any costs incurred the Client is to be invoiced. Appraisals should be carried out from the inventory in the majority of cases and charged for the time spent.  | £ In accord with bid pricing |
|  |
| **Labour Charges** | This is for the cost of the Contractor’s personnel (a driver and a porter) to remove goods from the Debtors Premises to the Contractor’s premises. For the purposes of this tender the Client will require a cost for a half day (3 hours) and a full day (7 hours) and the figure provided should be the total cost, no further expenses in respect of this item will be accepted by the Client. (NB:for cost comparison purposes the cost given for ½ day will automatically be multiplied by 100 while the full day will be multiplied by 10 which represents the expected ratio of use but is not necessarily indicative of the expected number of occasions this service will be required during the course of the contract) | Half Day | £ In accord with bid pricing |
| Full Day | £ In accord with bid pricing |
|  |
| **Storage Charges** | This should be a daily rate based upon occupied space (or the size and vehicle type in the case of vehicles) and not the value of the goods stored. The maximum storage period will be 14 days, for the purposes of this tender please give a daily rate for the following items | 50 sq metres of storage spaceCar/small commercial vehicleLarge commercial vehicle | £ In accord with bid pricing£ In accord with bid pricing£ In accord with bid pricing |
|  |
| **Vehicle Charges****All pricing in accordance with bids made** | There is an expectation that on occasions the Contractor will require the use of a vehicle (either their own or if necessary hired). All vehicles used by the Contractor must be roadworthy, suitably tested and insured and operated in an environmentally friendly manner. The Contractor must use a vehicle appropriate to the varying load sizes. Please provide costs for a half day (3 hour) and full day (7 Hour) use of the following types of vehicle (Please indicate which of the vehicles are owned and which will be provided by a 3rd party supplier/sub contractor).For cost comparison purposes the costs given will be automatically multiplied as follows; Van (3 Tonne) x 50, Box Van x 35, Truck x 5, low Loader x 5 and low Loader with lifting gear x 5 these factors represent the expected ratio of use of the individual vehicles but do not necessarily indicate the expected number of occasions each vehicle might be required during the course of the contract | Van (approx 3 Tonne load) | Owned | Hired | Half day£ | Full day£ |
| Box Van (approx 7 Tonne load) |  |  | £ | £ |
| Truck (approx 18 Tonne load) |  |  | £ | £ |
| Low Loader |  |  | £ | £ |
| Low Loader with lifting gear |  |  | £ | £ |
|  |
|  |
| **Advertising Charges** | Copy of invoice to be available for audit. Any additional work on contacting prospective buyers to be charged by time spent. | By agreement. |

**Pricing Scenario 1 – Vehicle Removal**

Please outline your costs in the table below for the following vehicle removals from Halifax/Norwich/Oxford/Greenwich/Aberystwyth/Cookstown. Please provide a description of your costs as often as able.

1. 2010 Ford Focus, plus keys, current MOT and Tax. Approximate mileage 160,000
2. 2003 Mazda pick-up, plus keys. No mot or tax. Approximate mileage 150,000



**Pricing Scenario 2 – Restaurant Removal**

Please outline your costs in the table below for removal of the following items from a restaurant in Halifax/Norwich/Oxford/Greenwich/Aberystwyth/Cookstown. Please provide a description of your costs as often as able.



### Schedule K Instructions for Assignment

K1.1 When a Client wishes to 'Call Off' any services detailed in the Framework Agreement, its representative will forward the assignment documentation to the Contractor providing full details of the requirement.

K1.2 Such details may include, but not be exclusive to; the type of items involved; their location, the type of Auction Services required, the timescale for completion of the assignment.

K1.3 Provided that they fall within the general scope of the Framework, and subject to final agreement with the Contractor, the Client may request non-standard or special requirements, such as bespoke delivery timescales or payment terms. These will be referred to as ‘Special Terms’.

K1.4 Any assignment/call-off will be subject to the framework agreement Terms and Conditions.

K1.5 Any Special Terms agreed between an individual Client and the Contractor (and formalised by means of the Service Order) shall be specific to those parties named on the Service Order and only applicable to the services requested and/or for the time period set out in the Service Order. When agreed, Special Terms do not create a variation to the Framework Agreement’s standard terms

### Schedule L HMRC Complaints Process

**L1 Purpose of This Guide**

L1.1 The purpose of this document is to inform Contractors of their roles, responsibilities and hand-offs, when dealing with complaints related to HMRC’s Programme.

L1.2 Contractors should ensure their staff deal with complaints thoroughly, that responses cover the points raised to the customer’s satisfaction and that necessary follow up action is taken. It is important that all necessary steps are taken to resolve customer complaints effectively, avoid escalation wherever possible and thereby prevent unnecessary complaints to HMRC and MPs.

L1.3 The Auction Services process will be reviewed to ensure that standards in handling complaints align with standards applied by HMRC. The following is then to be used in conjunction with the Auctioneers own complaints procedures. The guide describes generic processes, to be used and includes:

1. Definition of a complaint;
2. Ownership and hand off processes; and
3. Management Information Requirements.

**L2 Generic Standards**

 L2.1 For the purposes of the contract suppliers will be expected to:

1. apply the spirit of the HMRC complaints handling process;
2. manage complaints within the same timescales as those expected of HMRC;
3. enable escalation of unresolved complaints;
4. provide customers with details of their complaints handling policy on receipt of a complaint. This should include details of the escalation route for unresolved complaints; and
5. provide a named contact for managing complaints.

**L3 HMRC definition of a Complaint**

**L3.1 HMRC defines a complaint as a written or verbal expression of dissatisfaction that is not resolved at initial contact.**

L3.2 ‘Resolved at initial contact' should be interpreted as meaning that thematter can be sorted out quickly and informally with the customer, usually at the point of contact. Expressions of dissatisfaction which should be recorded as complaints will include those where:

1. the Debtor says they are making a complaint;
2. there may be no mention of the word complaint but it is clear that the customer is unhappy with the way their affairs have been handled.

L3.3 Whether the complaint concerns an unreasonable delay, a mistake they feel could have been avoided, or how they have been dealt with, HMRC are keen to learn from errors and put things right as quickly as possible.

L3.4 Customers can make their complaint by letter, phone, fax or in person.

L3.5 They should summarise what they think has gone wrong and what they think should be done to put it right. HMRC will look at the Debtor’s concerns and contact them as soon as possible - normally within 15 days. HMRC will normally expect to resolve most complaints at this stage. If Debtors are unhappy with our response they can ask us to look at the complaint again. A senior officer who has not been involved will:

1. take a fresh look at it and how we have handled it and
2. give a final decision

L3.6 If the customer is still unhappy they can ask the Adjudicator to look into the complaint.

L3.7 The Adjudicator is a fair and unbiased referee, independent of HMRC.

L3.8 If the customer is still unhappy with HMRC's or the Adjudicator's handling of the complaint, they can ask any MP to refer their case to the Parliamentary Ombudsman.

L3.9 HMRC are keen to help if there are complaints and will deal with customers in a friendly and professional way. We will:

1. treat the complaint seriously and keep it confidential
2. not treat the customer differently from other people just because they’ve made a complaint
3. not discriminate against them for any reason

L3.10 **Service** is the way in which customers are dealt with, e.g. through courteous and timely communication.

L3.11 It is very important that suppliers understand that there is a difference between a complaint about **service** and an explanation or reconsideration of a decision.

L3.12 Occasionally there is a complaint about **service** within a request for an explanation or reconsideration. In these cases the former is dealt with by the complaint process and the latter is dealt with by the HMRC interface team.

L3.13 On other occasions where there is a complaint about a Contractor’s service and/or HMRC service, dependent upon where the complaint has been received ownership and hand off procedures must be considered.

L3.14 All Suppliers will aim to resolve any complaint within 15 working days from receipt of complaint. Responses will be in the most appropriate format, wherever possible in writing. If the complaint cannot be resolved within 15 days the customer will be informed of the reasons for delay and when they can expect a full response.

**L4 Timescales**

L4.1 The Contractor will be required to operate an escalation route for complaints received from Customers in 2 stages.

1. Stage 1 - first response issued within 15 working days of receipt of the complaint.
2. Stage 2 - second response issued within 15 working days of receipt if the customer is dissatisfied with the first response.

**L5 Stage 1 and 2**

L5.1 Responses to complaints for stage 1 and 2 will be issued within 15 working days.

L5.2 In exceptional circumstances a response may not be available within 15 working days. In these circumstances the customer must be informed of the reason why and the date they can expect a full response.

L6 MP Complaints

L6.1 All complaints received from MPs will be handled by the HMRC interface team. This will enable HMRC to ensure the contact is genuine and strict control is in place.

L6.2 Contractors will provide HMRC with a response within 24 hours if any aspect of the enquiry refers to Auctioneers action.

L7 Ministerial Correspondence Unit Queries

L7.1 On occasion HMRC receives enquires from the Ministerial Correspondence Unit, all of these enquiries are handled by a specialist team within HMRC Debt Management and Banking. Contractors need to be aware that these queries have a turnaround deadline of 3 days to supply relevant information. As a consequence, requests for information for this type of enquiry are considered as urgent and DCAs will be required to provide responses within 24hrs.

**L8 Roles and Responsibilities**

L8.1 When Contractors receive a complaint, if all or any part of the complaint refers to them they will be deemed the owner and will take full responsibility to provide a resolution. Therefore if a contractor receives a complaint about their **service** and also the HMRC **service**, they will control the complaint and contact the interface team at

L8.2 Likewise if HMRC receive a multiple complaint and part of that complaint refers to the Auctioneers **service**, HMRC will control the complaint and contact the Contractor for their response. The Auctioneers will be expected to provide their response within 48 hours.

L8.3 The only exception to the above is when the Contractor receives a MPs enquiry. All MPs enquiries will be managed by HMRC. Annex 4 illustrates the process. Contractors will provide HMRC with a response within 24 hours if any aspect of the enquiry refers to Auctioneers Services action.

L8.4 All documentation will be issued and received via e-mail.

**L9** **Management Information**

L9.1 Detailed below is the basic Auction Services MI requirement.

L9.2 All information will be transferred to HMRC in electronic format via e-mail.

**L10 Weekly Requirements**

L10.1 Cases where the Contractor has received a complaint should be split into complaints about process and complaints about the Contractors conduct and, state whether the complaint has been upheld.

1. Summary Report - Excel spreadsheet
2. date of receipt
3. item reference/case identifier
4. complaint type
5. action taken

**L11 Individual resolution reports for each complaint:**

L11.1Summary Report

1. Case identifier
2. Name
3. Outline of complaint
4. Action taken
5. Outcome

A nil return will be required weekly.

L11.2 A copy of all correspondence regarding the complaint will be required by HMRC.

**L12 File Retention**

L12.1 The Contractor’s Customer Service Manager will be responsible for maintaining all clerical complaint documentation. Complaints data must be retained for 6 years from the date of last correspondence.

**L13 Data Protection**

L13.1 Customers make complaints in writing and by telephone. When dealing with any customer it is important to be certain, before disclosing information or discussing details about a particular case that you are communicating with the customer or their appointed representative. Authority should be sought, where necessary, from the customer, before disclosure of any information.

**L14 Review Procedures**

L14.1 Complaints and the complaints procedure will be reviewed at the regular performance meetings; this will include a review of the most critical complaints and consideration given to whether escalation is required.