

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:

'Approval' means the written consent of the Client.

'Client' means Her Majesty's Revenue & Customs (HMRC).

'Client Data' means:

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

'Commencement Date' means the effective date shown within the Form of Agreement.

'Commercially Sensitive Information' means Information:

- (a) which is provided by the Contractor to the Client in confidence; and/or
- (b) that constitutes a trade secret.

'Confidential Information' means all Information:

- (a) however it is conveyed or on whatever media it is stored;
- (b) 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
- (c) 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);
- (d) 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;
- (e) and which Information is not:
 - (i) in the public domain at the time of disclosure (otherwise than by breach of Clause E4 (Confidential Information)); or

- (ii) received from a third Party (who has lawfully acquired it) without restriction as to its disclosure; or
- (iii) independently developed without access to the Confidential Information

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

'Contracting Authority' means any Contracting Authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

'Contractor' means the person, firm or company with whom the Client enters into the Contract.

'Contract Period' means the period from the Commencement Date to:

- (a) the date of expiry set out in Clause A2 (Initial Contract Period); or
- (b) following an extension pursuant to Clause F7 (Extension of Initial Contract Period), the date of expiry of the extended period;

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

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

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

'Default' means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of the relevant Party or the 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.

'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.

'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.

'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.

'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,

- (a) 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
- (b) 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, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable 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 of which the Contractor is bound to comply.

'Month' means calendar month.

'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.

'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).

'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 Transfer' shall have the meaning set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE')

'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.

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

'Services' means the Services to be supplied as specified in the Specification.

'Specification' means the description of the Services to be supplied under the Contract.

'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.

'Staff Vetting Procedure' means the Client's procedures for the vetting of personnel and as advised to the Contractor by the Client.

'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.

'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:

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

A2 Initial Contract Period

A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on [..... 20--], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause E6 (Extension of Initial Contract Period).

A3 Contractor's Status

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

A4 Client's Obligations

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

A5 Notices

A5.1 Any notice or other communication which is to be given by either Party to the other shall be issued by the E-Sourcing Messaging Facility. Where, for legal or other reasons, this is not possible, notice shall be given by letter, (sent by hand or post, registered post or recorded delivery), or transmitted by facsimile or e-mail, confirmed in either case by written letter. Such notice or communication shall be deemed to have been given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

A6 Mistakes in Information

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 neither the Contractor nor any Staff is placed in a position 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 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.

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:

- (a) any member of the Staff; or
- (b) 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's 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

- A10.1 Any land or Premises made available from time to time to the Contractor by the Client in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- A10.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.
- A10.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.
- A10.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed Equipment or fittings therein.
- A10.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Client retains the right at any time to use any Premises owned or occupied by it in any manner it sees fit.

A11 Staff Vetting and Government Baseline Security Standard

- A11.1 The Contractor shall comply with the Client's Staff Vetting Procedures 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 on a basis that is equivalent to and no less strict than the Client's Staff Vetting Procedures.
- A11.2 As far as it is required to do so, the Contractor shall comply with the Client's Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Goods. The Contractor confirms that, where the Client has required, all persons employed or engaged by the Contractor have been vetted and recruited on a basis that is equivalent to and no less strict than the Client's Staff Vetting Procedures.
- A11.3 The Client may require the Contractor to ensure that any person employed in the provision of the Goods or Services has undertaken a Criminal Records Bureau check as per the Client's Staff Vetting Procedures. 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 Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Goods or Services.
- A11.4 The Contractor hereby warrants and represents that the checks specified in HMG Baseline Personnel Security Standard (the Baseline Standard) 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.
- A11.5 The Contractor shall maintain full and accurate records of Baseline Standard checks such that the Client (or its authorised agents) may verify that the Contractor has carried out such checks in accordance with the Baseline Standard.
- A11.6 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 Baseline Standard 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 Baseline Standard.

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 Client's Premises. The Client shall afford to the authorised personnel of the Contractor at all reasonable times and with prior agreement such access to the Client's Premises as may be necessary for the performance of the Contract provided always that the Client shall have the right to refuse admittance to or order the removal from the Premises any person employed by or acting on behalf of the Contractor or any sub-contractor who in the opinion of the Client (which shall be final) is not a fit and proper person to be on the Client's Premises. Action taken under this Condition shall be confirmed in writing to the Contractor by the Client and shall not relieve the Contractor of its obligations under the

Contract. At all times personnel of the Contractor shall obey the Client's directions relating to safety.

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 five 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 two Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.