

Wales Audit Office

***Invitation to tender for Financial Audit and Related
Services***

REFERENCE NUMBER JUN037665

OJEU Notice 201090-2014

TABLE OF DEFINITIONS:

“Unless the context otherwise requires, the following words and expressions used within this Invitation to Tender shall have the following meanings:”

TERM	MEANING
“Authority”	Means the Wales Audit Office
“Invitation to Tender” or “ITT”	Means this Invitation to Tender documentation and all related documents published by the Authority and made available to Tenderers.
“OJEU Contract Notice” or “OJEU”	Means the advertisement 201090-2014 issued in the Official Journal of the European Union
“Contract”	Means the draft Terms and Conditions of contract contained in section 10 of this ITT
“Conditions of Tender”	Means the terms and conditions set out in this ITT relating to the submission of a Tender
“EIR”	Mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations
“FoIA”	Means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
“Provider(s)”	Means the organisation(s) awarded a contract following this procurement process
“Tender”, “Response”, “Tender Response”, “Tendered Response” or “ITT Response”	Means the Tenderers’ formal offer in response to this ITT
“Tenderers”	Means the organisations or persons responding to this document
Audit Terms	Meaning
“Code of Audit Practice” or “Code”	The Code of Audit Practice and Statement of Practice issued by the Auditor General that prescribes how the Auditor General for Wales and the auditors he/she appoints will carry out their audit functions.
“AG Guidance”	The supplementary guidance on the application of the Code, including arrangements for how compliance with the Code will be assessed, as necessary. Such guidance will be updated should it be necessary in light of subsequent legislation.
“Audit Services”	Audit services pursuant to the Public Audit (Wales) Act 2004, the Government of Wales Acts, the Local Government Wales Measure 2009 (in accordance with the Code), and other related services
“Primary Services”	The services that must be provided by Provider(s) in relation to each audited body at which the Provider is allocated work.
“Other Services”	The services, other than Primary Services, that Providers may be requested to provide to assist the Auditor General in the discharge of his functions and/or the Wales Audit Office in relation to efficient and effective operations
“Audited Body”	An organisation that is audited by the Auditor General for Wales.
“Certification Instructions”	Instructions to auditors on the certification of grants and returns issued by the Auditor General from time to time, pursuant to arrangements made under para 20 of Sch 8 to the Government of Wales Act 2006.

“Grant Certification” or “Grant Certification Services”	Work in relation to the certification of claims and returns in respect of grants or subsidies made or paid by any public body to an audited body
“Engagement Lead”	A partner or director of a Provider organisation who is responsible for the delivery of the Core Services.
“PQQ Submission”	The response submitted by a Tenderer in response to the Contract Notice.

Table of Abbreviations

ABBREVIATION	MEANS
ITT	Invitation to Tender
KPI	Key Performance Indicator
AGW	Auditor General for Wales
WAO	Wales Audit Office
OJEU	Official Journal of the European Union
PQQ	Pre-qualification Questionnaire
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
VAT	Value Added Tax

Table of Contents

Section 1: Overview of the Authority and background information	7
1 Introduction	7
2 Background Information	8
3 The Auditor General's work	8
4 Approach to work	9
5 Procurement objectives and process	9
6 Overview of the Lots	10
7 Work allocation	11
8 Fees	12
9 The Services	14
Section 2: Instructions to Tenderers and Tender Process	20
10 Instructions to Tenderers	20
11 Canvassing	21
12 Confidentiality	21
13 Freedom of Information	22
14 Transfer of Undertakings (Protection of Employment) Regulations 2006	22
15 Timescales	23
16 Authority's contact details	23
17 Preparation of Tender	24
18 Submission of Tenders	24
19 Disclaimers	25
20 Collusive Behaviour	25
21 Acceptance of Tenders	26
22 Queries related to Tender	26
23 Amendments to Tender documents	26

24 Proposed amendments to the contract by the Tenderer	27
25 Right to reject/disqualify	27
26 Right to Cancel, clarify or vary the process	28
27 Customer References	28
28 Publicity activity	28
29 Independence and conflicts of interest	28
30 Tender process	29
31 Provision of further information by Tenderers	29
32 Evaluation Criteria of Tenders for Contract Award	29
33 Evaluation process	30
34 Contract award	31
35 Notification of award	32
36 Debriefing	32
Section 3: Specification of Requirements	33
37 Specification overview	33
38 Audit Services	33
39 Scope of work	34
40 Skills and experience	35
41 Quality control	36
42 Professional and technical support	36
43 Communication	36
44 Auditor General correspondence	37
45 Consistency of approach	37
46 Welsh Language Scheme requirements	38
47 General Equality Duty	38
48 Business continuity	38

49 Data protection	39
Section 4: Tender response questionnaire	40
50 Form of Tender	40
51 Confirmation of PQQ response	40
52 Response to Specification	41
53 Skills, knowledge, and experience	41
54 Understanding the roles and responsibilities of the Auditor General and audited bodies	43
55 Quality assurance and control in delivery of financial audit and related services	44
56 Working relationships and communication	46
Section 5: Cost Schedule	47
Section 6: Documents and information to be submitted	52
Section 7: Proposed amendments to the Contract	53
Section 8: Auditor General Guidance and leaflets	54
Section 9: Marking scheme and guidance to reviewers	55
Section 10: Terms and Conditions	61

Section 1 – Introduction

1. Introduction

- 1.1. In this Invitation to Tender (ITT), the Wales Audit Office (WAO), as the ‘Authority’ named in OJEU Notice 201090-2014, (Notice ID **JUN037665**) is looking for Providers to be appointed for contracts for the supply of audit and related services to support the Auditor General for Wales (AGW). The Wales Audit Office estimates that the total annual audit fees attributed will be about 1.6 million for the provision of such services under these contracts which form one part of its supply arrangements.¹
- 1.2. The Authority wishes to establish between three and five contracts for supply of financial audit and related services over three years, with an option to extend on an annual basis for up to two additional years. The Authority is managing this procurement process in accordance with the Public Contracts Regulations 2006 (the “Regulations”) using the Restricted Procedure.
- 1.3. This ITT is being made available by the Authority to only to those Tenderers who have pre-qualified at the first stage of this procurement and that have been selected to participate further in this procurement for the supply of audit and related services (the ‘Services’). This ITT is made available to Tenderers on condition that it is used in connection with the formulation of their Tender Response and for no other purposes.
- 1.4. Following evaluation of the compliant Tenders and approval of the outcome, the Authority intends to appoint between three and five Providers to enter into contracts. The Providers submitting the most economically advantageous offers in accordance with the criteria set out in paragraph 32 will be awarded a contract.
- 1.5. The ITT is split into three Lots covering the whole of Wales.
 - Lot 1 – single Provider, predominantly covering North and West Wales, estimated annual WAO fees value of £670,000 GBP.
 - Lot 2 – single Provider, predominantly covering South and Mid Wales, estimated annual WAO fees value of £850,000 GBP.
 - Lot 3 – two to three Providers, covering the whole of Wales, estimated annual WAO fees value of £190,000 GBP in total. Contracts will be split evenly (as much as possible) between the Providers taking account of both number of audits and their fees.
- 1.6. Lots 1 and 2 include a mix of audits for a number of public sector organisations as determined by the AGW (which may include a mix of Unitary Authorities, Local Government Pension Funds, and NHS bodies) to include financial audit and grants certification and with scope of such work to be anywhere in Wales at the Authority’s and AGW’s discretion.
- 1.7. Lot 3 includes a mix of community and town council audits across Wales.
- 1.8. All Lots also include an element of work across a range of other related services as required. The Lots also include a maximum of other work of up to £80,000 per annum per Provider in Lots 1 and 2, and £40,000 per annum per Provider for Lot 3. If a Provider is appointed for more than one Lot then the maximum for that Provider will remain at £80,000.

¹ Auditor General for Wales Consultation: Contracting Strategy and the audit of Town and Community Councils.

- 1.9.** Prospective Providers may tender for the Lot(s) requested within their PQQ response in this ITT. The award and allocation will be based on the most economically advantageous Tenders with respect to the award criteria for each Lot. It is the Authority's policy that Lots 1 and 2 will be awarded to different Tenderers unless the appointment of a single Tenderer would produce a significantly more economically advantageous outcome when considered across both Lots. Please see paragraph 32 for details on the process that the Authority will follow in awarding each Lot. A prospective Provider awarded a contract under Lot 1 and/or Lot 2 may be eligible to provide services under Lot 3 as well. A prospective Provider under Lot 3 may only be awarded one contract under the Lot.
- 1.10.** The Authority reserves the right to purchase any services (including those similar to the services covered by this procurement) from any provider outside this contract. As explained earlier (in paragraph 1.1) these contracts are part of a wider supply strategy.

2. Background information

- 2.1.** Background information on the Authority was included within the Pre-Qualification Questionnaire (PQQ) at the first stage of this procurement and is not repeated here. The following supporting documents are available on the WAO website and which Tenderers may also find useful:
- The Auditor General's [Contracting Strategy](#)
 - The Auditor General for Wales [Code of Audit Practice and Statement of Practice 2014](#)
 - Wales Audit Office [Corporate Strategy 2013-2016](#)
 - Auditor General for Wales [Annual Report and Accounts 2013-14](#)
 - Wales Audit Office: [Welsh Language Scheme](#)
 - Other information is available on the [About Us](#) and [Consultation](#) pages

3. The Auditor General's work

- 3.1.** The Auditor General for Wales (AGW) is the statutory external auditor of the Welsh Government, its sponsored and related public bodies, the National Health Service and (subject to some transitional provisions) local government bodies in Wales. Statutory functions include:
- auditing the accounts of the Welsh Government and its sponsored and related bodies, NHS bodies and local government bodies in Wales (including police bodies, national parks, fire authorities and local government pension funds);
 - making arrangements for certifying grant claims and other returns, such as that for local authorities' contributions for national non-domestic rates;
 - conducting value for money studies on Welsh public bodies, including those in the National Health Service, local government, and the further and higher education sectors; and
 - assessment of the compliance of relevant local government bodies with the improvement duties of the Local Government (Wales) Measure 2009.
- 3.2.** "Performance audit" is the term we use to describe value for money studies, Local Government (Wales) Measure 2009 work and local work in respect of arrangements for securing value for money. It ranges from examinations of particular issues, such as governance failures at individual bodies, to cross-sectorial national studies, such as local

government measure work. Governance work cuts across performance and financial audit.

- 3.3. The statutory audit reporting requirements vary by sector. A summary of the relevant legislation is available on the Wales Audit Office website: [*A guide to the legislation relevant to the work of the Auditor General for Wales and the Wales Audit Office.*](#)

4. Approach to work

- 4.1. The AGW has prepared a [*Code of Audit Practice*](#) and Statement of Practice (the 'Code') which prescribes the way in which auditors are to carry out their functions, and embodies what appears to the Auditor General to be best professional practice. (An earlier code remains extant in respect of appointed auditors under transitional provisions.)
- 4.2. Providers will be required to agree to and follow the Auditor General's Code and related guidance, and will be required to co-operate with his systems for quality monitoring and controls, including contract management and reporting. The successful Tenderers will undertake the financial audit work at the bodies assigned to them subject to the oversight arrangements put in place by the Auditor General, which includes oversight by senior staff of the Wales Audit Office.
- 4.3. The reporting requirements of the Auditor General vary by sector. Further details are set out in the Code and [*A guide to the legislation relevant to the work of the Auditor General for Wales and the Wales Audit Office.*](#)
- 4.4. However, it is worth noting that the Auditor General is responsible for certifying the accounts of all bodies, and, in the case of Welsh Government (including sponsored bodies) and NHS bodies, the certified accounts are laid before the National Assembly for Wales. The Assembly's Public Accounts Committee may then take evidence from the organisations concerned and report on its findings.
- 4.5. As noted above, in addition to the financial audit work, the AGW also undertakes work on governance arrangements. Audit teams responsible for auditing the accounts of individual bodies may be required to contribute to wider governance and performance audit work undertaken by Wales Audit Office staff or engagement teams.
- 4.6. In addition to the planned programme of audit work, flexible and responsive arrangements are needed to respond to in-year work demands. These include specific reviews of issues arising, including dealing with correspondence from members of the public, National Assembly Members or whistle-blowers that raises such issues in relation to a body that they are assigned to audit. The nature and volume of these work demands cannot be predicted, and they often require resourcing at short-notice.

5. Procurement objectives and process

- 5.1. The primary objective of this procurement is to establish and implement contracts with three to five Providers for the provision of audit and related services, and in order to assist the Authority and the Auditor General for Wales to exercise our functions and meet our strategic objectives.

- 5.2. Prospective Suppliers that have met minimum requirements and scored 75 per cent or higher against the PQQ evaluation criteria have been invited to tender. If there are any material changes since the PQQ submission, these should be notified to the Authority as soon as practicable and no later than with the Tender submission.
- 5.3. The *Evaluation Criteria* in Section 2 sets out further information on the selection process, additional detail and weightings on criteria for selection. The Authority is reliant on the information provided by the Tenderers within their PQQ and ITT responses. The Authority may discount a supplier for changes that result in a supplier no longer being eligible to participate in the procurement or which result in reasons for mandatory or discretionary rejection.

6. Overview of the Lots

- 6.1. Lots 1 and 2 are split by geographical areas with work predominantly within regional areas and covering a mix of audits across a range of sectors and audited bodies (ABs). Work may be in any part of Wales, and Provider(s) within Lot 1 and 2 will provide backup for the other Lot as set out further in paragraph 7.
- 6.2. Lot 3 covers town and community council audits across Wales. Providers under this Lot will provide backup for other Provider(s) under Lot 3 and, in exceptional circumstances, secondary backup where appropriate for Lots 1 and 2 as stated in paragraph 7.5. All Lots also cover other services on an as required basis.
- 6.3. The Lots comprise the following services; paragraph 9 sets out the full overview of services by Lot and other services.

Lots 1 and 2 – Primary Services

- Audit of financial statements
- Grant certification
- Questions and objections raised
- Contribution into governance and performance element of Local Government or NHS bodies

Lot 3 – Primary services

- Town and community councils audit
- Grant certification

Other Services - As required

- Consultancy services, technical advice and audit support
- Provision of temporary workers to support WAO audit teams

Estimated audit fees and allocated audits per annum

*Lots	**Estimated no. of audited bodies	***Estimated WAO fees per annum per Provider (exclusive of VAT)	****Other services (as required basis) per Provider (exclusive of VAT)
Lot 1	2	£670,000	£0 - £80,000
Lot 2	3	£850,000	£0 - £80,000
Lot 3	739	£190,000	£0 - £40,000

*Lot 1 covers predominantly North and West Wales; Lot 2 covers predominantly South and Mid Wales. Lot 3 covers the whole of Wales and includes two to three Providers with work split between Providers.

** Some audits include pension and associated grants work.

*** Fees are estimated based on current fee scales (rounded to the nearest £10k) which are subject to change each year. Fees in Lot 3 will be broken down between 2-3 Providers awarded contracts.

**** Other Services are on an as required basis and cannot be estimated to any level of accuracy at this time as work is often based on external factors.

7. Work allocation

- 7.1. The primary services within each Lot will be allocated for the first three years initially at the start of the contract for the audit of the 2015-16 financial year. Financial audit planning work would normally commence in the autumn of 2015 with the associated governance and performance work in relation to those bodies taking place at various points during the year. Any correspondence, questions or objections in relation to individual audited bodies will normally be undertaken by the audit team for that audit.
- 7.2. The successful Providers will provide financial audit and related services covering the audit of the 2015-16, 2016-17, and 2017-18 accounts, with the option of extending annually to cover the 2018-19 and 2019-20 accounts.
- 7.3. Other services will be awarded on an as required basis between the three Lots. The Authority cannot define the quantum of work or specification for such work at this time. Where a service relates to a particular Lot (e.g. geographically or in terms of audit allocation), a specification of work will be provided, number of days/skill mix required will be agreed as defined in the ITT cost rates schedule, and it will be awarded to the Lot Provider if they are able to undertake the work. If they are unable to undertake the work or the work is not agreed, all other Lot Providers will be approached where appropriate. If work spans more than one Lot or is unrelated to a Lot, then a competitive quote will be requested from all Lot Providers.
- 7.4. The Authority, using its discretion, may alter or reduce the contract mix and work within Lots as result of changes in its operating environment due to circumstances outside the Authority's control and other factors, which may include the following:
 - Changes to the quantum of work or boundary changes –
 - Mergers, voluntary or otherwise, between audited bodies thereby reducing or increasing the quantity of audit work required
 - Partnership work across boundaries that may blur or alter the lines of responsibility in relation to public audit.
 - Welfare reforms connected to Housing Benefit Subsidy, loss of grant funding or audit requirements changing resulting in fewer audits needing to be undertaken.

- The Welsh Government’s review of audit, inspection and regulation may result in changes to audit practices.
 - Where a Provider has declared a conflict of interest and so, for ethical or independence reasons cannot complete work related to a particular audited body.
 - Other reasons, such as justifiable client dissatisfaction for performance and quality reasons.
- 7.5.** It is the Authority’s intention to address the factors identified in paragraph 7.4 as below, and it is therefore important that all Providers are able to cover the whole of Wales.
- For factors which do not result in changes to the quantum of work required or audit practices, the Authority would seek to allocate work to another Provider awarded a contract. The other Provider will be provided the opportunity to accept or decline the additional work.
 - In the case of Lots 1 and 2, this would usually be between the two Lots. In exceptional circumstances, as secondary backup by a Provider in Lot 3.
 - In the case of Lot 3, to the Provider with the next most advantageous offer for that category of work or by competitive quote where appropriate.
 - In the case where there are valid reasons not to award the work to another Provider, such as when it is more economically advantageous for WAO to undertake the work, or where other Provider(s) have independence issues or lack of capacity, then the Authority would retain the work or purchase services from a provider outside the contract.
 - Where there is a change to quantum of work (either increase or decrease), the Authority reserves the right to retain or ‘claw back’ the work but may also consider alterations to audit mix.
 - In all cases where there are changes proposed, the Authority will endeavour to consult with the Provider(s) in advance to ensure that adequate notice of three months or longer is provided wherever possible. An exception to this is short-notice requests for work.

8. Fees

- 8.1.** The Wales Audit Office has prepared and published a fee scheme which sets out the basis on which the Wales Audit Office charges fees. The fee scheme has been prepared under section 24 of the Public Audit (Wales) Act 2013 and has been published following approval by the National Assembly.
- 8.2.** The fee scheme sets out:
- the enactments under which the Wales Audit Office charges fees; and
 - the arrangements for setting those fees.
- 8.3.** The arrangements for setting fees comprise either:
- fee scales that set out fee ranges for particular areas of audit work; or
 - fee rates for work not covered by fee scales.
- 8.4.** For work for which fees are charged, resource requirements are converted into fees directly based on, and not exceeding, the full costs of carrying out that work. Those costs will include the direct costs of staff plus an appropriate proportion of overheads.

- 8.5.** Auditors will use their professional judgment, informed by the Auditor General's Code of Audit Practice and Statement of Practice, relevant accounting and auditing standards, and other guidance issued by the Auditor General to determine the amount of work that is necessary at a particular audited body to meet the Auditor General's statutory responsibilities. Providers will be required to discuss the fees and billing arrangements with the Authority.
- 8.6.** The amount of work that is necessary is likely to depend on each body's circumstances. The total fee must be sufficient to fund the work required taking into account considerations such as the governance environment, risk, financial and performance management arrangements, size, complexity and the body's track record on improvement. If unplanned or additional work is required as a result of failures by audited bodies to provide what auditors need for them to do their work efficiently, additional fees will be charged commensurate with the additional work involved.
- 8.7.** Fee scales provide a framework within which auditors can discuss fees with audited bodies, and enable the Wales Audit Office to identify and challenge proposed fees that appear to be either too high or too low to enable auditors to properly discharge the Auditor General's responsibilities.
- 8.8.** The Wales Audit Office is required to prescribe fee scales for:
- work relating to the audit of local government bodies;
 - work carried out under the Local Government (Wales) Measure 2009; and
 - data matching work.
- 8.9.** Providers must undertake audits within these scales, other than in exceptional circumstances, and the fee for each body will be agreed between the Provider and AGW each year. The fees set are inclusive of travel and subsistence costs and are therefore not differentiated according to the audited bodies' location in Wales.
- 8.10.** Providers will be entitled to charge for their services on the basis of the percentage reductions (on the fee scales) that they provide in their tender (in the case of fee scale work) or, in the case of work that falls outside the fee scales (i.e. other work), in accordance with the hourly/daily rates provided in their tender. Fee scales are explained further in Section 5.
- 8.11.** The WAO will, under its billing arrangements, charge fees and invoice clients for Lots 1 and 2. Providers will invoice WAO for services under Lots 1 and 2. It is WAO's current expectation that WAO will also undertake the billing arrangements for Lot 3. However, Tenderers are invited to submit a price for undertaking the billing arrangements as agents of the WAO for Lot 3 only. The price for undertaking billing will not be included with the appraisal of Tender Responses. Key documents for reference in respect of fees are:
- [Auditor General for Wales' Code of Audit Practice and Statement of Practice](#)
 - [Wales Audit Office consultation document 'Local government audit and inspection fee scales 2015-16'](#). (This document is also provided in PDF format in Section 5)

9. The Services

9.1. The services to be provided are defined as either primary services or other services.

Primary Services

9.2. Primary services include:

Lots 1 and 2

- Audit of financial statements – for a number of public sector organisations as determined by the AGW in accordance with International Standards for Auditing (ISAs), legal and regulatory requirements and guidance issued by the AGW including the Code of Audit Practice. On completion of the audit, providers will give the AGW an appropriate audit opinion on the financial statements.
- Certifying claims and returns for grants and subsidies paid to audited bodies by the Welsh Government or other public bodies in accordance with guidance issued by the AGW.
- Questions and objections raised in respect of Local Government bodies, raised in accordance with electors' rights under the Public Audit (Wales) Act 2004 in accordance with AGW oversight arrangements.
- Dealing with matters concerning audited bodies and their audit raised in correspondence.
- Other audit services required by statute and in accordance with the Code.
- Governance and performance element of Local Government or NHS bodies – supporting and contributing to the governance and performance work undertaken at each individual body in association with the WAO performance audit team for that body. This work includes work under the Local Government (Wales) Measure 2009 and work in respect of satisfaction as to arrangements for securing value for money. It is estimated that this aspect would be in the region of 5 to 20 days work at the local government bodies and 5-10 at NHS bodies that the Provider has been allocated for financial audit. The number of days will be determined and agreed upfront annually based on the work required.

Lot 3

- Town and community councils – undertaking audits of town and community councils and other small bodies as applicable. Work includes a financial audit of accounts and considering the adequacy of the internal systems of control established for local councils across Wales in accordance with guidance issued by the AGW.
- Certifying (on behalf of the AGW) claims and returns for grants paid to town and community councils by the Welsh Government or other public bodies in accordance with guidance issued by the AGW.

9.3. The Auditor General may require a Provider to provide any Primary Services at any of the bodies of which the Auditor General is the auditor. The composition of the organisations allocated and work may change as result of e.g. new bodies being created, abolished or merging or for other reasons as set out in paragraph 7, Work Allocation.

Other Services

- 9.4.** Other Services are services other than the primary services that Providers may be asked to provide that will assist the Auditor General and the Wales Audit Office in the exercise of their functions. Other Services are requested on an as required basis and can be further defined as:
- Consultancy to WAO, technical advice and audit support; or
 - provision of temporary workers to support WAO audit teams.
- 9.5.** Consultancy services, technical advice and auditor support - Providers will work in partnership with staff of the Wales Audit Office, using professional expertise and knowledge and other related activities to provide consultancy services, technical advice and auditor support to Wales Audit Office. The categories and breakdown of these services that may be required are detailed within Table 4.
- 9.6.** Provision of temporary workers – The Auditor General has a need for audit support at times of peak workload. The timetable for the completion of the NHS and central and local government accounts means that there is an increase in demand at certain times. At present this is during May to September. However, demand may change as work programmes and the requirements alter.
- 9.7.** Temporary assignments provide a key way for the WAO to meet additional, short-notice demands or to manage workload peaks. In addition to undertaking audit work at specific audited bodies, Providers should have the ability to provide suitable staff to undertake work to support other WAO audit teams. The Authority uses multiple sources for its supply of temporary workers. Specific requirements may include:
- Provision of audit staff to support auditors who are members of staff of the WAO and other WAO officers; and/or
 - Supplementing in-house resources with additional staff to carry out specific functions. These may include specific non-financial specialist areas, or areas of a technical nature. For example, these may include (but are not limited to) provision of specialists with housing, environmental, sustainable development, leisure and support services experience, or additional staff complement to support technical functions.
- 9.8.** Temporary assignments that are of short duration will be provided based on day-rates (or portion thereof with a minimum half-day applicable). Any requirements that are over three months in duration will be by secondment arrangement unless otherwise agreed between the WAO and the Provider. Tenderers should note that the WAO operates based on a seven hour work day and all travel and subsistence costs for day-rates are included within WAO's fee scales. Providers should include all travel and subsistence costs in their day-rates in the fee rates table. In exceptional circumstances, additional travel and subsistence may apply which must be agreed upfront with the WAO Engagement Director.

Services by Lot

- 9.9.** An indicative overview and breakdown of the primary services by Lot is set out below. The figures and numbers of audits are estimates based on current fees rates and proposed sample allocations. The other services that may be required, applicable to all lots are also set out below.

Lot 1 – Predominantly North and West Wales

Table 1: Lot 1 – Primary Services			
Primary Services	Description	**Estimated no. of Audits (by type of audit)	***Estimated fees per annum
LG Financial Audit	Audit of financial statements for *local government bodies, in accordance with International Standards for Auditing and the Code of Audit Practice. On completion of the audit, Providers will give the AGW an appropriate audit opinion on the financial statements.	2	370,000
Grant Certification	Certifying claims and returns for grants and subsidies paid (in relation to the LG audited bodies above) by the Welsh Government or other public bodies in accordance with instructions issued by the AGW.	2	240,000
LG Pension funds	Audit of the financial statements of pension funds in accordance with International Standards for Auditing and the Code of Audit Practice. On completion of the audit, providers will give the AGW an appropriate audit opinion on the financial statements.	1	33,000
LG Governance and Performance	Supporting and contributing to the governance and performance work undertaken at each individual body, in relation to the above LG bodies, in association with the WAO performance audit team for that body. (5-20 days)	2	26,000
Questions and Objections raised	<ul style="list-style-type: none"> Specifically for LG bodies, dealing with correspondence, questions and objections raised in accordance with electors rights under the Public Audit (Wales) Act 2004 in accordance with AGW oversight arrangements. For all assigned audited bodies, specific reviews of issues arising, dealing with correspondence or investigating issues (in accordance with guidance and as directed), raised by members of the public, National Assembly Members, whistle-blowers, in relation to assigned audited bodies. The nature and volume of these work demands cannot be predicted, and they often require resourcing at short-notice. 	As required	Fees charged based on grade related scales subject to agreement with WAO Lead

* local government bodies exclude small bodies such as community and town councils which are included in Lot 3.

** some audits include pension and associated grants work e.g. several types of audit at one LG body

*** Fees are susceptible to change each year and will fluctuate up/down; figures are provided using the current fee rates. (No VAT is charged to bodies)

Lot 2 – Predominantly South and Mid-Wales

Table 2: Lot 2 – Primary Services			
Primary Services	Description	Estimated no. of Audits (by type of audit)	Estimated fees per annum
LG Financial Audit	Audit of financial statements for *local government bodies in accordance with International Standards for Auditing and the Code of Audit Practice. On completion of the audit, providers will give the AGW an appropriate audit opinion on the financial statements.	2	410,000
Grant Certification	Certifying claims and returns for grants and subsidies paid (in relation to the LG audited bodies above) by the Welsh Government or other public bodies in accordance with instructions issued by the AGW.	2	210,000
Local National Health Service (NHS) financial audit	Audit of financial statements for *local NHS bodies in accordance with International Auditing Standards and the Code of Audit Practice. On completion of the audit, providers will give the AGW an appropriate audit opinion on the financial statements.	1	158,000
LG Pension funds	Audit of the financial statements of pension funds in accordance with International Standards for Auditing and the Code of Audit Practice. On completion of the audit, providers will give the AGW an appropriate audit opinion on the financial statements.	1	40,000
LG and NHS Governance and Performance	Supporting and contributing to the governance and performance work undertaken at each individual body in association with the WAO performance audit team for that body. (5-20 days for LG, and 5-10 for NHS)	3	32,000
Questions and Objections raised	<ul style="list-style-type: none"> Specifically for LG bodies, dealing with correspondence, questions and objections raised in accordance with electors rights under the Public Audit (Wales) Act 2004 in accordance with AGW oversight arrangements. For all assigned audited bodies, specific reviews of issues arising, dealing with correspondence or investigating issues (in accordance with guidance and as directed), raised by members of the public, National Assembly Members, whistle-blowers, in relation to assigned audited bodies. The nature and volume of these work demands cannot be predicted, and they often require resourcing at short-notice. 	As required	Fees charged based on grade related scales subject to agreement with WAO Lead

* local government and local NHS bodies exclude small bodies such as community and town councils which are included in Lot 3.

** some audits include pension and associated grants work e.g. several types of audit at one LG body.

*** Fees are susceptible to change each year and will fluctuate up/down, figures are provided for estimates using the current fee rates. (No VAT is charged to bodies)

Lot 3 – Town and Community Councils

Table 3: Lot 3 – Primary Services			
Primary Services	Description	*Estimated no. of Audits	Estimated fees per annum
Town and Community Council financial audit	<ul style="list-style-type: none"> Undertaking audit for town and community councils and other small bodies as applicable. Work includes a financial audit of accounts and considering the adequacy of the internal systems of control established for local councils across Wales in accordance with guidance issued by the AGW. Please see paragraph 39.2 under AG Guidance for an outline of changes to take place to the limited assurance regime from 2015-16. Work required will include a review of accounting statements and an annual governance statement. The annual governance statement will include a themed section that will change each year. Auditors will examine evidence to support the assertions made in the governance statement. 	245 – 370	£62,000 - £94,000
Grant Certification	Certifying claims and returns for grants and subsidies paid to town and community councils by the Welsh Government or other public bodies in accordance with instructions issued by the AGW.	As required for the bodies awarded	As below
Questions and objections raised	<ul style="list-style-type: none"> Specifically for LG bodies, dealing with correspondence, questions and objections raised in accordance with electors rights under the Public Audit (Wales) Act 2004 in accordance with AGW oversight arrangements. For all assigned audited bodies, specific reviews of issues arising, dealing with correspondence or investigating issues (in accordance with guidance and as directed), raised by members of the public, National Assembly Members, whistle-blowers, in relation to assigned audited bodies. The nature and volume of these work demands cannot be predicted, and they often require resourcing at short-notice. 	As required	Fees charged based on grade related scales subject to agreement with WAO Lead

* estimated number of audits each between 2-3 Providers

All Lots – Other Services

Table 4: All Lots – Other Services

Other Services	Description
Local Government question and objections	If additional support is required to support WAO's audit teams or if there are conflicts or reasons whereby other Providers cannot undertake the work under the Lots, dealing with questions and objections raised in accordance with electors rights under the Public Audit (Wales) Act 2004 and other correspondence in accordance with AGW oversight arrangements.
Specialist tax advice	<p>The WAO may have a requirement for advice in any of the following areas:</p> <ul style="list-style-type: none"> • Value Added Tax (VAT), in particular business versus non-business supply classification or other general VAT advice; • Pay As You Earn (PAYE) and employment taxes, including employment status and issues relating to establishing permanent places of work; • Property tax e.g. Stamp Duty Land and Reserve Taxes (SDLT); • Corporation tax; • Implications for employees / WAO where employees are engaged on international work; • Pension fund taxation including international aspects and taxation of alternative / unquoted investments; • taxation implications of machinery of government changes and of legislation creating new public sector organisations; • Ability to undertake periodic tax compliance audits; and • Providers must demonstrate sufficient in-house capacity to be able to provide timely responses to urgent requests and to be able to provide practical guidance based on HMRC custom and practice.
Pension fund advice	Pension fund advice on an as required basis to support WAO's audit work or if there are internal requirements where specialist advice is required.
Financial management advice	The WAO may have a requirement for financial management advice either in respect of its own financial management arrangements or in respect of a financial management issue in an audited body where we do not have in house expertise or capacity
Special investigations, data matching and fraud review	<ul style="list-style-type: none"> • Forensic accounting and/or ICT audit • Special investigations and fraud review as required • Use of special audit techniques and methodologies e.g. CAATs
Research and technical support	<ul style="list-style-type: none"> • Developing, researching and or making available audit methodologies and other specific products and tools • Providing technical support by providing access to in-house services e.g. specialist audit areas
Wider governance and performance audit work	<ul style="list-style-type: none"> • Performance audit requirements will reflect the resource and skills needs arising from VFM (including local government and health) studies programmes, to support the delivery of studies by either filling gaps in expertise, knowledge, or resourcing; or through adding value in order to meet the specific needs and time requirements of individual studies – e.g. specialist support for local government, health, education or environmental sectors (which are procured through various means). • Special inspections and other performance work requirements may also emerge throughout the year and the nature and volume of these cannot be predicted.
Provision of temporary workers to support WAO audit teams	<p>Temporary assignments provide a key way for the WAO to meet additional short-notice demands or to manage workload peaks. Providers should have the ability to provide suitable staff to undertake work to support other WAO audit teams.</p> <ul style="list-style-type: none"> • For financial audit and technical areas any staff grade may be required but it is expected that this would primarily be for qualified auditors or suitably qualified specialists and team leader grades; duration of requirements will vary.

Section 2 – Instructions to Tenderers and Tender Process

10. Instructions to Tenderers

- 10.1.** These instructions are designed to ensure that all Tenderers are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified. Please contact Laurie Davies at Tenders@wao.gov.uk if you have any doubt as to what is required or will have difficulty in providing the information requested. The Authority will use the e-tendering email address to communicate with Tenderers.
- 10.2.** Queries that relate to the ITT in terms of clarification and for further information must be made to the **Sell2Wales site**; a question and answers page is set up for the duration of the procurement. Any requests for clarification or further information in respect of this ITT **should be made by 16 October 2014**.
- 10.3.** All queries that are raised and considered relevant to the tender submission will be posted on the Sell2Wales website with responses. See also paragraph 22 which provides further information on queries.
- 10.4.** Tenderers should read these instructions before completing the Tender documentation and submission of the Tender Response. Tenderers are advised to acquaint themselves with the extent and nature of the services and contractual obligations. These instructions constitute the Conditions of Tender. Participation in the tender process automatically signals that the Tenderer accepts these Conditions.
- 10.5.** Included within the ITT there are a number of sections intended to ensure all Tenderers submit the required information in the correct format. Sections 4 and 5 include response questionnaires and cost tables to be completed by Tenderers. Section 6 includes a Form of Tender and Documents and Information to be submitted is provided for you to check that you have included the correct information that you should return and complete with the Tender response.
- 10.6.** If there have been any material changes to the information contained within the PQQ Response, or if there are material changes at any time during the Tender period, the Tenderer must advise WAO as soon as practicable (see Section 4).
- 10.7.** Tender Responses which are deemed by the Authority to be compliant will proceed to evaluation. These will be evaluated using the selection criteria and weightings detailed in Section 2, paragraph 32.
- 10.8.** All material issued in connection with this ITT shall remain the property of the Authority and, subject to any legal requirements, shall be used only for the purpose of this procurement exercise.
- 10.9.** The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these instructions and the Conditions of Tender.
- 10.10.** Tenderers shall accept and acknowledge that by issuing this ITT the Authority shall not be bound to accept any Tender and reserves the right not to conclude a contract for some or all of the services for which Tenders are invited. The Authority reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement exercise.

10.11. Tenderers shall acknowledge that the nature of services required may change over time and in response to the Authority's operating environment. The Authority reserves the right to alter the contract or substitute work at its discretion in accordance with paragraphs 7 and 9.3.

11. Canvassing

11.1. The Tenderer shall not make contact with any other employee, agent, non-executive or consultant of the Authority in connection with this procurement exercise during the period of this procurement exercise, unless instructed otherwise by the Authority. All queries must be raised to the nominated contact (see 10.1 above) only.

11.2. No approach in connection with this ITT or with this procurement process should be made to any other person within, or associated with:

- The Wales Audit Office;
- any of the audited bodies that may be affected by this procurement; or
- any government department or agency.

11.3. Direct or indirect canvassing of any organisation outlined above may result in the disqualification of the Tenderer.

12. Confidentiality

12.1. Subject to the exceptions referred to in paragraph 13, the contents of this ITT are being made available by the Authority on condition that:

12.1.1. Tenderers shall at all times treat the contents of the ITT and any related documents (together called the 'Information') as confidential, save in so far as they are already in the public domain;

12.1.2. Tenderers shall not disclose, copy, reproduce, distribute or pass any of the Information to any other person (person, firm, body or association) at any time or allow any of these things to happen;

12.1.3. Tenderers shall not use any of the Information for any purpose other than for the purposes of submitting (or deciding whether to submit) a Tender; and

12.1.4. Tenderers shall not undertake any publicity activity within any section of the media.

12.2. Tenderers may disclose, distribute or pass any of the Information to the Tenderer's advisers, sub-contractors or to another person provided that either:

12.2.1. This is done for the sole purpose of enabling a Tender to be submitted and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Tenderer; or

12.2.2. The Tenderer obtains the prior written consent of the Authority in relation to such disclosure, distribution or passing of Information; or

12.2.3. The disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract arising from it; or

12.2.4. The Tenderer is under a legal obligation (other than a contractual obligation) to make such a disclosure.

12.3. The Authority may disclose detailed information and any documents relating to Tenders to its officers, employees, or advisers. The Authority also reserves the right to disseminate information that is materially relevant to the procurement to all Tenderers, even if the information has only been requested by one Tenderer, subject to the duty to protect each Tenderer's commercial confidentiality in relation to its Tender (unless there is a requirement for disclosure under the Freedom of Information Act, as explained in paragraphs 13.1 to 13.3 below).

13. Freedom of Information

13.1. In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), the Authority may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the said Act, or the Environment Information Regulations 2004 (EIR) be required to disclose information submitted by the Tenderer to the Authority.

13.2. In respect of any information submitted by a Tenderer that it considers to be commercially sensitive the Tenderer should:

13.2.1. clearly identify such information as commercially sensitive;

13.2.2. explain the potential implications of disclosure of such information; and

13.2.3. provide an estimate of the period of time during which the Tenderer believes that such information will remain commercially sensitive.

13.3. Where a Tenderer identifies information as commercially sensitive, the Authority will endeavour to maintain confidentiality. Tenderers should note, however, that, even where information is identified as commercially sensitive, the Authority may be required to disclose such information in accordance with the FoIA or the EIR. In particular, the Authority is required to form an independent judgment concerning whether the information is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. Accordingly, the Authority cannot guarantee that any information marked 'confidential' or "commercially sensitive" will not be disclosed.

13.4. Where a Tenderer receives a request for information under the FoIA or the EIR during the procurement process, this should be immediately passed on to the Authority and the Tenderer should not attempt to answer the request without first consulting with the Authority.

14. Transfer of Undertakings (Protection of Employment) Regulations 2006

14.1. Prospective Tenderers should be aware of the possibility that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') could apply to elements of this Procurement, depending on the Tender Responses received and the final Contracts awarded. In a case where TUPE does apply, those employees of the Auditor General's existing suppliers employed in the part of the service transferred could become employees of the relevant Provider on their existing terms and conditions of employment.

14.2. Under TUPE there is an obligation to consult with recognised trade unions, professional associations and employee representatives about any likely consequences for staff. Where relevant, Providers will be expected to provide all necessary information required by the Authority to meet that obligation.

14.3. A Tenderer must satisfy itself that its Tender Response takes account of any financial impact that such a transfer might involve. No adjustment in respect of any TUPE transfer can be made after the contract is awarded. Successful Providers will be required to indemnify the authority against claims arising from any such TUPE transfer.

14.4. Tenderers are advised to seek their own professional advice in order to form their views on the legal and financial consequences of TUPE.

15. Timescales

15.1. Set out below is the proposed procurement timetable. This is intended as a guide and while the Authority does not intend to depart from the timetable it reserves the right to do so at any stage.

DATE	STAGE
10 September 2014	ITT to be issued by the Authority
11 September 2014	Clarification period opens
16 October 2014	Clarification period closes
30 October 2014 14:00 GMT	Closing date and time for receipt by the Authority of Tenderer Responses to the ITT
30 October 2014	Evaluation of ITT Responses commences
24 November – 28 November 2014	Clarification meetings (if required)
1 December – 3 December 2014	Reference checks
9 December – 12 December 2014	Final evaluation and selection
14 December 2014 – 28 January 2015	Authorisation processes
30 January 2015	Notification of proposed contract award
13 February 2015	Expiry of standstill period required under Regulation 32 of the Public Contracts Regulations 2006
16 February 2015	Appointment of Provider
1 April 2015	Commencement Date of Contract

16. Authority's Contact Details

16.1. Unless stated otherwise in these Instructions or in writing from the Authority, all communications from Tenderers (including their sub-contractors, consortium members, consultants and advisers) during the period of this procurement exercise must be directed to the designated Authority contact named in paragraph 10.1 above.

16.2. All communications should be clearly headed Invitation to Tender for Provision of Audit and Related Services and include the name, contact details and position of the person making the communication.

17. Preparation of Tender

- 17.1. Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of Tenders. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their Tender and all other stages of the selection and evaluation process. Under no circumstances will the Authority be liable for any costs or expenses borne by Tenderers, sub-contractors, Providers or advisers in this process.
- 17.2. Tenderers are required to complete and provide all information required by the Authority in accordance with the Conditions of Tender and the Invitation to Tender. Failure to comply with the Conditions and the Invitation to Tender may lead the Authority to reject a Tender Response.
- 17.3. Tenderers must form their own opinions, investigations and taking such advice (including professional advice) as is appropriate, regarding the services and their Tenders, without reliance upon any opinion or other information provided by the Authority or their advisers and representatives. Tenderers should notify the Authority promptly of any perceived ambiguity, inconsistency or omission in this ITT, any of its associated documents and/or any other information issued to them during the procurement process.

18. Submission of Tenders

- 18.1. The Tender must be submitted to the [Sell2Wales post-box](#) no later than **14:00 GMT on 30 October 2014** (“the Deadline”). Tenders may be submitted at any time before the closing date. Tenders received before this deadline will be retained unopened until after the closing time and date. Tenders should be labelled as directed on the Sell2Wales site but should not include the name of the organisation/person submitting the Tender within the subject line.
 - 18.1.1. The Tenderer is responsible for making their own internal checks whether a file was received by the Authority.
 - 18.1.2. In exceptional circumstances, if the Tenderer is unable to send the electronic tender due to e.g. very large file size, then they should do either of the following:
 - 18.1.2.1. send several zip files all clearly labelled e.g. ITT Provision of Audit and Related Services, file 1 of 3 and in accordance with paragraph 18.1;
 - 18.1.2.2. send a single email with a secure link and repository to retrieve Tender files that must not expire within one week after the Deadline.
 - 18.1.3. The Authority does not accept responsibility for the premature opening or mishandling of Tenders that are not submitted in accordance with these instructions.
 - 18.1.4. Any Tender received after the Deadline may be rejected unless the Tenderer can provide evidence that the Tender was capable of being received by the due date and time. Tenderers are advised that the Sell2Wales site may automatically reject Tenders that are submitted beyond the deadline time.
 - 18.1.5. The PQQ Response and any documents accompanying must be in the English or Welsh languages.

18.1.6. Any financial data provided must be submitted in pounds sterling and stated exclusive of VAT.

18.1.7. Tenderers may modify or withdraw their Tender prior to the Deadline by giving notice to the Authority by email to tenders@wao.gov.uk or withdrawing on the Sell2Wales site directly.

18.2. The Authority may at its own absolute discretion extend the closing date and the time for receipt of Tenders specified in paragraph 18.1. Any extension is granted to all Tenderers.

18.3. Tenderers should not include in the Tender any extraneous information which has not been specifically requested in the ITT including, for example, any sales literature, standard terms of trading, etc. Paragraph 24 sets out arrangements for proposed amendments to the contract by the Tenderer.

19. Disclaimers

19.1. While the information in this ITT and supporting documents has been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.

19.2. Neither the Authority, nor its advisors, directors, officers, members, partners, employees, other staff or agents:

- makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT; or
- accept any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.

19.3. Any persons considering making a decision to enter into contractual relationships with the Authority following receipt of the ITT should seek their own professional financial and legal advice.

19.4. Any contract concluded as a result of this ITT shall be governed by the law of England and Wales.

20. Collusive Behaviour

20.1. Any Tenderer shall (without prejudice to any other civil remedies available to the Authority and without prejudice to any criminal liability which such conduct by a Tenderer may attract) be disqualified, if the Tenderer:

- fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other party; or
- communicates to any party other than the Authority the amount or approximate amount of its proposed Tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or insurance or any necessary security); or
- enters into any agreement or arrangement with any other party that such other party shall refrain from submitting a Tender; or
- enters into any agreement or arrangement with any other party as to the amount of any Tender submitted; or

- offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender, any act or omission.

21. Acceptance of Tenders

- 21.1.** The Authority does not bind itself to accept the lowest or any Tender, and in addition, reserves the right to accept part only of a Tender. No Tender shall be deemed to have been accepted unless such acceptance shall have been notified to the Tenderer in writing.

22. Queries Relating to Tender

- 22.1.** The Authority will endeavour to answer all questions as quickly as possible, but cannot guarantee a minimum response time. The Authority has designated a specific window of time to deal with clarification requests from Tenderers.
- 22.2.** Clarification requests can be submitted via e-mail only to [Sell2Wales](#) from **11 September 2014**. No further requests for clarification will be accepted after **16 October 2014**.
- 22.3.** In order to ensure equality of treatment of Tenderers, the Authority intends to publish the questions and clarifications raised by Tenderers together with the Authority's responses (but not the source of the questions) on a regular basis. The information will be posted on the Sell2Wales website.
- 22.4.** Tenderers should indicate if a query is of a commercially sensitive nature – where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if the Authority at its sole discretion does not either consider the query to be of a commercially confidential nature or one which all Tenderers would potentially benefit from seeing both the query and Authority's response, the Authority will:
- 22.4.1. invite the Tenderer submitting the query to either allow rewording of the query to enable the query along with the Authority's response to be circulated to all Tenderers; or
 - 22.4.2. request the Tenderer, if it still considers the query to be of a commercially confidential nature, to withdraw the query.
- 22.5.** The Authority reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests.

23. Amendments to Tender Documents

- 23.1.** At any time prior to the deadline for the receipt of Tenders, the Authority may modify the ITT by amendment. Any such amendment will be numbered and dated and issued by the Authority to all prospective Tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, the Authority may, at its discretion, extend the Deadline for receipt of Tenders.

24. Proposed Amendments to the contract by the Tenderer

- 24.1.** A draft contract is attached to this ITT at Section 10 – Terms and Conditions. The Authority does not intend to depart materially from the terms and conditions but accepts that Tenderers may have comments or suggested amendments.
- 24.2.** As the Authority is using the Restricted procedure as detailed in the Public Contracts Regulations 2006 it is prevented from undertaking negotiation of the Tender. However, amendments by Tenderers and/or the Authority to clarify its terms are permitted. The Authority will consider proposed amendments strictly on their merits and within the limits imposed by the Regulations.
- 24.3.** Any proposed amendments to the contract must be detailed separately on the Proposed Amendments form included at Section 10, and returned with the Tenderer's ITT Response.
- 24.4.** The Authority will consider suggested amendments to the draft contract and may accept or reject them. Any amendments that are accepted will be incorporated in a final draft contract which will be issued to all Tenderers by 1 December 2014.
- 24.5.** In submitting a tender response, Tenderers accept that they will be bound by the terms and conditions set out in the final draft contract. Nothing shall prevent the Authority from making further changes to the draft contract.

25. Right to Reject/Disqualify

- 25.1.** In certain circumstances as a public sector body, the Authority is required by law to exclude organisations from participating in a tender. This includes when the organisation, any directors or partners who have powers of representation, decision or control have been convicted of offences related to the following:
- conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 1977 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of the Council Framework Decision 2008/84/JHA;
 - corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906, where the offence relates to active corruption;
 - the offence of bribery, where the offence relates to active corruption, or bribery within the meaning of section 1 or 6 of the Bribery Act 2010;
 - fraud, where the offence relates to fraud affecting the EU Communities' financial interests, including: the offences of; cheating the revenue, conspiracy to defraud, fraud, theft, fraudulent trading, fraudulent evasion; offences in connection with taxation in the EU, the offences of destroying, defacing or concealing documents, the offence of procuring the execution of a valuable security; or the offences contained within of sections 2, 3, 4 and 7 of the Fraud Act 2006;
 - money laundering within the meaning of section 340(11) of the Proceeds of Crime Act 2002; and

- an offence in connection with proceeds of criminal conduct, drug trafficking, or any other offence within the meaning of Article 45(1) of Directive 2004/18/EC.

25.2. The Authority also reserves the right to reject or disqualify a Tenderer where:

- the Tenderer fails to comply fully with the requirements of this Invitation to Tender or is guilty of a serious misrepresentation in supplying any information required in this document; or expression of interest; and/or
- the Tenderer is guilty of serious misrepresentation in relation to its Tender; expression of interest; and/or the Tender process; and/or
- there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer.

25.3. If there are any material changes to the information supplied at the first stage of this procurement, the PQQ stage, Tenderers must notify the Authority at its earliest opportunity and no later than as part of the Tender submission.

26. Right to Cancel, Clarify or Vary the Process

26.1. The Authority reserves the right to:

- amend the terms and conditions of the Invitation to Tender process,
- require the Tenderer to clarify its Tender in writing and/or provide additional information.
- cancel or withdraw from the procurement process at any stage; and/or
- not to award any contract as result of the procurement process.

27. Customer References

27.1. After the receipt of Tenders, the Authority may contact or seek written references from any of the contract reference as provided in the PQQ Response. As part of the ITT response, the Tenderers are requested to confirm whether the references may be contacted at any time. In cases where this is not agreed, approval will be sought from the Tenderer prior to undertaking reference checks.

28. Publicity activity

28.1. Tenderers shall not undertake, at any time, any publicity activity in any media (including print, radio, television or social media) in relation to the contract(s) or this procurement process, except with written permission of the Authority.

29. Independence and conflicts of interest

29.1. To assist the Authority in managing independence issues that may arise when issuing new contracts, the Tenderers will be asked to provide information regarding actual or perceived conflicts of interest. Conflicts may include contractual, financial or personal relationships with Wales Audit Office and/or the Auditor General for Wales. They may also include undertaking non-audit related work at audited bodies where the Tenderer is currently (or will be at the start of this contract) engaged.

29.2. The Authority avoids conflicts of interest in order to maintain independence. Tenderers should note that the WAO reserves the right to disqualify Tenderers from being awarded a Lot(s) or portion thereof, where there is an actual or potential conflict of interest. Tenderers should review prior or current involvement of the Tenderer and its members, officers, employees (including sub-contractors, consortium members and each and any of their advisors) to disclose these to the Authority.

30. Tender process

30.1. The Tender process will be conducted to ensure that Tenders are evaluated fairly to ascertain the most economically advantageous Tenders. Account will also be taken of any factors which may impact on the Tenderers suitability that emerge from the tendering process.

30.2. The Tenderers submitting the most economically advantageous offers with regard to the evaluation criteria at the conclusion of the evaluation, as set out in paragraph 1.9, will be awarded a contract.

31. Provision of further information by Tenderers

31.1. The Authority is relying on the information provided by Tenderers in their Pre-qualification Submissions. If there have been any material changes to that information prior to the issue of this ITT, or if there are any material changes at any time during the Tender Period, the Tenderer must advise the Authority as soon as practicable.

31.2. The Authority may request further information in relation to Tender submissions or evidence in support of its response to the PQQ or ITT.

32. Evaluation Criteria of Tenders for contract award

32.1. Tenderers responses to the questions contained in Section 4 Tender Response Questionnaire, along with pricing information and any other information requested in questionnaires and related to the evaluation of Tenders and requested by the Authority in this ITT will be evaluated against the high level criteria in the Evaluation Criteria for Selection table below.

Table 5: Evaluation Criteria for selection		
Criteria	Evaluation method	Weighting
Skills, knowledge and experience	<ul style="list-style-type: none"> • Review of response to the ITT submissions with respect to skills, knowledge and experience of public audit and staff makeup of: <ul style="list-style-type: none"> - Proposed engagement Leads - Skills mix and team composition 	15
Understanding the nature and purpose of the Auditor General and audited bodies in Wales	<ul style="list-style-type: none"> • Review of response to the ITT submissions with respect to evidence of strong understanding of <ul style="list-style-type: none"> - the Auditor General's functions and duties - public sector audited bodies purposes and an ability to address issues facing them 	15

Quality assurance and control	<ul style="list-style-type: none"> • Review of response to the ITT submissions with respect to evidence of effective internal quality assurance and control arrangements to deliver a quality service • Sound relevant references 	15
Working relationships and communication	<ul style="list-style-type: none"> • Review of response to the ITT submissions with respect to evidence of sound working relationships and good communication – demonstrated through partnership working arrangements, response to correspondence from local/national electors and representatives 	15
Overall cost	<ul style="list-style-type: none"> • Review of response to the ITT submissions with respect to <ul style="list-style-type: none"> - Overall cost for primary service delivery over the life of the contract - Estimated cost for secondary service delivery over the life of the contract based on hourly/day rates for the supply of suitably qualified staff 	40
Criteria relevant to Lots 1 and 2 only - Interaction of Lot and Lot 2	If the Tenderer has achieved the highest score in both Lot 1 and Lot 2, the mechanism set out below will apply to determine whether the Tenderer may be disqualified from one of the two Lots.	Pass / Fail

33. Evaluation Process

33.1. The evaluation process will feature some, if not all, the following phases:

Phase 1 – Receipt and opening

ITT Responses will be logged as received and opened after the closing Deadline of **14:00 on Thursday, 30 October 2014**. The WAO will notify each of the Prospective Tenderers of receipt of Tender Responses following the logging procedure. Any ITT Response that is received after the deadline may be rejected and not considered for evaluation.

Phase 2 – Evaluation of Tender Responses

(a) Lots 1 and 2—Firstly, the Authority will evaluate each of Lot 1 and Lot 2 applying the award criteria listed in the table above.

If a single Tenderer receives the highest score for both Lot 1 and Lot 2, the Authority will calculate the following three total scores to determine the most economically advantageous outcome for the Authority:

- the score obtained in Lot 1 by the highest-scoring Tenderer and the score obtained in Lot 2 by the next-highest scoring Tenderer; (“**Dual Award 1**”)
- the score obtained in Lot 2 by the highest-scoring Tenderer and the score obtained in Lot 1 by the next-highest scoring Tenderer; (“**Dual Award 2**”)
- the scores obtained in Lots 1 and 2 by the highest-scoring Tenderer. (“**Combined Award**”).

If the Combined Award total exceeds each of the Dual Award totals by at least [20] points, the highest-scoring Tenderer will be awarded both of Lot 1 and Lot 2.

If this is not the case, the Authority will compare the Dual Award 1 total with the Dual Award 2 total. If the Dual Award 1 total is higher, the highest-scoring Tenderer will be disqualified from Lot 2. If the Dual Award 2 total is equal to or higher than the Dual Award 1 total, the highest-scoring Tenderer will be disqualified from Lot 1.

The Authority will then award each Lot to the most economically advantageous Tender in each Lot.

- (b) Lot 3—will be split evenly (as far as possible) between the two or three Tenderers providing the most economically advantageous responses.

Phase 3 - Moderation of Scores

Moderation and merging of the evaluation of the qualitative and quantitative evaluation scores/rankings to produce a preliminary ranking. A consensus score will be recorded against each tender response.

Phase 4 – Clarification Meetings

During the evaluation period it may be necessary to call for further information from any Tenderer, to seek confirmation or clarification of the Tenderers Responses. The Tenderers will each be offered the opportunity to attend WAO premises for a clarification meeting. Scores will be revisited by the evaluation team and panel for final moderation.

Phase 5 – References and approval

Taking up of customer references

Final moderation panel meeting to agree scores and recommendations, having regard to the management of Tenderers' perceived or actual independence issues and the avoidance of Tenderers' conflicts of interest.

Subject to there being no independence issues, then

For Lots 1 and 2:

- The award recommendations will be made in accordance with the mechanism set out in Phase 2;

For Lot 3:

- Town and community councils will be grouped into two or three regions, based on the boundaries of the current unitary authorities, so that the regional groups will have broadly similar numbers of councils and expected total fees.
- Awards will then be made on the combination of contracts (two or three) which offers the greatest overall advantage to the Authority and in consideration of the most economically advantageous offers for the Lot.

Evaluation report and recommendations for approval by the Management Committee and WAO Board

34. Contract award

- 34.1.** The Authority will inform all Tenderers in writing of any intention to award a contract. Following a minimum standstill period of 10 working calendar days from the intention notification, subject to there being no substantive challenge to that intention, a contract will be formally awarded to the successful Tenderer.

34.2. All unsuccessful Tenderers will be provided with an “unsuccessful letter“ in writing via email at the start of the standstill period notifying them of the outcome of the evaluation exercise. This will include details of:

- the award criteria;
- the score of the Tenderer;
- the name of the successful Tenderer(s) and why the Tenderer(s) was/were successful;
- the score for the successful Tenderer(s); and
- feedback on the Tender Response.

34.3. Unsuccessful Tenderers will be able to seek a further debrief as set out in paragraph 36.

35. Notification of Award

35.1. The Authority will notify the successful Tenderers of the intention to award a contract in writing and following the required standstill period will publish an Award Notice in the Official Journal of the European Union in accordance with the Public Contracts Regulations 2006 within 48 days of the award of the contract.

36. Debriefing

36.1. Following the conclusion of the procurement, all unsuccessful Tenderers will be afforded the opportunity of a debriefing. Unsuccessful Tenderers should notify the Authority in writing if they wish to be debriefed. The Authority will formally debrief such unsuccessful Tenderers within 15 days of receiving such a request.

36.2. Where an unsuccessful Tenderer requests, in writing and no later than midnight on the second working day after being informed of the conclusion of the contract, the reasons why that Tenderer was unsuccessful, the Authority will provide details of the characteristics and relative advantages of the successful Tenderer(s).

Section 3 – Specification of Requirements

37. Specification overview

37.1. The Specification of Requirements sections below sets out the requirements of the Provider in fulfilling obligations under the contract. These requirements will, in part, form the conditions of contract together with the Terms and Conditions set out in Section 10 along with the Providers response and any clarification amendments made.

38. Audit Services

38.1. The selected Provider will undertake audits of public bodies for the Auditor General for Wales under the Public Audit (Wales) Act 2004 and may be required to provide audit work and related work pursuant to other legislation, such as the Government of Wales Act 2006. Auditors' work covers not only the audit of financial statements, but also aspects of the arrangements that public bodies have put in place to secure value for money in the use of resources. Auditors will support and contribute to the governance and performance work undertaken at each individual body allocated in association with the WAO performance audit team for the body, as relevant. Auditors help to ensure that those responsible for spending public money are accountable for its use by reporting their work to the public and other key stakeholders, and responding to local electors (where applicable). The services comprise those services outlined in Paragraph 9 under primary services and other services as relevant to the Lot(s) awarded.

38.2. A Provider may be allocated work by the Auditor General to:

- undertake whole audits on his behalf;
- Discharge particular functions in relation to an audit e.g. provision of assistance to staff of the WAO.

38.3. Providers (and their staff) contracted to the Wales Audit Office will undertake audit in accordance with International Standards for Auditing (ISAs), legal and regulatory requirements. Providers (and their staff) are also required to comply with the Auditor General's Code of Audit Practice and Statement of Practice and other non-statutory requirements. These are set out in Auditor General Guidance (AG Guidance) that may be issued periodically. Each Provider undertaking audit will be required under terms of contract to deliver a high quality audit that complies with the Code, AGW Guidance and other directions that may be issued. On completion of the audit, Providers will give the AGW an appropriate audit opinion on the financial statements.

38.4. The overall objective of the audit work is to obtain sufficient and appropriate audit evidence to enable the Provider to express an appropriate audit opinion to the AGW. In meeting this objective the Provider will seek assurance that:

- The form and content of the financial statements comply with the applicable government and professional accounting requirements and principles;
- The figures in the financial statements are properly stated to form a true and fair view;
- The funds have been applied to the services and for the purposes intended;

- The transactions are in accordance with regulations;
 - The Statement of Internal Control (or its equivalent) meets the requirements for disclosure and is consistent with other information resulting from the audit of the financial statements; and
 - Information which comprises the management commentary and certain other information normally included in an executive report, included within the Annual Report is consistent with the accounts.
- 38.5.** The Auditor General has a statutory duty under Schedule 8 of the Government of Wales Act 2006 to make arrangements to certify grant claims and other returns of financial information. His arrangements provide designated auditors with a suite of ‘certification instructions’ prescribing the tests which auditors should perform on such claims or returns and which set out important background information on the underlying schemes. The auditor normally provides the grant-paying body with an auditor certificate including a ‘limited assurance conclusion’ which states that ‘nothing has come to our attention to indicate that the claim or return is not fairly stated and is not in accordance with the relevant terms and conditions’. If the auditor finds errors in the claim or return which the recipient body is unwilling to correct, then the auditor issues a ‘qualification letter’ to the grant-paying body alongside their certificate.
- 38.6.** In addition to the financial audit and grants work, the AGW also undertakes value for money audit work and studies. This work includes a combination of work undertaken on a national basis across all bodies or work in response to specific risks at an individual body. Audit teams responsible for auditing the accounts of individual bodies may therefore be required to contribute to wider governance and performance audit work undertaken by the Wales Audit Office staff. For example, working with performance auditors to inform work on the body’s financial position and financial planning arrangements or attending meetings to bring a financial audit perspective.
- 38.7.** In addition to the planned programme of audit work, flexible and responsive arrangements are needed to respond to in year work demands. These include specific reviews of issues arising, dealing with correspondence or investigating issues raised by members of the public, National Assembly Members, or whistle-blowers, in relation to a body that they are assigned to audit or by undertaking a corporate governance inspection. The nature and volume of these work demands cannot be predicted, and they often require resourcing at short-notice.

39. Scope of Work

- 39.1.** In addition to the Code, there is specific Auditor General Guidance and other documents that further explain the scope of work, liaison arrangements, and specific processes for undertaking work. These documents may change and the Auditor General may notify Providers of additional requirements.
- 39.2.** Several of the key Auditor General Guidance documents are set out below and there is a further set of guidance documents that are included in Section 8, for information. The Auditor General’s Guidance below is current but the process for Single Appointed Auditor will be changing with respect to the Auditor General taking on the role of statutory auditor for Local Government, in accordance with the Public Audit (Wales) Act 2013. All of the documents are subject to change.

Auditor General Guidance	Documents
Single Appointed Auditor operating arrangements	 Single Appointed Auditor Operating Arr
Harmonisation of the audit approach across the Single Appointed Auditor regime	 Harmonisation of the audit approach across
Liaison arrangements for contractor firms – NHS bodies	 Liaison arrangements for contractor firms –
*Limited Assurance Audits for local councils in Wales	  Town and community Annual Return 31 councils in Wales.doc:March_2016_Electronic
Reliance on the work of other auditors for financial audits.	 Reliance on the work of other auditors for financial
Dealing with correspondence	 Auditor General Correspondence.doc

* The limited assurance audits for town and community councils will be changing from 2015-16. The draft documents attached in this table outline the new arrangements and are provided for information.

40. Skills and experience

40.1. The Wales Audit Office requires the following key skills and experience of financial auditors and expects that the Providers it engages to undertake audit on the Auditor General's behalf follows similar arrangements.

- Consultative Committee of Accountancy Bodies (CCAB) accountancy qualified or part-qualified (or its equivalent) for financial audit;
- very good understanding of public sector audit and accounting issues;
- very good understanding of audit and accounting standards and their application to the public sector, including emerging and technical issues;
- efficient time management skills and in particular be able to work across a number of audits at any one time;
- effective oral and written communication skills (Welsh if required);
- very good analytical skills and the ability to demonstrate sound professional judgement;
- ability to travel wherever required throughout Wales; and

- ability to form and develop relationships with audited body officers and colleagues.

41. Quality Control

- 41.1.** Providers are expected to maintain internal quality control arrangements to ensure that the services provided meet the Auditor General's quality standards and are in line with the International Standard on Quality Control (ISQC1), issued by the International Auditing and Assurance Standards Board. Such arrangements should be applied to all audit work under the Auditor General's Code including grant certification services.
- 41.2.** An annual review of Provider's quality control and quality monitoring procedures forms one element of the Auditor General's audit monitoring and review arrangements. The Auditor General reserves the right to change the quality assurance and review arrangements at any time. Providers will be notified of any change before it takes effect. Providers will be required to cooperate with the quality assurance and review arrangements and to provide access to certain documents as part of the process.

42. Professional and technical support

- 42.1.** Providers are expected to provide professional, technical and other support to their audit teams throughout the duration of this contract to ensure on-going professional development, to maintain quality standards, and reduce impacts on WAO. In addition, Providers should:
- Answer ad hoc enquiries from the Auditor General or staff of the WAO within a reasonable, as agreed, defined timeframe;
 - Comment on the draft AG Guidance and other relevant documents when requested to do so;
 - Assist the WAO as reasonably required in development of innovative tools and techniques or provide other technical support, where requested under the contract;
 - Share information and knowledge to support the development of good practice and reduce duplication; and
 - Participate in the Auditor General's working groups, such as audit practitioner groups.

43. Communication

- 43.1.** The Auditor General's Communications (AGCs) are the primary route for disseminating all AG Guidance, other relevant technical and compliance information and other regime-wide information to auditors. The AGCs will be sent to all Providers and the WAO staff will discuss with Provider the application of technical, compliance or other information contained in an AGC as appropriate.
- 43.2.** During the audit, the Provider's Engagement Lead is expected to keep the WAO's Engagement Director (or other contacts) informed of any significant matters arising. All draft reports should be prepared in a format agreed in advance with the WAO, and must be reviewed by WAO before being forwarded to the audited body. The firm will be responsible for agreeing the draft report with those charged with governance at the audited body and final reports should then be forwarded to the WAO. At the conclusion of

the audit, following the review processes, the Provider will forward an appropriate audit opinion and to the WAO representative along with a summary of significant issues arising from the audit for the AGW to consider before issuing an audit opinion to the audited body.

- 43.3.** The selected Provider will be required to attend meetings with the Audit Committee and a WAO representative may also attend. Unless otherwise agreed, it is expected that in any presentation the Provider will take the lead in discussing the work and any findings to the audited body and the Audit Committee.

44. Auditor General Correspondence

- 44.1.** Correspondence from the public, elected representatives and others that raises concerns about public business, can inform the work programme by identifying issues for further investigation. The WAO and its Providers must appreciate the importance of the issues to those that have taken the time to highlight them and respond to the public concern promptly, in a fair, objective and professional manner. The AG Guidance on correspondence sets out the arrangements for doing so. In brief, if Providers are asked to deal with correspondence, they must:

- Prepare a suitable draft response, supported by records of any research or other investigative work (the guidance provides the overall approach to preparing responses);
- Send the draft response to the WAO's nominated contact within 15 working days of being assigned the correspondence, unless otherwise notified.
- Include a concise summary of any background, investigation and conclusions.
- If a Provider cannot prepare a full response with 15 working days e.g. because the correspondence covers particularly complex issues that need to be investigated further, an email progress update must be sent to the nominated contact in order to arrange to send an interim reply to the correspondent.
- If a further delay is likely, the Provider should draft an update of progress for the correspondent, including an estimated date for sending a detailed response.

- 44.2.** At all times confidentiality must be observed, and where appropriate, the WAO correspondence manager should be engaged where there are other important considerations to discuss the approach. Some correspondence may combine a request for information with expressions of concern, and such correspondence must be processed in a way that meets both WAO correspondence and Freedom of Information procedures.

45. Consistency of approach

The WAO wishes to work with its Providers to ensure that there is greater consistency between the way in which audit is undertaken and in the ways that reports are produced for public bodies. The WAO does not wish to alter existing arrangements Providers have in place but rather work in partnership to ensure that the audit is delivered efficiently and effectively with regard to the public purse, avoiding duplication, and in addressing significant differences that may be evident. It also wishes to use the opportunity to learn from each other.

45.1. The WAO has adopted the Issues Analysis and Drawing Conclusions (IADC) processes for its work with audited bodies in order to ensure that thinking and reporting are clear, rigorous and achieved with the appropriate brevity. The principles of IADC should be applied to all work that involves substantive reporting (i.e. beyond standard audit opinion). Details of the IADC are included with the documents in Section 8.

46. Welsh Language Scheme requirements

46.1. The Providers must ensure that services provided through this contract are compliant with the Welsh Language Scheme and, on their commencement, the Welsh Language Standards. As a minimum the WAO will expect:

- communication with public bodies (oral and written) will be in accordance with the language preference of those bodies;
- public communications in relation to this contract to be in both Welsh and English languages where this applies;
- and standard letters and/or general communication to be available in either language.

47. General Equality Duty

47.1. Under the Equality Act 2010 ('the Act'), the Wales Audit Office is subject to the General Equality Duty. The Providers must assist the Wales Audit Office in meeting the General Equality Duty in exercising its functions, and so must have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

47.2. Providers will also have an obligation to perform the General Equality Duty in the course of work undertaken on behalf of the Auditor General, and they must also comply with other requirements of the Equality Act 2010, such as in making "reasonable adjustments" in respect of persons with impairments (disabilities).

47.3. Annual quality review arrangements will examine samples of audits and other projects completed by Providers in order to check whether the Provider has made arrangements to perform the General Equality Duty. The results of the quality reviews will be fed back to Providers, and in significant cases will result in remedial measures under contract. The results will also be taken into account in WAO's annual progress reporting.

48. Business continuity

48.1. The Providers shall have robust contingency plans in place to ensure that the services will be maintained in the event of disruption, including IT systems and operations and that of any sub-contractors. Such contingency plans must be made available on reasonable request for the Authority to inspect.

49. Data Protection

49.1. The Providers and their staff shall comply with any requirements under the Data Protection Act 1998. Providers shall ensure that it has in place appropriate technical and organisational measures to ensure the security of personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data). The Provider shall follow any reasonable instructions notified by the Authority or relevant public body e.g. classification requirements and regarding transfer of information. The Provider shall follow Auditor General Guidance with respect to information security and data protection.

Section 4 – Tender response questionnaire

50. Form of Tender

50.1. The Tenderer is requested to agree and sign the Form of Tender which is set out in Section 6 Documents and Information to be submitted. The form of tender and Section 6 sets out to seek agreement from the Tenderer on their Tender submission and confirmation from the Tenderer that they have considered all areas adequately.

51. Confirmation of PQQ response

51.1. Tenderers are requested to confirm that all statements within its PQQ response remain accurate and true. Tenderers should re-confirm which lots they are tendering for and any new lots.

1	Confirmation of PQQ response	Response
1.1	All statements made in the PQQ response remain true and accurate	Y/N
	If no, please provide details	
1.2	Lot 1 – North and West Wales	Y/N
	Lot 2 – South and Mid Wales	Y/N
	Lot 3 – Town and Community Councils	Y/N
1.3	Please indicate whether references can be taken up at any stage	Y/N
	If no, please provide details	
1.4	Please list by Lot area names of any public sector audited bodies in Wales (at a firm level) where the Tenderer may not be able to accept a designation as result of conflicts of interest or other ethical reasons. (see paragraph 29 for further information)	
		Lot 1 Lot 2 Lot 3

52. Response to Specification

52.1. Tenderers must respond to each of the following questions that will be used, to evaluate the ITT Responses against the Criteria for Selection. Please respond to the questions as relevant to the Lot(s) you are Tendering for. If a Tenderer is bidding for more than one Lot and the response is the same for the Lots, the Tenderer may choose to state it only once, but it should be stated clearly.

53. Skills, knowledge and experience

53.1. In your PQQ submission, you provided an overview of skills and experience available generally. This section seeks to obtain further information regarding the proposed team makeup and skills mix in undertaking the primary work. Your response should be specific to this contract in terms of the proposed team, size and value, and proposed skills mix based on the Lot(s).

53.2. In the sections below, and elsewhere in this document where the Tenderer is requested to respond, please consider the following roles:

- Engagement Leads – overall responsibility, client engagement and liaison, oversight, quality and monitoring, contract management.
- Audit Managers – delegated authority under the Engagement Lead to lead the team in undertaking the audit(s), responsible for client engagement and day-to-day liaison, quality assurance, coaching, etc.
- Team Leader – supports the Audit Manager in undertaking audit e.g. at a large high risk body or leads the team at a smaller body, etc.
- Team member – CCAB qualified auditors.
- Trainee – part qualified auditor or trainee currently undertaking a CCAB qualification

53.3. The following section requests an overview of the Engagement Lead(s) (or equivalent) you wish to allocate to this contract. The Engagement Lead(s) is/are the individual(s) nominated and authorised by the Provider to act on its behalf for the purposes of the contract. The Tenderer is also asked to describe how the Engagement Lead(s) would discharge their role in the delivery of services and management of the contractual obligations.

53.4. The wider team makeup is also requested, including an overview of full time equivalent staff that will undertake the Primary Services, in its totality, and an indicative team makeup for an example audit.

2	Skills knowledge and experience		Response	
2.1	Please provide details of the Engagement Lead(s) (or equivalent) that you propose for this contract. Indicate by Lot (if relevant and/or more than one lead proposed)		Name and professional status Relevant skills and experience Percentage of time envisaged working on this contract	
2.2	Please provide an overview of how the Engagement Lead(s) would discharge their role under the contract(s)		Maximum 400 words	
2.3	Please provide an indication of the number of current staff specifically allocated under this contract to deliver the Primary Services – according to relevant public sector audit experience.		Respond by full time equivalent staff e.g. 2.85 audit managers	
	Audit manager	Team leader	Team member	Trainee
Lot 1				
0-2 years				
2-5 years				
5-10 years				
10> years				
Lot 2				
0-2 years				
2-5 years				
5-10 years				
10> years				
Lot 3				
0-2 years				
2-5 years				
5-10 years				
10> years				

2.4	Please provide an indicative response to a proposed team makeup for a given category of audit. Responses should be based on the example audited body below which is a mid-sized body with moderate risk. (refer to fee scheme for further information)	Response based on per cent of time working on the example audit e.g. team member (0.5 FTEs, comprising 2 @ 25 per cent of their working time), trainee (0.3 FTEs, comprising 1 @ 30 per cent (assumes some of your staff will work for other clients as well as the WAO)		
Example audit body	<p>Lots 1 and 2 Unitary Authority with gross revenue expenditure of £200m per year, with 20 grant schemes requiring certification</p> <p>Lot 3 *Limited assurance audit of a town and community council with gross revenue expenditure of £200k per year, with 1 small grant</p>			
	Audit manager	Team leader	Team member	Trainee
Lots 1 and 2				
Lot 3				

* Please see the AG Guidance table in paragraph 39.2 under the limited assurance, town and community council's documents for an overview of the new audit.

54. Understanding the roles and responsibilities of the Auditor General and Audited Bodies in Wales

54.1. Auditors must understand the issues facing the bodies that they audit and the wider public sector in Wales. Auditors must also appreciate the roles and responsibilities of the Auditor General and the Wales Audit Office

3	Nature and purpose of the Auditor General and Audited Bodies in Wales	Response
3.1a	What do you see as the main issues relevant to the audit of public bodies in Wales or likely to arise over the next three-five years?	Consider the primary and/or other services for the Lots tendered for that in your view is relevant Maximum 1000 words
3.1b	In consideration of your response to the issues identified above, please explain how these will relate to the services, including your	Please provide evidence to support your ability to address issues facing them and meet your

	responsibilities as a designated auditor working under the Auditor General for Wales' Code of Audit Practice.	responsibilities as a designated auditor Maximum 1000 words
3.2	In the context of the Auditor General's powers and duties, how do you see your role in the delivery of the regime, and in line with WAO's values?	Please provide appropriate evidence using specific examples to highlight your role(s) in public service audit delivery Maximum 1000 words

55. Quality assurance and control in the delivery of financial audit and related services

55.1. You are asked below to describe how you would ensure the delivery of high quality financial audit and related services to local government and/or NHS bodies and/or town and community councils under the Lot(s). Your response should be specific to the WAO contract and not general.

55.2. Please ensure your response considers the Specification of Requirements, in particular

- Audit services delivery;
- Application of AG Guidance and the Code;
- Quality control; and
- Professional and technical support.

55.3. The Tenderer must also have sound relevant references which are not scored but any will be considered as confirmation of quality service delivery. If a reference is returned unsatisfactory then the WAO may mark down a score.

4	Quality assurance	Response
4.1	Please describe the specific arrangements you will apply to WAO contract(s) to ensure the delivery of high quality financial audit and related services (see paragraph 55.1 and 55.2)	Please provide evidence and consider the specification in the response Maximum 1500 words
4.2	Please describe how significant issues with audited bodies and/or service delivery in the course of audit work will be raised to the Auditor General and his Engagement Directors at the appropriate time	Maximum 300 words

56. Working relationships and Communication

56.1. Please describe how you work in partnership with audited bodies and partner suppliers, and how you manage these relationships effectively.

5	Working relationships and communication	Response
5.1	Please describe how you work in partnership with audited bodies, external auditing bodies, and your approach to developing relationships with senior officials and electors/representatives while maintaining independence.	Provide evidence to demonstrate how you manage these relationships effectively Maximum 500 words
5.2	How do you respond to correspondence from the public and elected representatives, in particular where significant issues are raised?	Please use a specific example(s) as relevant Maximum 300 words

Section 5 – Cost Schedule

The cost tables below must be completed for the Authority to assess each Tenderer for their applicable Lot(s). All charges/prices (where requested) must be expressed in pounds sterling and should be exclusive of VAT. Pricing and discount information provided will form the basis of any resultant contract.

Fee rates and fee scales applicable to the 2014-15 audits are included at the end of Section 5 and are provided for information to assist Tenderers. Please note that the fee scales and rates are subject to change annually – per cent discounts stated below by Prospective Tenderers will be applied to the applicable fee scales and rates for future audit years for work allocated under a contract and for other work on an as required basis.

The grant certification work undertaken at local government bodies undertaken in any year is dependent on the number of claims or schemes subject to audit and the number of audited bodies participating in those schemes. Charges for this work are made on a per diem basis and reflect the size, complexity or any particular issues in respect of the grant in question. An overview of the estimated staff mixes for grant certification work is included at the end of this section.

Primary services - discount for financial statements, grants and governance work

Lot	Proposed Lot makeup	*Estimated total fees per annum	Per cent discount off estimated fees	Estimated total fee for all work
Lot 1	<ul style="list-style-type: none"> audit of financial statements and **grants certification for two unitary authorities 5-20 days governance work at these bodies audit of a pension scheme 	£672,000		
Lot 2	<ul style="list-style-type: none"> audit of financial statements and **grants certification for two unitary authorities audit of financial statements for a local NHS body 5-20 days governance work at the unitary authorities 5-10 days governance work at the NHS body audit of a pension scheme 	£851,000		
Lot 3	<ul style="list-style-type: none"> ***limited assurance audit of between 245-370 town and community councils grant certification as required for these small bodies 	£62,000 - £94,000		

* Estimated total fees are based on current fee rates and scales which are subject to change each year.

** Tenderers should assume in the region of £200,000 total fees per year of grants certification work.

*** The limited assurance regime is changing with effect from the 2015-16 audit. An overview of the proposed new limited assurance process is provided in paragraph 39.2 under AG Guidance and indicative fee scales are at the end of this section.

Lot	Billing Services as an agent of WAO	Estimated number of Audits	Price per invoice	Estimated total price (range)
Lot 3	*Undertaking billing for services as an agent of WAO	245-370		

* Currently WAO envisages that it will undertake client billing. However, Tenderers are invited to provide a cost for this service. This will not be factored in to the Tender appraisal process but if offered costs stated will apply.

Other primary services (challenge, small bodies which are not town or community councils) and ‘other services’

To meet statutory responsibilities, it is sometimes necessary for auditors to carry out work which goes beyond the obligation to give an opinion on the accounts. Additional work can include reports in the public interest, extraordinary audit, special inspections and further work in relation to elector challenge/questions and the prevention of unlawful expenditure. Charges for this type of work will reflect the nature of the work required. The extent of any work will need to be agreed with the WAO lead contact.

Other than those types of bodies for which fee scales have been prescribed, there are a small number of other types of local government body. For audits of these bodies, a zero-based approach to audit planning is applied, with resource requirements converted into fees directly based on the costs of delivering the work.

In all of these cases, fees will be charged based on the applicable fee rates for that year, with those for 2014-15 set out below as an indication of the current rates. Higher rates may be appropriate for certain pieces of work, where specialist skills are required. In such circumstances, the WAO lead contact must be consulted in advance and their agreement obtained.

‘Other services’ include consultancy services, technical advice, audit support and provision of temporary workers to support WAO audit teams (please refer to Table 4 for a full list). Daily rates are applicable for certain other types of work e.g. provision of temporary workers. Audit Providers may be asked to undertake additional non-audit related work, which therefore could need sign off by the WAO Engagement Director.

Such work will not be arranged if audit independence and integrity could be compromised, or could be perceived to be compromised, unless appropriate mitigation and controls can be applied. Where such work can be carried out, the fees to be charged will comply with the published Fee Scheme in relation to Financial Audit and Performance Audit staff. For other staff, rates will be agreed subject to the fee charged not exceeding the full cost of the work. Daily rates are also applicable for certain other types of work.

Fee rates for other work, including ‘other services’

Grade of staff		*Fee rate per hour (current)	**Per cent of discount off WAO Fee Scale	**Other daily rate	Comments
Financial Audit	Engagement lead	£162			
	Audit manager	£111			
	Team leader	£75			
	Team member (CCAB)	£56			
	Trainee	£45			
	Other (specify)				
Performance	Engagement lead	£162			

audit	Performance audit manager	£111			
	Performance audit lead	£93			
	Performance Auditor	£65			
	Other (specify)				
***Other	(specify)				

* Fee scales are calculated to include for travel and subsistence and overhead costs (there is no VAT charged to audited bodies), figures reflect the 2014-15 audit year scales.

** Please assume a seven hour working day. Day rates must also be provided for other work where fee rates do not apply e.g. to fulfil temporary audit support requirements or specialist support.

*** If a supplier is offering other services these must be stated by category as relevant e.g. specialist tax advice. Please add additional lines as required. A flat daily rate should be applicable in majority of cases where work is of a standard nature, rather than by staff grade for these categories. Please note that if there is a grade differential for 'other services' the WAO will use the average as a basis to assess and compare cost.

Fee Scales

The current fee rate extracts from the Fee Scales Consultation document are provided overleaf to assist Tenderers in completing the cost tables above. Information includes:

- Unitary authorities - fee scale for audit of 2014-15 accounts;
- Pension funds – fee scale for audit of 2014-15 accounts;
- Estimated staff mixes for grant certification work; and
- Town and Community Council - indicative fees for 2015-16.

The full current fee scales consultation document is also attached below for reference.



Fee_scales_consultation_2014_English.pdf

Fee Scales and Fee Rates 2014-15

Unitary authorities - fee scale for audit of 2014-15 accounts

Gross expenditure £000,000	Fee range £000		
	Minimum	Median	Maximum
100	119	140	161
200	143	168	193
300	159	187	215
400	172	202	232
500	182	215	247
600	191	225	259
700	199	235	270
800	207	243	280
900	213	251	289
1,000	219	258	297
1,100	225	265	304
1,200	230	271	312

Pension funds – fee scale for audit of 2014-15 accounts

All pension funds	Fee range £000		
	Minimum	Median	Maximum
	30	40	50

Estimated staff mixes for grant certification work

Grade of staff	Complex grants staff mix %	All other grants staff mix %
Engagement lead	1 to 2	0 to 1
Audit manager	4 to 6	1 to 2
Team leader	18 to 21	12 to 16
Team member/trainee	77 to 71	87 to 81

Complex grants include:

- BEN01 Housing and council tax benefits scheme
- EUR01 Structural funds
- HOU03 HRA subsidy (non-stock transfer authorities)
- LA01 National non-domestic rates return
- PEN05 Teachers' pensions return

Town and Community Council fee scale

The Auditor General is replacing the current two-tier (basic/intermediate) approach with a single form of audit for all town and community councils, from the 2015-16 year of accounts onwards. The revised approach will encourage councils to focus on improving their financial management and governance arrangements, and increase public reporting of issues arising from audit work. Indicative fees for 2015-16 are below. Our current expectation is that the majority of councils would be at the Median level.

Town and Community Council - indicative fees for 2015-16

Annual income or expenditure	Fee range £000		
	Lower	Median	Upper
£0 – £5,000	152	214	276
£5,001 – £20,000	182	260	338
£20,001 – £50,000	205	296	387
£50,001 – £100,000	224	326	428
£100,001 – £200,000	244	359	474
£200,001 – £300,000	257	380	503
£300,001 – £400,000	267	396	524
£400,001 – £500,000	275	408	541
£500,001 – £600,000	281	419	556
£600,001 – £700,000	287	428	569
£700,001 - £800,000	292	436	580
£800,001 - £900,000	296	443	590
£900,001 - £1,000,000	300	450	599

Section 6 – Documents and Information to be submitted

The Tenderers must submit the following documents and information

Response to questionnaires in Section 4.

Completed cost schedules in Section 5.

Return of this Form of Tender in Section 6

Proposed amendments to the contract in Section 7

The Authority reserves the right to reject any tender on the basis of not meeting minimum requirements for engagement or for an incomplete or late tender submission.

Form of Tender

Having examined the Invitation to Tender and other information made available to use in the course of this procurement process, and being fully satisfied in all respects with the requirements of the ITT, I/we hereby offer to provide the Services for the prices shown in the cost tables.

I/we declare that our Tender Response is not conditional upon any changes to the terms and conditions of Contract. I/we undertake that in the event of our Tender Response being accepted by the Wales Audit Office, I/we on being called upon to do so, will execute formal contracts in the form of the terms and conditions of contract (including amendments as agreed by WAO) issued by Wales Audit Office.

I/we confirm that we have considered TUPE and have taken full account of the financial impact that a potential transfer might involve.

I/we confirm that I/we agree with the Wales Audit Office to comply with the provisions and specific requirements relating to confidentiality, canvassing and collusive behaviour all as set out in this ITT.

I/we confirm that we have completed and returned the information set out above under documents and information to be returned.

This Tender Response shall remain open for acceptance by the Wales Audit Office for a period of six months after the Tender Response Return Deadline specified in the ITT.

I/we understand that no offer or Tender Response is deemed accepted by the Wales Audit Office until the relevant contractual documents have been duly signed on behalf of the Wales Audit Office and the successful Provider.

I/we confirm that we have the requisite corporate authority to sign this Tender Response and confirm that we have complied with all requirements set out in the ITT.

Name:

Signature:

Section 8: Auditor General Guidance and Leaflets

AG Guidance and Leaflets	
WAO Complaints Policy July 2013	 The WAO Complaints Procedure.doc
Auditor General Quality Review and Assurance Arrangements	 The Auditor General's Quality Rev
Reporting and monitoring sensitive issues by WAO Engagement Partners and Firms	 Reporting and monitoring sensitive is
The Implications of the Bribery Act 2010 for Public Bodies	 The Implications of the Bribery Act 2010
Money laundering reporting obligations Feb 09	 Money laundering reporting obligations.
Improving Financial Management and Governance: Issues from the Audit of Community Council Accounts 2011-12	 Improving_Financial_Management_English
Update on Disclosure of Information	 Disclosure of Information.doc
Information Security	 Keeping personal and sensitive informa
A complete guide to Issue Analysis and Drawing Conclusions	 Complete guide to IADC_1.pdf
Access rights of the Auditor General for Wales and Appointed Auditors	 Access_rights_leaflet final.pdf
How to complain about an audit	 WAO_Complaints Leaflet English.pdf
Electors rights for council accounts (to be updated pending new regulations)	 Electors rights - Council accounts.pdf

All Auditor General guidance and associated documents are subject to change.

Section 9: Marking scheme and guidance to reviewers

The following sections set out the marking scheme and guidance for evaluating the Tender responses for the Provision of financial audit and related services. The guidance explains how the Tender Responses will be scored and weighted against the evaluation criteria. Only the information supplied by the Tenderer within their Tender Response, and clarified as necessary in any subsequent Clarification Meeting, will be assessed; current or existing or prior knowledge of a Tenderer will not be considered. If information is incomplete it may result in a Tenderer being marked down.

Score	Assessment	Description
5	Very good	The response is comprehensive and includes strong relevant evidence to support the response, including examples where required. The response adequately covers or exceeds all required areas as requested and demonstrates that the Tenderer is capable of fulfilling obligations and to deliver high quality audit services.
3	Good	The response is comprehensive and includes satisfactory evidence to support the response, including examples where required. The response covers all required areas as requested and demonstrates that the Tenderer is capable of fulfilling obligations and to deliver high quality audit services.
1	Poor	The response is comprehensive and includes some evidence to support the response in parts but the response may not adequately cover the areas as requested. The response and evidence demonstrates, to a degree, that the Tenderer is capable of fulfilling obligations and to deliver high quality audit services.
0	Fail	The response is not comprehensive and evidence is very weak. The response does not demonstrate that the Tenderer is capable of fulfilling obligations or to deliver the services without risking quality.

1 Confirmation of PQQ Response

1	Confirmation of PQQ response	Response	Guidance	Marks	Weighting	Comments
1.1	All statements made in the PQQ response remain true and accurate	Y/N	Not scored Pass if Yes, review for minimum requirements if No	n/a	n/a	Substantive changes that result in a Tenderer not meeting minimum requirements could result in a supplier being disqualified
1.2	Lot 1 – Mid and North Wales Lot 2 – South and West Wales Lot 3 – Town and Community Councils	Y/N Y/N Y/N	Not scored Confirmation of Lots	n/a	n/a	Tenderers may bid for more or less Lots than in PQQ, except where minimum requirements cannot be met for a particular lot
1.3	Indication on whether references can be taken up at any stage	Y/N	Not scored – for information	n/a	n/a	References will be used to confirm quality (as in 4.1 below)
1.4	Public sector audited bodies in Wales (at a firm level) where the Tenderer may not be able to accept a designation as result of conflicts of interest or other ethical reasons.	Lot 1 Lot 2 Lot 3	Not scored but considered at Lot award stage	n/a	n/a	As per paragraph 29 in the ITT the WAO must ensure independence from the bodies it audits and will review the conflicts at contract award

2 Skills, knowledge and experience

2	Skills, knowledge and experience	Response	Guidance	Marks	Weighting	Comments
2.1	Details of the Engagement Lead(s) (or equivalent) proposed for this contract. Indicated by Lot (if relevant and/or more than one lead proposed)	Name, professional status, Relevant skills and experience Percentage of time envisaged working on this contract	The Tenderer will provide information requested as left. Relevant skills and experience must include public sector audit as relevant to this procurement.	5	0.5	Higher marks supplier must demonstrate use of CCAB qualified and with good levels of experience in areas relevant and appropriate time applied to WAO's contract.
2.2	Overview of how the Engagement Lead(s) would discharge their role under the contract(s)	Maximum 400 words	Tenderer should adequately cover and demonstrate areas outlined in paragraphs 53.2 and 53.3	5	0.5	Good overview and evidence of application including audit oversight and contract management.
2.3	FTE number of staff specifically allocated under this contract to deliver the Primary Services and skills mix, experience		Response should demonstrate good consideration of skills mix, experience, management, as relevant to the delivery of Primary Services and sufficient resources.	5	1	Tenderers will have replied by Lot and must evidence good use of resources as relevant to Lot(s) and in relation to this contract.
2.4	Proposed team makeup for example (Lot specific)		Tenderers will demonstrate a resource plan for a given	5	1	Audit is for mid-sized body with moderate risk – mix

			example by Lot. Must evidence good consideration for the type of audit.			should relate and be adequate in terms of time and skills mix.
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3 Understanding the nature and purpose of the Auditor General and Audited Bodies in Wales

3	Nature and purpose of the Auditor General and Welsh Audit Bodies	Response by	Guidance	Marks	Weighting	Comments
3.1	Covers the main issues to be relevant to audit of public bodies in Wales or to arise over the next three-five years	Maximum 1000 words	Tenderer will have demonstrated, with evidence an understanding of the issues facing public bodies over next three-five years. This will link to the lots they have tendered for and should cover the financial, contextual, and governance areas.	5	1	Considers the primary and/or other services as relevant to the Lot. Higher marks demonstrate a good understanding of most of the key issues for audited bodies in Wales.
3.2	In consideration of Tenderers response to the issues identified above, explained how these will relate to the services, including responsibilities under the Auditor General for Wales Code of Practice.	Maximum 1000 words	Tenderer should evidence, using specific examples to highlight their role(s) in public service audit delivery in addressing the issues.	5	1	Higher marks indicate the probable impact of most of the key issues on the AGW's work and linking these to the auditor's responsibilities.
3.3	In the context of the Auditor General's powers and duties, how Tenderer sees their role in the delivery of the regime in line with WAO values.	Maximum 1000 words	Tenderer will demonstrate and evidence through examples how they see their role and may include specific proposals for doing so.	5	1	Higher marks consider how to assist the AGW to address key issues and support him with activities, linking to WAO values and agenda.

4 Quality assurance and control in the delivery of financial audit and related services

4	Quality assurance	Response by	Guidance	Marks	weighting	Comments
4.1	Describes specific arrangements for contracts Tenderer would apply to ensure the delivery of high quality financial audit and related services	Maximum 2500 words	Tenderers will provide evidence and consider the specification of requirements in the response as specific to the contract. Response should be adequately defined across a range of areas including quality controls and covering all work.	5	2	Higher marks will consider areas as outlined in paragraphs 55.1 and 55.2. Evidence demonstrates how the Tenderer will tailor firm-wide systems and processes to ensure quality and in order to meet specific requirements within the Auditor General's code. Tender must also have sound relevant references.
4.2	Please describe how significant issues with audited bodies and/or service delivery in the course of audit work will be raised to the Auditor General and his/her Engagement Directors at the appropriate time	Maximum 300 words	Tenderers will provide an overview of how different types of issues (as left) will be addressed and should link to the audit work. Should provide evidence to demonstrate understanding of what typical issues could be.	5	1	Higher marks will demonstrate a good appreciation for timely communication, key stages and/or processes and application in practice.

5 Working relationships and Communication

5	Working relationships and communication	Response by	Guidance	Marks	Weighting	Comments
5.1	Please describe how you work in partnership with audited bodies, external auditing bodies, and your approach to developing relationships with senior officials and electors/representatives while maintaining independence	Maximum 500 words	Tenderer will describe working relationships covering the key areas as left, including independence issues.	5	2	Higher marks will demonstrate high level of commitment to partnership and communication evidenced through practical examples.
5.2	How do you respond to correspondence from the public and elected representatives, in particular where significant issues are raised?	Maximum 300 words	Tenderer will provide specific example(s) as relevant and which outlines how correspondence is addressed.	5	1	Higher marks demonstrate very good understanding of electors' rights and commitment to service delivery.

Section 10: Draft Terms and Conditions

DATED **2015**

(1) THE WALES AUDIT OFFICE

-and-

(2) [THE SUPPLIER]

AGREEMENT

relating to

AUDIT SERVICES AND RELATED SERVICES

DATE

2015

PARTIES

(1) THE WALES AUDIT OFFICE of 24 Cathedral Road, Cardiff, CF11 9LJ (the “**WAO**”); and

(2) [THE SUPPLIER] of [ADDRESS] (the “**Supplier**”)

(together “the Parties” and each individually a “**Party**”)

BACKGROUND

- A. The WAO is a corporate body established under the 2013 Act with responsibility for providing resources to the Auditor General as required by him for the exercise of his functions.
- B. The Auditor General:
 - a. is the statutory auditor of the Welsh Assembly Government, its sponsored and related bodies, the National Assembly for Wales Commission, Welsh NHS bodies and local government bodies in Wales;
 - b. has a duty to make arrangements for the certifying of claims and returns in relation to grants and subsidies paid to audited bodies by specified public bodies;
 - c. may, and in some cases must, undertake (i) examinations into the economy, efficiency and effectiveness with which certain Welsh public bodies have used their resources, and (ii) studies for improving economy etc. in services;
 - d. must carry out audits and inspections of local government bodies as required by the Local Government (Wales) Measure 2009;
 - e. may (i) examine, certify or report on a person’s accounts, or (ii) carry out examinations into the economy, efficiency and effectiveness with which a person has used his resources in discharging his functions, where provision is made for him to do so by an agreement entered into by the person with either the Welsh Assembly Government or a Minister of the Crown.
- C. This Contract makes provision to enable the WAO to appoint firms as contractors to provide audit services to assist the Auditor General in the exercise of his functions.
- D. Through a process of competitive tender the Supplier has indicated its willingness to provide such services and has been selected by the WAO to provide such services.
- E. This Contract provides for the terms and periods of contractor engagements made to the Supplier.
- F. This Contract also provides for the Supplier to discharge certain functions of the Auditor General under the Government of Wales Act 2006 with regard the certification of grant claims and returns as agent of the Auditor General.
- G. This Contract also provides for the Supplier to provide Other Services (listed in **Part B of Schedule 1**) relating to audit services.
- H. It is agreed that the provision of Services by the Supplier shall be governed by the terms and conditions of this Contract.

Definitions and Interpretations

1.1 In this Contract the following expressions shall have the following meanings:

“1998 Act”	means the Government of Wales Act 1998;
“2004 Act”	means the Public Audit (Wales) Act 2004;
“2006 Act”	means the Government of Wales Act 2006;
“2009 Measure”	means the Local Government (Wales) Measure 2009;
“2013 Act”	means the Public Audit (Wales) Act 2013;
“a business in the Regulated Sector”	has the meaning ascribed by Schedule 3A of the Terrorism Act 2000;
“Approval” and “Approved”	means the written consent of the Contract Manager;
“Assembly”	means the National Assembly for Wales;
“Audit Designation”	means a designation made by the WAO of a firm as its contractor to assist the Auditor General in providing Audit Services at a particular audited body;
“Audit Designation Notice”	means notification given to a Supplier (and copied to the Audited Body) in accordance with Clauses 17.2 to 17.4 whereby the Designated Auditor is notified that it is designated to assist the Auditor General in carrying out the audit of some or all of the accounts of that Audited Body or in carrying out such other work as the WAO shall specify;
“Audit Designation Period”	means, in respect of an Audit Designation, the period commencing on the commencement date specified in the Audit Designation Notice and ending on the earlier of: <ul style="list-style-type: none">• the expiry date specified in the Audit Designation Notice; or• the date of revocation where the Audit Designation is revoked in accordance with this Contract;
“Audited Body”	means a public body in Wales whose accounts or statement of accounts are audited by the Auditor General;
“Audit Certificate”	means the certificate issued by the Auditor General on completion of an audit as required by section 23 of the 2004 Act;
“Auditor General”	means the Auditor General for Wales;
“WAO Director of Corporate Services”	means the Wales Audit Office Director of Corporate Services or the person performing equivalent functions;

“Auditor General Guidance”	means guidance (including appendices and schedules) issued by the Auditor General and sent by the WAO to the Supplier in accordance with Clause 5.1 ;
“Audit Performance Period”	means the period for performance of an audit commencing on 1 April in any Audit Year and ending with the issue of the Audit Certificate in respect of that Audit Year (provided that the commencement date of Audit Performance Periods may from time to time be varied by the Auditor General in Auditor General Guidance);
“Audit Services”	means the services to be performed by the Supplier and set out in Part A(1) of the Specification ;
“Audit Services Fee”	means the amount set by the WAO in accordance with Clause 21 which is payable by the Audited Body to the WAO for the Audit Services in relation to an Audit Year within an Audit Designation Period;
“Audit Services Remuneration”	means the fee payable by the WAO to the Supplier in consideration of the performance of the Audit Services in relation to an Audit Year as calculated in accordance with the Pricing Schedule;
“Audit Year”	means the period commencing 1 April in any year and ending on 31 March of the following year;
“Business Day”	means a day other than a Saturday, Sunday or a bank holiday in England or Wales;
“Certification Instructions”	means the “Instructions to Auditors on the Certification of Grants and Returns” issued by the Auditor General and sent by the WAO to the Supplier from time to time;
“Code of Audit Practice”	means the Code of Audit Practice prepared by the Auditor General under section 10 of the 2013 Act and the Statement of Practice for local government improvement audit, assessment and special inspection functions prepared by the Auditor General under section 25 of the 2009 Measure and includes any alterations made to either document in accordance with those sections;
“Commencement Date”	means the date of this Contract;
“Commercially Sensitive Information”	means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: <ul style="list-style-type: none"> (a) which is provided by the Supplier to the WAO in confidence for the period set out in that schedule; (b) which constitutes a trade secret; and/or (c) which otherwise constitutes commercially sensitive information for the purposes of section 43 of the FOIA.

“Commercially Sensitive Information Schedule”	means Schedule 5 ;
“Confidential Information”	means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party (the “Disclosing Party”) to another party (the “Receiving Party”) whether before or after the date of this Contract including, without limitation, any information relating to the Disclosing Party’s business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers;
“Consistent Failure”	means two or more Supplier Defaults in any twelve month period;
“Contact Partner”	means the partner or individual of equivalent status nominated from time to time by the Supplier as the individual authorised to act on behalf of the Supplier for the purposes of the Contract;
“Contract”	means this agreement between the WAO and the Supplier consisting of these terms and conditions and the attached Schedules;
“Contract Manager”	means the person for the time being appointed by the WAO as being authorised to administer the Contract on behalf of the WAO or such person as may be nominated by the Contract Manager to act on its behalf;
“Contract Period”	means the period from the Commencement Date until the earliest of: <ul style="list-style-type: none"> • 31 March 2018; or • such other date as may be agreed pursuant to Clause 2;
“Contract Reporting Requirements”	means the reporting requirements determined by the WAO for the purposes of this Contract and notified in writing to the Supplier from time to time;
“Contract Remuneration”	means: <ul style="list-style-type: none"> • the Primary Services Remuneration; and • the Other Services Remuneration <p>due to the Supplier under the Contract;</p>
“Contract Term”	means the period from the Commencement Date until the earliest of: <ul style="list-style-type: none"> • the end of the last ending Audit Performance Period in respect of any Audit Year relating to any Audit Designation made by the WAO under this Contract; and • the revocation date of such final Audit Designation referred to above;

“Default Interest Rate”	means 2% above LIBOR;
“Deliverable”	means the materials, documents, software or other items created by the Supplier in the performance of the Primary Services and Other Services;
“Designated Auditor”	means the Supplier designated by the WAO as its contractor to assist the Auditor General in providing Audit Services at a particular Audited Body and notified in accordance with Clause 17.2 ;
“Engagement Leads”	means the persons referred to in Part A of Schedule 3 ;
“Environmental Information Regulations”	means the Environmental Information Regulations 2004;
“Fee Scheme”	means the scheme relating to the charging of fees by the WAO prepared by the WAO under section 24 of the 2013 Act;
“First Audit Year”	means the Audit Year commencing on 1 April 2015;
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
“Force Majeure Event”	<p>means any of the following events or circumstances:</p> <ul style="list-style-type: none"> • war, civil war, armed conflict or terrorism; • nuclear, biological or chemical contamination (unless in any case the Supplier (including its Staff) caused such contamination); or • pressure waves caused by devices travelling at supersonic speeds <p>which directly causes either party to be unable to comply with all or a material part of its obligations under this Contract;</p>
“General Change in Law”	means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) and which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services;
“Grant Certification Services”	means work in relation to claims and returns in respect of grants or subsidies made or paid by any government department or public body to an Audited Body pursuant to arrangements made by the Auditor General under paragraph 20 of Schedule 8 to the 2006 Act as further specified in Part A(2) of the Specification ;
“Grant Certification Services Fee”	means the fee payable by an Audited Body to the WAO in relation to an Audit Year within an Audit Designation Period

	in respect of Grant Certification Services performed by the Supplier and set by the WAO in accordance with Clause 21 ;
“Grant Certification Services Remuneration”	means the fee payable by the WAO to the Supplier in consideration of the performance of the Grant Certification Services in relation to an Audit Year as calculated in accordance with the Pricing Schedule;
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000;
“Intellectual Property Rights”	means copyright, patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, database rights, domain names, trade or business names, and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
“Key Personnel”	means the Supplier’s key personnel named in Part B of Schedule 3 ;
“Law”	means any applicable law, statute, bye-law, regulation, order, measure, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
“LIBOR”	means the rate per annum determined by Barclays Bank plc. (from time to time) to be the offered rate for six Months sterling deposits in the London interbank market which appears on Reuters Screen LIBOR01 page (or such other page as may replace that page);
“MLR”	means the Money Laundering Regulations 2003;
“Money Laundering”	has the meaning ascribed by POCA;
“Month”	means calendar month;
“Other Services”	means the additional services set out in Part B of the Specification
“Other Services Remuneration”	means the fee payable by the WAO to the Supplier in consideration of the performance of the Other Services as calculated in accordance with the Pricing Schedule;
“POCA”	means the Proceeds of Crime Act 2002;
“Premises”	means the location where the Services are to be performed;
“Pricing Schedule”	means Schedule 2 ;

“Primary Services”	means:
	<ul style="list-style-type: none"> • the Audit Services; and • the Grant Certification Services;
“Primary Services Fee”	means:
	<ul style="list-style-type: none"> • the Audit Services Fee; and • the Grant Certification Services Fee;
“Primary Services Remuneration”	means the:
	<ul style="list-style-type: none"> • the Audit Services Remuneration; and • the Grant Certification Services Remuneration;
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the WAO and/or the Supplier and “Regulatory Body” shall be construed accordingly;
“Relevant Business”	has the meaning ascribed by MLR;
“Remuneration Rate”	means the percentage rate specified in the Pricing Schedule;
“Remuneration Table”	means the remuneration table contained in Part A of the Pricing Schedule;
“Request for Information”	shall have the meaning set out in FOIA and/or the meaning given to the word “request” in the Environmental Information Regulations (as applicable);
“Services”	means the Primary Services and the Other Services as set out in the Specification;
“Specification”	means the description of the Services to be provided under the Contract as set out in Schedule 1 ;
“Specific Change in Law”	means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Supplier, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services;
“Staff”	means all persons employed by the Supplier to perform the Contract together with the Supplier’s servants, agents and sub-contractors used in the performance of the Contract;
“Supplier Default”	means any breach of the obligations of the Supplier (whether statutory, contractual or otherwise) and any default, act, omission, negligence or negligent statement of either the Supplier or its Staff in relation to the subject

matter of the Contract:

- which is not capable of remedy; or
- which is capable of remedy and which has not been remedied by the Supplier within such period of time as the WAO may reasonably specify and notify to the Supplier;

“Tax” means Value Added Tax; and

“Terrorism Act” means the Terrorism Act 2000;

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

- 1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 words importing the masculine include the feminine and the neuter;
- 1.3 references in this Contract to any Clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause of or schedule to this Contract so numbered;
- 1.4 references to any statute, enactment, order, measure, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, measure, regulation or instrument as amended or re-enacted by any subsequent enactment, modification, order, measure, regulation or instrument as subsequently amended or re-enacted;
- 1.5 references 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;
- 1.6 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- 1.7 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- 1.8 the WAO may during the Contract Term commonly refer to Audited Bodies as “clients” but this terminology shall not be deemed to imply any duties other than those reflected in this Contract or arising by virtue of legislation.

2. CONTRACT DURATION

- 2.1 Subject to Clauses 6 and 40 to 46 and Clause 2.2, the Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Term.
- 2.2 Subject to clause 2.3, the Authority may at its discretion extend the Contract Period:
 - 2.2.1 to 31 March 2020; or
 - 2.2.2 for one or more further periods, each of which shall be for a duration of no less than 12 months and which in aggregate shall not extend the Contract Period beyond 31 March 2020.
 - 2.2.3 Any extension under this Clause 2 shall be on existing terms and conditions.

- 2.3** To exercise its option to extend this Agreement pursuant to clause 2.2, the Authority must serve notice to such effect on the Supplier no later than 3 months, unless otherwise agreed, prior to the date upon which the initial Contract Period or the previously extended Contract Period would otherwise expire and such notice shall include details of the duration of the relevant extension, but the Authority shall use reasonable endeavours to notify the Supplier of an extension not less than 6 months before the expiration of the initial Contract Period or the previously agreed extended Contract Period pursuant to this Clause 2.3 (as applicable).

3. THE SERVICES

Primary Services

- 3.1** The Supplier shall provide in respect of each Audit Designation where the Supplier is the Designated Auditor:

3.1.1 the Audit Services; and

3.1.2 the Grant Certification Services;

for each Audit Year during each respective Audit Designation Period.

- 3.2** The Supplier shall provide the Audit Services and the Grant Certification Services referred to in Clause 3.1 above as agent for the Auditor General.

Other Services

- 3.3** The Supplier shall during the Contract Period provide Other Services to the extent requested and required by the WAO from time to time.

Contract Remuneration

- 3.4** In consideration of the Supplier providing the Services the Supplier shall be entitled to the Contract Remuneration in accordance with the provisions of this Contract.

4. GENERAL SUPPLIER OBLIGATIONS

Contract Capacity

- 4.1** The Supplier warrants and represents that it has the full capacity and authority and all necessary consents to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier.

- 4.2** The Supplier warrants and represents at the Commencement Date and on a continuing basis during the operation of this Contract that it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

Conflicts of Interest

- 4.3** The Supplier shall take appropriate steps to ensure that neither the Supplier nor its Staff are 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 Supplier or Staff and the duties owed to the WAO or Audited Bodies under the provisions of the Contract.
- 4.4** The Supplier shall promptly notify and (to the extent permitted by obligations of confidence to a third party) provide full particulars to the WAO if such conflict referred to in Clause 4.3 above arises or it becomes reasonably foreseeable it will arise.
- 4.5** The obligations in Clause 4.3 and 4.4 above apply to the Supplier in addition to the requirements of Auditor General Guidance.

Safeguard against Fraud

- 4.6** The Supplier shall safeguard the WAO's funding of the Contract against fraud generally and, in particular, fraud on the part of the Supplier or its Staff. The Supplier shall notify the WAO immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

Prevention of Bribery and Corruption

- 4.7** The Supplier shall not:
- 4.7.1** offer or give, or agree to give, to any employee, agent, servant or representative of the WAO 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 this Contract or any other contract with the WAO, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract ; or
 - 4.7.2** engage in, and shall procure that all the Supplier's staff or any person acting on the Supplier's behalf shall not commit, in connection with the Contract, a prohibited act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.
- 4.8** The Supplier warrants, represents and undertakes that it has not:
- 4.8.1** paid commission or agreed to pay commission to the WAO, any other public body or any person employed by or on behalf of the WAO in connection with the Contract; and
 - 4.8.2** entered into the contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the WAO or any other public body or any person employed by or on behalf of the WAO in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the WAO before execution of the Contract.

- 4.9** The Supplier shall, and shall procure that its staff shall:
- 4.9.1** comply with all applicable laws relating to anti-bribery and anti-competition (“Anti-Bribery Law”) including the Bribery Act 2010;
 - 4.9.2** have and keep in place proportionate procedures which are adequate to prevent persons who are representing them (including their employees) committing a bribery offence anywhere in the world, or receive confirmation from such representatives that such procedures are in place, and enforce such procedures where appropriate; and
 - 4.9.3** not do, or omit to do, any act that will cause or lead the WAO or the Auditor General to be in breach of Anti-Bribery Law.
- 4.10** Where the Supplier or its Staff or anyone acting on the Supplier’s behalf engages in conduct prohibited by Clauses 4.7 to 4.9 in relation to this or any other contract with the WAO and without prejudice to its legal rights more generally, the WAO shall have the right to:
- 4.10.1** terminate the Contract in accordance with Clause 41 and recover from the Supplier the amount of any loss suffered by the WAO resulting from such breach; or
 - 4.10.2** in any event recover in full from the Supplier any other loss sustained by the WAO in consequence of any breach of Clauses 4.7 to 4.9.
- 4.11** In exercising its rights or remedies under Clause 4.10 above, the WAO shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act.

Operation of the WAO and Auditor General

- 4.12** The Supplier shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations or activities of the Auditor General, the WAO, the employees of the WAO or any other contractor employed by the WAO.

Quality

- 4.13** The Supplier shall provide the Services during the Contract Term in accordance with the Auditor General’s requirements as set out in the Specification and the terms of this Contract.
- 4.14** The Supplier shall discharge the obligations in this Contract and perform the Services with all due skill, care and diligence and in accordance with applicable professional practice.
- 4.15** The Supplier shall ensure that all obligations of the Supplier pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff.
- 4.16** The Supplier shall ensure that all documentation and information supplied to the Auditor General or the WAO in connection with the provision of the Services is accurate and shall rectify without cost to the WAO any

discrepancies, errors or omissions therein reasonably required by the WAO or the Auditor General.

4.17 Any legislative requirement to account for the services in euros (or to prepare for such accounting) instead of or in addition to sterling, shall be implemented by the Supplier at no additional cost to the WAO.

4.18 In providing the Services, the Supplier shall comply with and take into account all applicable laws, enactments, orders, measures, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

5. PERFORMANCE OF THE SERVICES

5.1 The Supplier shall provide the Services in respect of each Audited Body (as applicable) in accordance with:

5.1.1 the 1998 Act, the 2004 Act, the 2006 Act and the 2009 Measure;

5.1.2 the Auditor General's Code of Audit Practice;

5.1.3 this Contract;

5.1.4 any requirements contained in Auditor General Guidance or otherwise notified to the Supplier in writing by the WAO; and

5.1.5 any legislation, guidance, professional standards or best practice applicable (from time to time) to the provision of the Services.

5.2 The Supplier shall comply with and satisfy the requirements in any Certification Instructions in performing Grant Certification Services in accordance with this Contract.

5.3 The provision of the Primary Services shall be subject to the WAO's Contract Reporting Requirements and for that purpose the Supplier shall provide such information, afford such access on reasonable notice and explanation and use all reasonable endeavours to arrange attendance at such meetings in relation to the Services as the WAO shall from time to time require.

6. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

6.1 Without prejudice to any other right or remedy which the WAO may have at Law or in this Contract, if in the opinion of the WAO any of the Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the WAO may (whether or not any part of the Services have been delivered) do any of the following:

6.1.1 at the WAO's option, give the Supplier the opportunity at the Supplier's expense to either remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the WAO's instructions;

6.1.2 refuse to accept any further Services to be delivered by the Supplier but without any liability to the WAO;

- 6.1.3** carry out at the Supplier's expense any work necessary to make the Services comply with the Contract;
 - 6.1.4** without terminating the Contract, at the Supplier's expense, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the WAO that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
 - 6.1.5** without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Primary Services Remuneration shall be made) and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or
 - 6.1.6** charge the Supplier for and the Supplier shall on demand pay, any costs reasonably incurred by the WAO (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the WAO or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the WAO uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 6.2** Notwithstanding any of the provisions of this Clause 6, in the event that the Supplier fails to comply with Clause 6.1 above and the failure prevents the WAO from discharging a statutory duty, the WAO may terminate the Contract with immediate effect by giving the Supplier notice in writing.

7. PROVISION OF GUIDANCE, ADVICE AND SUPPORT BY THE AUDITOR GENERAL

- 7.1** The WAO shall send the Supplier Auditor General Guidance issued by the Auditor General from time to time.
- 7.2** Without prejudice to the Supplier's obligations with respect to provision of the Services under this Contract, the WAO shall provide the Supplier with such advice and support (including technical guidance, training and information services) as the Auditor General sees fit for the purposes of maintaining the overall quality of audit services under the 1998 Act, the 2004 Act, the 2006 Act and the 2009 Measure.
- 7.3** The WAO shall be entitled to make (and the Supplier shall pay) reasonable charges for advice and support provided in accordance with Clause 7.2 by serving reasonable notice on the Supplier prior to the provision of such advice.
- 7.4** Without prejudice to the WAO's discretion to charge pursuant to Clause 7.3, the advice and support supplied by the WAO under Clause 7.2 shall be free from the Commencement Date until such notification is served in accordance with Clause 7.3.

8. SUPPORT OF AUDIT REGIME BY SUPPLIER

- 8.1** The Supplier shall participate in arrangements made by the WAO from time to time in order to support the audit regime maintained by the Auditor General.
- 8.2** The arrangements referred to in Clause 81 may include:
- 8.2.1** nominating individuals with responsibility for overall liaison and for maintaining efficient communication between the Supplier and the Auditor General;
 - 8.2.2** attendance at regular conferences, meetings and events designed to enable the Auditor General to discuss with Suppliers current and forthcoming issues relevant to the Services; and
 - 8.2.3** co-operating in the development of the Services through commenting on draft documents and participation in the piloting of such development and of guidance and other Auditor General products.
- 8.3** Where any pilot work described in Clause 8.2.3 involves additional work by the Supplier, the WAO and the Supplier shall agree an appropriate fee and mechanism for payment.

9. ENGAGEMENT LEADS FOR PRIMARY SERVICES

- 9.1** The individuals referred to in Part A of Schedule 3 shall be the Engagement Leads in respect of the Primary Services specified by the WAO and may act as Key Personnel for Other Services as required by and agreed in writing with the WAO.
- 9.2** The Supplier shall ensure that the Engagement Leads have operational responsibility and control (within the Supplier organisation) of the conduct of the provision of Primary Services in relation to specified Audit Designations except by reason of an Engagement Partner's long-term sickness or termination of employment or other extenuating circumstances or otherwise by written agreement with the WAO.
- 9.3** Any replacements to the Engagement Leads shall be subject to the prior written agreement of the WAO. Such replacements shall be of at least equal status or of equivalent experience and skills to the Engagement Leads being replaced and be suitable for the responsibilities of that person in relation to the Primary Services.
- 9.4** The WAO shall not unreasonably withhold its agreement under Clauses 9.2 and 9.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract that could be caused by a change in Engagement Leads.

10. KEY PERSONNEL FOR OTHER SERVICES

- 10.1** The individuals referred to in Part B of Schedule 3 shall be the Key Personnel in respect of Other Services.
- 10.2** The Supplier shall ensure that the Key Personnel have operational responsibility and control (within the Supplier organisation) of the conduct of the provision of the Other Services except by reason of a Key Personnel's

long-term sickness, termination of employment, other extenuating circumstances or otherwise by written agreement with the WAO.

- 10.3** Key Personnel shall not be released from providing the Other Services without the written agreement of the WAO, except by reason of long-term sickness, termination of employment or other extenuating circumstances.
- 10.4** Any replacements to the Key Personnel shall be subject to the prior written agreement of the WAO. 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 those Key Personnel in relation to the Services.
- 10.5** The WAO shall not unreasonably withhold its agreement under Clauses 10.2 to 10.4, subject to appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

11. SECONDMENT

- 11.1** In the event that Staff are seconded to the WAO for the purposes of providing Other Services the provisions of the WAO's standard secondment policy (in force from time to time) shall apply between the WAO and Supplier and the Supplier shall procure that its seconded Staff enter into the WAO's standard secondment agreement (in force from time to time).

12. DISCRIMINATION

- 12.1** The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment and shall comply with policies with equivalent obligations to those in the WAO's Equality and Diversity Policy (from time to time in force).
- 12.2** The Supplier shall take all reasonable steps to secure the observance of Clause 12.1 by the Staff employed in the performance of the Contract.
- 12.3** The Supplier shall at all times comply with the General Equality Duty as defined by the Equality Act 2010 as if it were a public authority subject to that duty.

13. TUPE

The parties agree that the provision in **Schedule 4** shall apply to this Contract.

14. LICENCE TO OCCUPY WAO'S PREMISES

- 14.1** Any land or Premises (including temporary buildings) made available to the Supplier by the WAO in connection with the Contract, shall be made available to the Supplier free of charge and shall be used by the Supplier solely for the purpose of performing the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract or upon receiving notice to do so from the WAO.

- 14.2** The Supplier shall not use any Premises made available by the WAO for any purpose or activity other than the provision of the Services unless given prior Approval.
- 14.3** The Supplier and 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 WAO, and shall pay for and indemnify the WAO against all costs associated with making good any damage caused by the Supplier or 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.
- 14.4** The Parties agree that there is no intention on the part of the WAO to grant exclusive rights or create a tenancy of whatsoever nature in favour of the Supplier or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the WAO retains the right at any time to use in any manner the WAO sees fit any premises owned, occupied or made available for use by it.

15. ADMISSION OF SUPPLIER'S STAFF

- 15.1** The WAO reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the WAO:
- 15.1.1** any member of the Staff; or
 - 15.1.2** any person employed or engaged by a sub-contractor, agent or servant of the Supplier
- whose admission or continued presence would be, in the opinion of the WAO, undesirable.
- 15.2** The Supplier shall ensure that its Staff comply with such rules, regulations and requirements (including those relating to security arrangements and information security requirements) as may be in force from time to time for the conduct of personnel when at the Premises.
- 15.3** If the Supplier fails to comply with Clause 15.2 above the WAO (whose decision shall be final and conclusive) may decide that such failure may reasonably pose a serious security risk to the WAO or the occupier of any such Premises and if the Supplier does not comply with the provisions of Clause 15.2 within a reasonable time of written notice from the WAO so to do then the WAO may terminate the Contract in accordance with Clause 41.
- 15.4** The decision of the WAO as to whether any person is to be refused access to any Premises occupied by or on behalf of the WAO and as to whether the Supplier has failed to comply with Clause 15.2 above shall be final and conclusive.
- 15.5** The Supplier shall bear the cost of any notice, instruction or decision of the WAO under this Clause as reasonably calculated by the WAO.

16. HEALTH AND SAFETY

- 16.1** The Supplier shall promptly notify the WAO of any health and safety hazards which may arise in connection with the performance of the Contract, whether existing or arising from use of the WAO's Premises or otherwise.
- 16.2** The WAO shall promptly notify the Supplier of any known health and safety hazards which may exist or arise at the WAO's Premises and which may affect the Supplier in the performance of the Contract.
- 16.3** While on the WAO's Premises, the Supplier shall comply with any health and safety measures implemented by the WAO in respect of Staff and other persons working on those Premises.
- 16.4** The Supplier shall notify the WAO immediately in the event of any incident occurring in the performance of the Contract on the WAO's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 16.5** The Supplier shall take all necessary measures to 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 that may apply to Staff and other persons working on the Premises in the performance of the Contract.
- 16.6** The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the WAO on request.

17. DESIGNATIONS

Informing Supplier

- 17.1** The WAO will inform the Supplier of its intention to consult any Audited Body before consulting such body in relation to proposals to appoint the Supplier as Designated Auditor to that body.

Designation Notice

- 17.2** Where the WAO designates the Supplier:

- 17.2.1** as Designated Auditor of an Audited Body it shall send a written Audit Designation Notice in the form set out at Clause 17.3 to the Supplier and a copy of such notice to the relevant Audited Body;
- 17.2.2** to perform Other Services it shall send a written notice to the Supplier in such form as the WAO considers appropriate.

Content of Audit Designation Notice

- 17.3** The WAO shall state the following in each Audit Designation Notice issued to the Supplier:
- 17.3.1** the notice is given under this Contract;
- 17.3.2** the identity of the Audited Body;

- 17.3.3** the identity of the Engagement Partner;
- 17.3.4** the date on which the designation is to commence;
- 17.3.5** the date on which the designation will expire; and
- 17.3.6** the functions which the Designated Auditor is to undertake.

Effect of Audit Designation Notice

- 17.4** Upon receipt of any Designation Notice issued by the WAO, the Supplier shall, as appropriate:
 - 17.4.1** be the Designated Auditor to the Audited Body for the Audit Designation Period;
 - 17.4.2** provide the Other Services to the WAO in accordance with the terms of the Contract.

18. REVOCATION OF DESIGNATION BY WAO'S NOTICE

- 18.1** Any Audit Designation may be revoked by the WAO in the circumstances that follow by the WAO serving notice in writing on the Supplier to take effect on such date specified in such notice:
 - 18.1.1** in the event of serious and material failure on the part of the Designated Auditor to comply with any provision of the 1998 Act, the 2004 Act, the 2006 Act, the 2009 Measure, the Code of Audit Practice, any provision of this Contract or any requirement contained in Auditor General Guidance, which failure is either irremediable or, if remediable, is not remedied within such period as may be specified in a notification of the failure by the WAO to the Supplier;
 - 18.1.2** in the event of Consistent Failure on the part of the Designated Auditor;
 - 18.1.3** in the event of conduct of or circumstances relating to the Designated Auditor or Supplier being in conflict with the functions of the Auditor General, including conflicts of interest and independence threats;
 - 18.1.4** for any other reason that the WAO may from time to time properly determine as a result of significant legislative or other change to the functions of the Auditor General or to the circumstances of the Audited Body such that all or part of the Services in relation to the Audited Body are rendered inoperative, inapplicable or irrelevant.
 - 18.1.5** in the event of the Audited Body to which the Audit Designation relates merging with, subsuming, or being subsumed by, any other Audited Body.

19. AUTOMATIC REVOCATION OF AUDIT DESIGNATION

- 19.1** Any Audit Designation shall automatically be revoked with immediate effect in the event that the Audited Body ceases to exist.

- 19.2** Unless otherwise specified in writing by the WAO at the time a notice terminating the Contract is served on the Supplier, all Audit Designations shall automatically be revoked with immediate effect upon the termination of this Contract.

20. EFFECTS OF DESIGNATION REVOCATION

- 20.1** From the date of the revocation of any Audit Designation as referred to in Clauses 16.6, 18 and 19:
- 20.2** the Supplier shall cease to be the Designated Auditor for that Audited Body; and
- 20.3** the Audit Designation Period in respect of that Audit Designation shall end with immediate effect; and
- 20.4** the Supplier shall immediately cease to provide Services at the Audited Body; and
- 20.5** the Supplier shall co-operate free of charge with the WAO and any new contractor appointed by the WAO to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

21. PRIMARY SERVICES FEES

- 21.1** The WAO will set the Audit Services Fee and the Grant Certification Services Fee payable by each Audited body for which the Supplier is the Designated Auditor and notify the Supplier and the Audited Body concerned. The WAO will invoice each Audited Body direct for the Primary Services Fee. *(If the optional service for Lot 3 related to acting as an agent of WAO for billing this section will be amended and agreed)*

22. SUPPLIER'S PAYMENT FOR PRIMARY SERVICES

- 22.1** The Supplier shall invoice the WAO monthly in arrears in respect of the Primary Services Remuneration.
- 22.2** The WAO shall pay undisputed sums due to the Supplier within 30 days of receipt and agreement of invoices submitted to the WAO.

23. PAYMENT FOR OTHER SERVICES

- 23.1** The WAO shall pay undisputed sums due to the Supplier in respect of the Other Services within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed in accordance with the Contract and any directions or briefs specified by the Auditor General or the WAO.
- 23.2** Each invoice shall contain all appropriate references and a detailed breakdown of the Other Services and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.

24. TAX

- 24.1** All payments amounts referred to in this Contract are exclusive of Tax.

25. SET-OFF AND OVERPAYMENT

- 25.1** Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the WAO in respect of any breach of this Contract), the WAO may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the WAO.
- 25.2** Any overpayment by the WAO to the Supplier, whether of the Contract Remuneration or of Tax, shall be a sum of money recoverable by the WAO from the Supplier as a debt.
- 25.3** The Supplier shall make any payments due to the WAO without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has either a valid court order or an arbitration award (or similar judgement or award) requiring an amount equal to such deduction to be paid by the WAO to the Supplier.

26. LATE PAYMENTS

- 26.1** Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of this Contract on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment and the parties agree that such interest shall be regarded as a substantial remedy for the purpose of the Late Payment of Commercial Debts (Interest) Act 1998.

27. CHANGE OF LAW AND CONTRACT REMUNERATION

- 27.1** The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the charges as the result of:
- 27.1.1** a General Change in Law; or
- 27.1.2** a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.
- 27.2** If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in Clause 27.1), the Supplier shall notify the WAO of the likely effects of that change, including:
- 27.2.1** whether any Change is required to the Services, the fee payable to or by the Supplier or this Contract; and
- 27.2.2** whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 27.3** As soon as practicable after any notification in accordance with Clause 27.2 the Parties shall discuss and agree the matters referred to in that Clause and

any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

- 27.3.1** providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;
 - 27.3.2** demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;
 - 27.3.3** giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - 27.3.4** demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Fee.
- 27.4** Any increase in the Contract Remuneration or relief from the Supplier's obligations agreed by the parties pursuant to this Clause 27 shall be at the absolute discretion of the WAO.

28. SUPPLIER'S DUTY TO INSURE

- 28.1** The Supplier 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 Supplier, arising out of the Supplier's performance of the Contract, including 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 Supplier.
- 28.2** The Supplier shall effect and maintain the following for the duration of the Contract in relation to the performance of this Contract:
- 28.2.1** public liability insurance adequate to cover all risks in the performance of this Contract from time to time;
 - 28.2.2** employers' liability insurance with a minimum limit of indemnity as required by law from time to time;
 - 28.2.3** professional indemnity insurance with a minimum limit of indemnity of £10,000,000 (ten million pounds) for each individual claim or such higher limit as the WAO may reasonably require (and as required by law) from time to time.
- 28.3** Any excess or deductibles under such insurance (referred to in Clause 28.1 and Clause 28.2) shall be the sole and exclusive responsibility of the Supplier.
- 28.4** The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Contract.
- 28.5** The Supplier shall produce to the Contract Manager, on request, either, 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.
- 28.6** If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this Contract the WAO may make alternative

arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

28.7 The Supplier shall maintain the insurances referred to in Clause 28.1 and Clause 28.2 a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

29. SUPPLIER'S INDEMNITY TO WAO

29.1 In respect of the Services the Supplier shall indemnify and keep indemnified the WAO fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the provision of the Services including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. This Clause 29.1 shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of the Supplier or its Staff, or by any circumstances within its or their control.

30. LIMITATION OF LIABILITY

30.1 The aggregate liability of the WAO in respect of all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract shall in no event exceed two million pounds.

30.2 The liability of the Supplier in respect of all claims arising out of, in respect of or in connection with the Contract shall be limited to [if awarded lots 1 or 2, five million pounds, if both lots 1 and, ten million pounds, if lot 3 one million pounds, if either a combination of lots 1 and 3 or lots 2 and 3, six million pounds] for each and every claim arising out of the same originating cause or source.

30.3 Subject to clause 36.9, in no event shall either Party be liable to the other for:

30.3.1 loss of profits, business, revenue, goodwill or anticipated savings; and/ or

30.3.2 indirect or consequential loss or damage.

30.4 Subject to Clauses 30.2 and 30.5, nothing in this Contract shall be taken as limiting the right of the WAO to claim from the Supplier for:

30.3.3 additional operational and administrative costs and expenses; and

30.3.4 expenditure or charges rendered necessary as a result of any Supplier Default.

30.5 Nothing in this Contract shall be construed as limiting the Parties' liabilities to each other in relation to personal injury or death or any other liability that cannot be lawfully limited or excluded.

31 DATA PROTECTION ACT

31.1 The Supplier shall comply with all the requirements of the Data Protection Act 1998 (“DPA”) in relation to the processing of personal data (as defined in the DPA) arising from or relating to the performance of this Contract.

31.2 Where the Supplier is processing personal data (as defined by the DPA) in relation to this Contract as a data processor (as defined by the DPA) for the WAO or an Audited Body the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA and shall from time to time:

31.2.1 provide the WAO with such information as the WAO may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;

31.2.2 promptly notify the WAO of any breach of the security measures required to be put in place pursuant to Clause 31.2; and

31.2.3 ensure that it does nothing knowingly or negligently which places the WAO in breach of the WAO’s obligations under the DPA.

32 CONFIDENTIALITY

32.1 During the Contract Term and after termination or expiry of this Contract for any reason whatsoever, the Receiving Party (as defined in Clause 1.1 within the definition of “Confidential Information”) shall:

32.1.1 keep Confidential Information confidential;

32.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party or in accordance with Clauses 32.2 and 32.3; and

32.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Contract.

32.2 During the term of this Contract, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Contract. In each case the permitted recipient of such Confidential Information shall be known as a “Recipient”.

32.3 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party’s obligations of confidentiality under this Contract as if the Recipient were a party to this Contract.

32.4 The obligations contained in Clauses 32.1 and 32.3 shall not apply to any Confidential Information which:

32.4.1 is at the date of this Contract in, or at any time after the date of this Contract comes into, the public domain other than through a breach of this Contract by the Receiving Party or any Recipient;

- 32.4.2** can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or
 - 32.4.3** subsequently comes lawfully into the possession of the Receiving Party from a third party without any obligation of confidentiality attached to it.
- 32.5** It shall not be a breach of the obligations in Clauses 32.1 and 32.3 to disclose Confidential Information which is required to be disclosed pursuant to a statutory, legal, regulatory or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.
- 32.6** Nothing in this Clause shall prevent the WAO from disclosing Confidential Information received from the Supplier:
- 32.6.1** for the purposes of examining and certifying the WAO's accounts; or
 - 32.6.2** for the purposes any examination pursuant to paragraph 34 of Schedule 1 to the 2013 Act; or
 - 32.6.3** to any government department on the condition that the WAO in so far as is practicable procures that such government department is made aware of and complies with all the WAO's obligations of confidentiality under this Contract as if such government department was a party to this Contract; or
 - 32.6.4** to any person engaged in providing any services to the WAO for any purpose relating to or ancillary to the Contract on condition that the WAO in so far as is practicable procures that such person is made aware of and complies with the WAO's obligations of confidentiality under this Contract.
- 32.7** Nothing in this Clause 32 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 does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 32.8** The Supplier shall comply and shall ensure that any Staff engaged in the performance of the Services shall comply with the provisions of Section 54 and Section 54ZA of the 2004 Act in relation to information that the Supplier may have access to during the Contract.

33 FREEDOM OF INFORMATION

- 33.1** The Supplier acknowledges that the WAO is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the WAO (at the Supplier's expense) to enable the WAO to comply with any Information disclosure requirements.
- 33.2** The Supplier shall (and shall procure that its Staff shall):

- 33.2.1** provide the WAO with any Request for Information received by the Supplier and associated with the Services to the WAO as soon as practicable after receipt and in any event within two Business Days of receiving the Request for Information;
 - 33.2.2** provide the WAO with a copy of all Information in its possession or power in the form that the WAO requires within five Business Days (or such other period as the WAO may specify being no less than 3 Business Days) of the WAO requesting that Information; and
 - 33.2.3** provide all necessary assistance as reasonably requested by the WAO to enable the WAO to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 33.3** The WAO shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
 - 33.3.1** is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - 33.3.2** is to be disclosed in response to a Request for Information, and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the WAO.
- 33.4** The WAO shall use reasonable endeavours to inform the Supplier in advance of disclosure if the WAO receives a Request for Information relating to the Services. The Supplier acknowledges that the WAO may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of the public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
 - 33.4.1** without consulting with the Supplier, or
 - 33.4.2** following consultation with the Supplier and having taken its views into account.
- 33.5** The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are indicative only and that the WAO may nevertheless be obliged to disclose Confidential Information in accordance with Clause 33.4.
- 33.6** In the event that the Supplier becomes a public authority for the purposes of the FOIA (or the Environmental Information Regulations) the Supplier shall:
 - 33.6.1** notify the WAO in respect of any Information Request made to the Supplier in relation to the Services, this Contract or the WAO and shall consult with, and give full details of the intended disclosure to, the WAO before authorising any such disclosure under the FOIA; and
 - 33.6.2** perform its duties under the FOIA in relation to or arising from this Contract at no cost to the WAO.

- 33.7** In the event that the Supplier or Designated Individual becomes a public authority for the purposes of the FOIA (or the Environmental Information Regulations), the WAO will assist the Supplier mutatis mutandis as set out in the foregoing provisions of this Clause 33.

34 SECURITY OF CONFIDENTIAL INFORMATION

- 34.1** In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 34.2** The Supplier will immediately notify the WAO of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clause 32. The Supplier will co-operate with the WAO in any investigation that the WAO considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 34.3** In the event of the Supplier's failure to comply with Clause 34.1 the WAO may require the Supplier to alter any security systems at any time during the Contract Term at the Supplier's expense.

35 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 35.1** The Supplier shall not make any press announcements or publicise the Contract or any part thereof in any way without the prior written consent of the WAO.
- 35.2** The Supplier shall use reasonable endeavours to procure the provisions of Clause 35.1 are observed by the Staff and the Supplier's professional advisors and consultants.

36 INTELLECTUAL PROPERTY RIGHTS

Auditor General's Intellectual Property

- 36.1** All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, data, databases, patents, patterns, models, designs or other material: furnished to or made available to the Supplier by the WAO shall remain the property of the Auditor General; and the Supplier shall not (and shall procure that the Staff shall not) except when necessary for the implementation of the Contract, use or disclose any such Intellectual Property Rights without prior Approval.
- 36.2** Subject to Clause 36.3 the Auditor General shall own all Intellectual Property Rights in the Deliverables and shall be entitled to serve notice on the Supplier requesting the immediate delivery to him of all recorded information (in whatever form) created or received by the Supplier in respect thereof.

- 36.3** The copyright and other intellectual property rights in any materials or software created by the Supplier prior to this Contract, or outside this engagement and any subsequent modifications to the same (“Pre-Existing Works”) will remain vested in the Supplier. To the extent that these form part of any of the Deliverables themselves, the Supplier will ensure that the WAO and the Auditor General have a non-exclusive licence to use, reproduce and maintain the Pre-Existing Works.
- 36.4** Third party software that does not form part of a Deliverable and is needed to enable the WAO or the Auditor General to read or use the Deliverable will be obtained by the Auditor General at the WAO’s cost.
- 36.5** Notwithstanding anything else in this Contract, the Supplier’s working papers and other internal documentation created by the Supplier or on the Supplier’s behalf in connection with the Services will belong to the Supplier provided that the Supplier will provide the Auditor General and or successor auditor with access to and copies of such papers and documentation in accordance with the Auditor General Guidance.

Third Party Intellectual Property Rights

- 36.6** The Supplier shall obtain Approval before using any material, in relation to the performance of this Contract, which is or may be subject to any third party Intellectual Property Rights.
- 36.7** The Supplier shall procure that the owner of the rights grants to the WAO a non-exclusive licence, or if itself a licensee of those rights, shall grant to the WAO an authorised sub-licence, to use, reproduce, and maintain the material.
- 36.8** Such licence or sub-licence referred to in Clauses 36.3 and 36.7 above shall be non-exclusive and perpetual, shall include the right for the WAO to sub-license, novate or assign to another public authority or to any other third party providing services to the WAO, and shall be granted at no cost to the WAO.
- 36.9** The Supplier shall not infringe (and shall procure that its staff and sub-contractors do not infringe) any Intellectual Property Rights of any third party in the provision of the Services and the Supplier shall during and after the Contract Period on written demand indemnify and keep indemnified the WAO against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Auditor General may suffer or incur as a result of or in connection with any breach of this Clause 36.
- 36.10** The Supplier indemnity in Clause 36.9 does not cover claims arising from:
- 36.10.1** the combination by WAO of any items or materials provided by the Supplier with products or services not provided by or otherwise agreed to by the Supplier;
 - 36.10.2** the modification of or work performed on such items or materials by WAO; and
 - 36.10.3** items or materials based upon designs furnished by the WAO.

- 36.11** The WAO shall immediately notify the Supplier in writing of any claim or demand brought against the WAO for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
- 36.11.1** shall consult the WAO on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 36.11.2** shall take due and proper account of the interests of the WAO; and
 - 36.11.3** shall not settle or compromise any claim without the WAO's prior written consent (not to be unreasonably withheld or delayed).
- 36.12** The WAO shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the WAO or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and the Supplier shall indemnify the WAO for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in doing so.
- 36.13** If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the written consent of the WAO (not to be unreasonably withheld or delayed) either:
- 36.13.1** modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
 - 36.13.2** procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the WAO.
- 36.14** At the termination or expiry of this Contract the Supplier shall immediately return to the WAO all materials, work or records held, including any back-up media and recorded information. The Supplier shall be entitled to retain copy documentation that it reasonably requires to support any advice, reports or opinions that the Supplier has provided or may provide to the WAO.

37 RETENTION OF RECORDS

- 37.1** The Supplier shall keep and maintain until eight years after the Contract has been completed, or as long a period as may be agreed in writing between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the WAO, and all payments made by the WAO to the Supplier. The Supplier shall on request afford the WAO or the WAO's representatives such access to those records as may be required by the WAO from time to time.

38 MONITORING OF CONTRACT PERFORMANCE

- 38.1** The Supplier shall comply with the monitoring arrangements set out in Contract Reporting Requirements including providing such data and information as the Supplier may be required to produce under this Contract.

39 COMPLAINTS REPORTING

- 39.1** The Supplier shall notify the Contract Manager of any complaints made to the Supplier concerning or arising from the provision of Services including complaints made by the Audited Bodies and staff of the WAO and the Supplier shall keep a full and accurate record of each complaint and steps taken to address the complaint.

40 TERMINATION OF CONTRACT ON INSOLVENCY

- 40.1** The WAO may terminate the Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where:

40.1.1 the Supplier is an individual or a firm and a petition is presented for the Supplier's bankruptcy, or a criminal bankruptcy order is made against the Supplier or any partner in the firm, or the Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Supplier's or firm's affairs;

40.1.2 the Supplier is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge;

40.1.3 where the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

40.1.4 where the Supplier convenes a meeting of its creditors;

- 40.1.5** if the Supplier makes a voluntary arrangement within Part 1 of the Insolvency Act 1986 or makes a proposal for the benefit of its creditors;
- 40.1.6** if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any material part of the business or assets of the Supplier;
- 40.1.7** if a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the Supplier (otherwise than for the purpose of an amalgamation or reconstruction) or for the making of an administration order or other appointment of an administrator in respect of the Supplier;
- 40.1.8** where the court makes an order for the winding-up of the Supplier;
- 40.1.9** the Supplier is a limited liability partnership or partnership and any event occurs which is analogous to those referenced in clauses 40.1.1 to 40.1.8; or
- 40.1.10** any similar event occurs under the law of any other jurisdiction within the United Kingdom.

41 TERMINATION ON MATERIAL BREACH

- 41.1** The WAO may terminate the Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier commits a material breach of the Contract and:
 - 41.1.1** where the material breach is capable of remedy; the Supplier has not remedied the material breach to the satisfaction of the WAO within such period as the WAO may reasonably specify after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - 41.1.2** the material breach is not capable of remedy.

42 TERMINATION ON CONSISTENT FAILURE

- 42.1** The WAO may terminate the Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where a Consistent Failure has occurred.

43 TERMINATION ON CORRUPTION

- 43.1** The WAO may terminate the Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where conduct prohibited in Clause 4.7 to 4.9 occurs.

44 TERMINATION ON SERIOUS SECURITY RISK

- 44.1** The WAO may terminate the Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where the Supplier fails to comply with the security obligation elements of Clause 15.2 and 15.3.

45 TERMINATION ON LEGISLATIVE CHANGES

45.1 The WAO may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice in the event of significant legislative changes to the functions of the WAO or the Auditor General such that the provisions of this Contract are or will be rendered incapable of operation.

46 TERMINATION BY THE PARTIES

46.1 This Contract may be terminated by the Supplier or the WAO:

46.1.1 by giving not less than two years' notice to the other Party to take effect at the end of an Audit Year.

46.2 In the event of termination under this Clause 46 the Parties shall co-operate with a view to ensuring that all:

46.2.1 commenced Services are completed;

46.2.2 Audit Fees for the Primary Services properly due are collected and amounts due to the WAO are paid; and

46.2.3 Contract Remuneration properly due is paid.

47 NOTICE PERIOD

47.1 Save in respect of Clause 46 above, the WAO may in its absolute discretion specify any date in the notice as to when termination takes effect for the purposes of notice given under Clauses 42 to 46.

48 RECOVERY UPON TERMINATION

48.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Supplier and the WAO accrued before such 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.

48.2 Subject always to the provisions of Clause 36.14, upon termination or expiry of the Contract, the Supplier shall forthwith deliver to the WAO upon request all the WAO's property (including but not limited to materials, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors.

48.3 Upon termination or expiry of the Contract the Supplier shall co-operate free of charge with the WAO and any new contractor appointed by the WAO to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress. The Supplier may, at its sole option, charge the WAO for such co-operation at its then current fee rates where the Contract is terminated by the WAO under Clauses 45 or 46.

49 WAIVER

- 49.1** The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise 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 this Contract.
- 49.2** 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 the provisions of Clause 52.
- 49.3** A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

50 FORCE MAJEURE

- 50.1** Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.
- 50.2** If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Clause 50.1 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

51 REMEDIES CUMULATIVE

- 51.1** Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this 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.

52 NOTICES

- 52.1** Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 52.2** All notices under this Contract shall be served by sending the same by first class post, facsimile or by hand, leaving the same at the address specified for the Party in Schedule 6.
- 52.3** Either Party to this Contract may change its nominated address or facsimile number by prior notice to the other Party.

52.4 Notices given by post shall be effective upon the earlier of (i) actual receipt, or (ii) three (3) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

52.4.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or

52.4.2 by 11am on the next following Business Day, if sent after 4pm, on a Business Day but before 9am on that next following Business Day.

53 ENTIRE AGREEMENT

53.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

53.2 In the event of and only to the extent of any conflict between the terms and conditions of Contract and the Schedules, the terms and conditions shall prevail.

54 In the event of any conflict or inconsistency between anything contained in this Contract and anything contained in the 1998 Act, the 2004 Act, the 2006 Act, the 2009 Measure or the Code of Audit Practice, the 1998 Act, the 2004 Act, the 2006 Act, the 2009 Measure or the Code of Audit Practice (as appropriate) shall prevail.

55 NO PARTNERSHIP

Nothing in the Contract shall be construed as creating a partnership or a contract of employment between the WAO and the Supplier.

56 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

56.1 Other than the Auditor General, no person who is not a Party to the Contract (including any employee, officer, agent, representative, or sub-contractor of either the WAO or the Supplier) shall have any right to enforce any term of this Contract. The Auditor General shall be entitled to enforce the terms of this Contract intended to confer rights on the WAO as if he were a Party.

57 ASSIGNMENT AND SUB-CONTRACTING

57.1 The Supplier shall not assign, transfer, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.

- 57.2** The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 57.3** Where the WAO has consented to the placing of sub-contracts, executed copies of each sub-contract shall be sent by the Supplier to the WAO within two (2) Business Days of issue.
- 57.4** The Supplier shall not use the services of self-employed individuals without prior Approval.

58 SEVERABILITY

- 58.1** 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.
- 58.2** In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

59 CONTINUING EFFECT

- 59.1** Notwithstanding anything else contained elsewhere in this Contract the provisions contained in this Clause, Clauses [1, 12, 25, 26, 28-30, 32, 34, 36, 37, 48, 49, 51-58, 60 and 61], shall survive the expiry or termination of this Contract howsoever caused and shall continue thereafter in full force and effect.

60 GOVERNING LAW

This Contract shall be governed by and interpreted in accordance with English law and the Parties shall submit to the exclusive jurisdiction of the courts of England and Wales.

61 DISPUTE RESOLUTION

- 61.1** 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 30 days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the WAO Director of Corporate Services and the representative nominated by the Supplier.
- 61.2** Where such a dispute cannot be resolved between the parties in accordance with Clause 61.1 above then the following provisions shall apply:
- 61.2.1** the parties agree that any such unresolved dispute may be referred to an expert to be appointed, in the absence of agreement, on the application of either party, by the President for the time being of the Law Society;

- 61.2.2** the person so appointed is to act as an expert and not as an arbitrator and shall be entitled to appoint such technical expert or experts as he considers necessary to assist him in determining the dispute referred to him;
- 61.2.3** the expert so appointed must afford the parties opportunity within such a reasonable time limit as he may stipulate to make representations to him, inform each party of the representations of the other, and allow each party to make submissions on the representations of the other to him;
- 61.2.4** the fees and expenses of the expert, including the costs of his nomination and any costs of any technical expert appointed by him, are to be borne as the expert may direct (but in the absence of such a direction, by the Parties in equal shares); the costs of the Parties are to be determined and borne as the expert may direct but in the absence of direction (unless they otherwise agree) the Parties will bear their own costs; and
- 61.2.5** the decision of the expert shall not be final and binding on both Parties except as to costs.
- 61.3** Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 61.4** The performance of the Contract and all payments due thereunder shall not be suspended, cease or be delayed by the reference of a dispute under this Clause 61 and the Parties (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.

62 MONEY LAUNDERING PROVISIONS

- 62.1** The Supplier represents and warrants that:
 - 62.1.1** to date it has complied with the provisions of POCA, the MLR and the Terrorism Act relevant to its business activities;
 - 62.1.2** all Staff who will be engaged in providing the Services have and will be trained regularly on their obligations under POCA, the MLR and the Terrorism Act;
 - 62.1.3** it has in place adequate systems for the reporting of the suspicion and or knowledge or the reasonable grounds for knowledge or suspicion of Money Laundering or acts or omissions contravening the Terrorism Act.
- 62.2** In providing the Services to the WAO either as Designated Auditor, agent or in any other capacity the Supplier and its Staff shall:
 - 62.2.1** treat the performance of the Services as the carrying out of Relevant Business and as a business in the Regulated Sector; and
 - 62.2.2** comply with the WAO's money laundering guidance from time to time in force; and

62.2.3 comply with the procedure as directed by the WAO or a member of the staff of the WAO for the reporting of knowledge or suspicion or the reasonable grounds for knowledge or suspicion of Money Laundering or acts or omissions contravening the Terrorism Act.

62.3 The Supplier shall procure that any subcontractor appointed by it pursuant to **Clause 57** of this Contract will give a unilateral undertaking to the WAO in the terms of this clause *mutadis mutandis* before commencing the provision of any of the Services. Any such undertaking does not discharge the Supplier from its obligations under **Clauses 57.1** and **57.2** of this Contract.

IN WITNESS of which this Contract has been duly executed as a Deed by the WAO and the Supplier and it is delivered on the date first set out above.

THE COMMON SEAL OF THE WALES AUDIT OFFICE)

Affixed by:)

.....

EXECUTED as a Deed by)
[SUPPLIER])

.....
Director

.....
Director/Secretary

SCHEDULE 1
THE SPECIFICATION

PART A: PRIMARY SERVICES SPECIFICATION

PART A(1) AUDIT SERVICES SPECIFICATION

[WALES AUDIT OFFICE TO PROVIDE]

PART A(2) GRANT CERTIFICATION SERVICES SPECIFICATION

[WALES AUDIT OFFICE TO PROVIDE]

SCHEDULE 1 continued

THE SPECIFICATION

PART B: OTHER SERVICES SPECIFICATION

[SUPPLIER TO PROVIDE]

SCHEDULE 2

PRICING SCHEDULE

PART A: PRIMARY SERVICES REMUNERATION PRICING SCHEDULE

AUDIT SERVICES REMUNERATION

The Audit Services Remuneration for each Audit Year shall be the Remuneration Rate multiplied by the total Audit Services Fees due to the WAO from all Audited Bodies for which the Supplier is the Designated Auditor.

GRANT CERTIFICATION SERVICES REMUNERATION

The Grant Certification Services Remuneration for each Audit Year shall be the Remuneration Rate multiplied by the total Grant Certification Services Fees due to the WAO from all Audited Bodies for which the Supplier is the Designated Auditor.

REMUNERATION RATE

The Remuneration Rate shall be **[0.X]**

REMUNERATION TABLE

SCHEDULE 2 continued

PRICING SCHEDULE

PART B: OTHER SERVICES REMUNERATION PRICING SCHEDULE

[SUPPLIER TO PROVIDE]

SCHEDULE 3
SERVICES STAFF

PART A - ENGAGEMENT LEADS IN RESPECT OF PRIMARY SERVICES

PART B – KEY PERSONNEL IN RESPECT OF OTHER SERVICES

SCHEDULE 4

TUPE PROVISIONS

For the purposes of this **Schedule 4** references to paragraphs are references to paragraphs in this Schedule, terms defined in the Contract shall have the same meanings in this Schedule and the following additional terms shall have the following meanings:

"Assigned Employees"	has the meaning set out in paragraph 7.1.1
"Employment Liabilities"	means any and all liabilities, damages, losses, costs (including the cost of legal and other professional services), claims, demands, actions, compensation and remuneration (including without limitation benefit entitlements and social charges whether contractual, statutory or otherwise) arising directly or indirectly from or in connection with employment or the termination of employment.
"Directive"	means the EC Acquired Rights Directive 2001/23 as amended
"Future Contractor"	has the meaning set out in paragraph 5.2
"Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or modified from time to time
"Transferring Employee"	Any person employed by the WAO immediately prior to the Service Transfer Date to carry out the Services and who is assigned to the organised grouping of resources or employees that is subject to a Relevant Transfer
"Relevant Transfer"	means a transfer for the purposes of Regulation 3 the Regulations
"Retendering Information"	has the meaning given in paragraph 7.1.1
"Return Date"	has the meaning set out in paragraph 8.2
"Returning Employee"	has the meaning set out in paragraph 8.2
"Service Transfer Date"	the date of the transfer of responsibility for the provision of the Services from the Auditor General to the Supplier

1 Relevant Transfer

1.1 These provisions relate to:-

1.1.1 the transfer of the Services from the WAO to the Supplier;

1.1.2 the transfer of the Services from the Supplier to the WAO;

1.1.3 the transfer of the Services from the Supplier to a Future Contractor.

1.2 In the event that the transfer of the Services from the WAO to the Supplier under this Agreement constitutes one or more Relevant Transfers, the contracts of employment of any Transferring Employee shall have effect (subject to Regulation 4(7) of the Regulations) after the Service Transfer Date as if originally made between the Transferring Employee and the Supplier save insofar as such contracts relate to any benefits relating to old age, invalidity or survivorship under any occupational pension scheme.

1.3 In relation to any Relevant Transfer, the WAO shall comply with its obligations under the Regulations and shall indemnify the Supplier against any Employment Liabilities incurred by the Supplier arising as a result of any breach of the obligations referred to in this paragraph 1.3.

1.4 In relation to any Relevant Transfer, the Supplier shall comply with its obligations under the Regulations (including without limitation the obligation under Regulation 13(4) of the Regulations) and its obligations under sections 257 and 258 of the Pensions Act 2004 and shall indemnify the WAO against any Employment Liabilities incurred by the WAO arising as a result of any breach of the obligations referred to in this paragraph 1.4.

2 Emoluments and Outgoings

2.1 The WAO shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date.

2.2 The Supplier shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, Staff and any other person who is or will be employed or engaged by the Supplier in connection with the provision of any of the Services under this Agreement, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Service Transfer Date.

3 Employee Information

The WAO will, at least 28 days prior to the Service Transfer Date, provide to the Supplier such information as it is required to provide under Regulation 11 of the Regulations in respect of the Transferring Employees.

4 Union Recognition

The WAO shall supply to the Supplier no later than five (5) Business Days prior to the Service Transfer Date true copies of any union recognition agreement(s) which relates to the Transferring Employees and the Supplier shall recognise the trade unions representing Transferring Employees after the Service Transfer Date to the same extent as they were recognised by the Auditor General before the Service Transfer Date.

5 Indemnities

5.1 The WAO shall indemnify and keep indemnified in full the Supplier against all Employment Liabilities incurred by the Supplier in connection with or as a result of:

- 5.1.1 a breach by the WAO of its obligations under paragraph 2.1 above; and
 - 5.1.2 any act or omission of the WAO prior to the Service Transfer Date relating to the employment or termination of employment of any Transferring Employee.
- 5.2 The Supplier shall indemnify and keep indemnified in full the WAO, and at the WAO's request, each and every service provider who shall provide any or all of the Services after expiry or earlier termination of this Contract ("**Future Contractor**") against all Employment Liabilities incurred by the WAO or any Future Contractor in connection with or as a result of:
 - 5.2.1 any act, fault or omission of the Supplier relating to any Transferring Employee, Staff or any other person employed or engaged to provide the Services;
 - 5.2.2 any breach by the Supplier of its obligations under paragraph 2.2 above; and
 - 5.2.3 any claim by any trade union or staff association or employee representative (whether or not recognised by the Supplier in respect of all or any of the Transferring Employees, Staff or any other person employed or engaged to provide the Services) arising from or connected with any failure by the Supplier to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of the Regulations, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 5.3 The Supplier shall indemnify and keep indemnified in full the WAO, against all Employment Liabilities incurred by the WAO in connection with or as a result of:
 - 5.3.1 any claim by any Transferring Employees that the identity of the Supplier is or may be perceived by any Transferring Employee as being to that Transferring Employee's detriment or that any proposed or actual substantial change by the Supplier to the Transferring Employee's working conditions or any proposed measures of the Supplier are to that Transferring Employee's detriment whether such claim arises before or after the Service Transfer Date; and
 - 5.3.2 any claim arising out of any misrepresentation or miss-statement whether negligent or otherwise made by the Supplier to any Transferring Employee or to the representatives of any Transferring Employee whether before on or after the Service Transfer Date and whether liability for any such claim arises before on or after the Service Transfer Date.

6 Provision of Details and Indemnity

The Supplier shall immediately upon request by the WAO provide to the WAO details of any measures (which the Supplier envisages it or they will take in relation to any Transferring Employees), and if there are no measures, confirmation of that fact, and shall indemnify and continue to indemnify the WAO against all Employment Liabilities resulting from any failure by the Supplier to comply with this obligation.

7 Retendering

7.1 The Supplier shall during the period of six (6) months immediately preceding the expiry of this Contract or following the service of a notice under **Clauses** 40 to 46 or as a consequence of the WAO notifying the Supplier of its intention to retender this Contract:

7.1.1 on receiving a request from the WAO provide in respect of any person engaged or employed in the provision of the Services under the Contract (the "**Assigned Employees**") full and accurate details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees including all information required to be provided under Regulation 11 of the Regulations (the "**Retendering Information**");

7.1.2 provide the Retendering Information promptly and at no cost to the WAO;

7.1.3 notify the WAO forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

7.1.4 be precluded from making any increase or decrease in the numbers of Assigned Employees without the prior written consent of the WAO;

7.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of employment of the Assigned Employees other than in the ordinary course of business and with the WAO's prior written consent; and

7.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide those services save with the WAO's prior written consent.

7.2 The Supplier shall indemnify and keep indemnified in full the WAO and at the WAO's request any each and every Future Contractor against all Employment Liabilities arising from any claim by any party as a result of the Supplier failing to provide or promptly to provide the WAO and/or any Future Contractor with any Retendering Information or to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.

8 Termination of Contract

- 8.1** On the expiry or earlier termination of this Contract the position with regard to the application of the Regulations in respect of the provision thereafter of the Services shall be determined in accordance with the law as at such date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.
- 8.2** For the purposes of this paragraph 8.2 “**Returning Employees**” shall mean those persons employed to carry out the Services immediately before the expiry or termination of this Contract whose employment transfers to the WAO or a Future Contractor pursuant to the Regulations. Upon expiry or termination of this Contract for whatever reason (such date being termed the “**Return Date**”), the provisions of this paragraph 8.2 will apply:
- 8.2.1** The Supplier shall and shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier up to the Return Date are paid;
- 8.2.2** The Supplier shall comply with its obligations under the Regulations including its obligations to inform and consult.
- 8.2.3** Without prejudice to paragraph 8.2.1, the Supplier shall:
- 8.2.3.1** remain responsible for all the Supplier's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and shall indemnify the WAO and any Future Contractor against all Employment Liabilities incurred by the WAO or any Future Contractor resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Supplier's employees who are not Returning Employees;
- 8.2.3.2** the Supplier shall indemnify the WAO and any Future Contractor against all Employment Liabilities incurred by the WAO or any Future Contractor relating to any Returning Employee or resulting from any claim whatsoever by or on behalf of any of any Returning Employee in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Supplier to comply with its obligations under Regulation 13 of the Regulations and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply. The WAO shall be entitled to assign the benefit of this indemnity to any Future Contractor.

SCHEDULE 4A
THE EMPLOYEE LIST
[WAO TO PROVIDE IF APPLICABLE]

SCHEDULE 5
COMMERCIALLY SENSITIVE INFORMATION

SCHEDULE 6
NOTIFICATION DETAILS

FOR THE WAO:

Address:

For the attention of []
Wales Audit Office
26 Cathedral Road, Cardiff, CF11 9LJ

FOR THE SUPPLIER:

Address:

For the attention of []