

# Framework Schedule 6 (Order Form Template and Call-Off Schedules)

## Order Form

CALL-OFF REFERENCE:	SR1612682056
THE BUYER:	The Commissioners for His Majesty's Revenue and Customs
BUYER ADDRESS	100 Parliament Street, London, SW1A 2BQ
THE SUPPLIER:	Computacenter (UK) Ltd
SUPPLIER ADDRESS:	Hatfield Business Park, Hatfield Avenue, Hatfield, Hertfordshire AL10 9TW
REGISTRATION NUMBER:	01584718
DUNS NUMBER:	22-602-3463
SID4GOV ID:	Unknown

## APPLICABLE FRAMEWORK CONTRACT

This Order Form is for the provision of the Call-Off Deliverables and dated 30/10/2023.  
It's issued under the Framework Contract with the reference number RM6068 for the provision of Technology Products and Associated Services.

## CALL-OFF LOT(S):

Lot 3 Software & Associated Services

## CALL-OFF INCORPORATED TERMS

The following documents are incorporated into this Call-Off Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

- 1 This Order Form including the Call-Off Special Terms and Call-Off Special Schedules.
- 2 Joint Schedule 1(Definitions and Interpretation) RM6068

3 The following Schedules in equal order of precedence:

- Joint Schedules for RM6068
  - Joint Schedule 2 (Variation Form)
  - Joint Schedule 3 (Insurance Requirements)
  - Joint Schedule 4 (Commercially Sensitive Information)
  - Joint Schedule 5 (Corporate Social Responsibility)
  - Joint Schedule 11 (Processing Data)
- Call-Off Schedules for SR1612682056
  - Call-Off Schedule 5 (Pricing Details)
  - Call-Off Schedule 6 (ICT Services) For the purposes of this Call-Off Schedule 6 – ICT Services, Annex B, Annex C and Annex D are attached as Annexes to this Order Form where applicable).

4 CCS Core Terms (version 3.0.6)

5 Joint Schedule 5 (Corporate Social Responsibility) RM6068

6 Annexes A to E Call-Off Schedule 6 (ICT Services)

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

## CALL-OFF SPECIAL TERMS

The following Special Terms are incorporated into this Call-Off Contract:

HMRC Mandatory Clauses (Annex 1)

CALL-OFF START DATE:	11 November 2023
CALL-OFF EXPIRY DATE:	10 November 2026
CALL-OFF INITIAL PERIOD:	3 years
CALL-OFF OPTIONAL EXTENSION PERIOD	N/A

## CALL-OFF DELIVERABLES

Kelverion Automation Portal Pack – [REDACTED]  
Kelverion Manipulation and Runbook Management [REDACTED]  
Kelverion Automation Portal HA upgrade [REDACTED]  
Kelverion Automation Portal Pack – Development [REDACTED]  
Kelverion Automation Portal HA Upgrade – Development [REDACTED]  
Kelverion Automation Portal Pack – Development [REDACTED]

## **LOCATION FOR DELIVERY**

Title to Goods is transferred to the Buyer on payment to the Supplier in full (save in respect of software where title to the same shall remain at all times with the relevant licensor).

## **DATES FOR DELIVERY OF THE DELIVERABLES**

11/11/2023

## **TESTING OF DELIVERABLES**

N/A

## **WARRANTY PERIOD**

The warranty period for the purposes of Clause 3.1.2 of the Core Terms shall be the duration of any guarantee or warranty period the Supplier has received from the third party manufacturer or supplier.

## **MAXIMUM LIABILITY**

Each Party's total aggregate liability in each Contract Year under this Call-Off Contract (whether in tort, contract or otherwise) is no more than the lower of £5 million or 125% of the Estimated Yearly Charges.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year shall be the total aggregate Charges paid or payable by the Buyer from the Call-Off Start Date until the end of the first Call-Off Contract Year.

## **CALL-OFF CHARGES**

See details in Call-Off Schedule 5 (Pricing Details)

The Charges will not be impacted by any change to the Framework Prices. The Charges can only be changed by agreement in writing between the Buyer and the Supplier because of a Specific Change in Law or Benchmarking using Call-Off Schedule 16 (Benchmarking) where this is used.

## **REIMBURSABLE EXPENSES**

N/A

## **PAYMENT METHOD**

To facilitate payment, the Supplier shall use an electronic transaction system chosen

by the Buyer and shall:

Register for the electronic transaction system in accordance with the instructions of the Buyer;

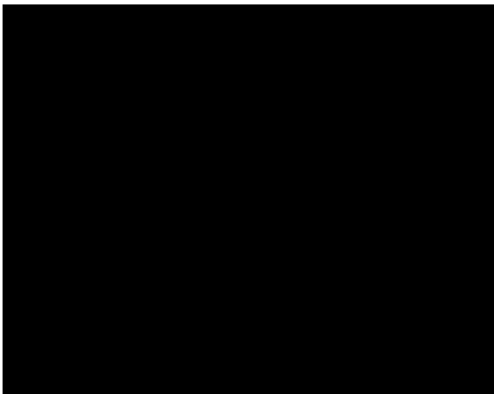
allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system.

The Supplier shall submit invoices directly to the billing address as per the Buyer's order. The Supplier shall invoice the Buyer for Goods on despatch and for Services as per Supplier's quotation. Payment to be made by BACS payment.

## **BUYER'S INVOICE ADDRESS:**

All invoices will be sent via Ariba-

## **BUYER'S AUTHORISED REPRESENTATIVE**



## **BUYER'S ENVIRONMENTAL POLICY**

Environmental policy can be found in the 'HMRC Sustainable Procurement Strategy' which is on our public facing 'Procurement at HMRC' Gov.uk page under the heading "Sustainable Procurement at HMRC" – see links below:

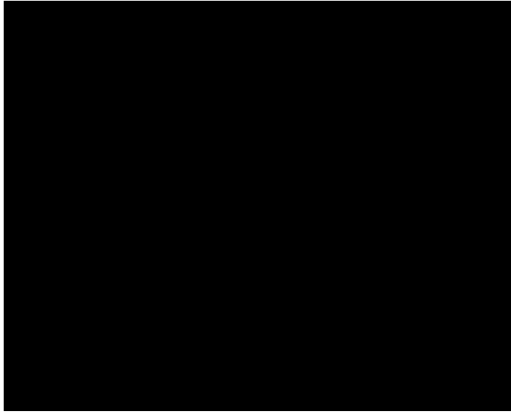
<https://www.gov.uk/government/organisations/hm-revenue-customs/about/procurement>

[HMRC Sustainable Procurement Strategy.pdf \(publishing.service.gov.uk\)](#)

## **BUYER'S SECURITY POLICY**

N/A

## **SUPPLIER'S AUTHORISED REPRESENTATIVE**



## **SUPPLIER'S CONTRACT MANAGER**

N/A

## **PROGRESS REPORT FREQUENCY**

N/A

## **PROGRESS MEETING FREQUENCY**

N/A

## **KEY STAFF**

N/A

## **KEY SUBCONTRACTOR(S)**

N/A

## **COMMERCIALLY SENSITIVE INFORMATION**

Supplier's pricing and/or any Supplier specific solution(s) for the period of the Call-Off Term +2 years

## **SERVICE CREDITS**

N/A

## **ADDITIONAL INSURANCES**

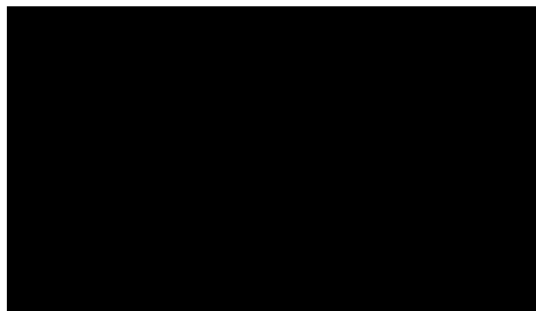
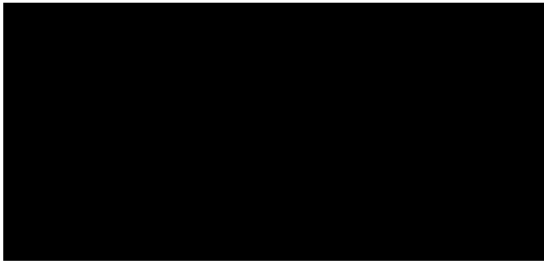
N/A

## **GUARANTEE**

N/A

## **SOCIAL VALUE COMMITMENT**

N/A



## Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

Contract Details							
This variation is between:	<b>[delete]</b> as applicable: CCS / Buyer] ( "the Buyer") And <b>[insert]</b> name of Supplier] ("the Supplier")						
Contract name:	<b>[insert]</b> name of contract to be changed] ("the Contract")						
Contract reference number:	<b>[insert]</b> contract reference number]						
Details of Proposed Variation							
Variation initiated by:	<b>[delete]</b> as applicable: CCS/Buyer/Supplier]						
Variation number:	<b>[insert]</b> variation number]						
Date variation is raised:	<b>[insert]</b> date]						
Proposed variation							
Reason for the variation:	<b>[insert]</b> reason]						
An Impact Assessment shall be provided within:	<b>[insert]</b> number] days						
Impact of Variation							
Likely impact of the proposed variation:	<b>[Supplier to insert]</b> assessment of impact]						
Outcome of Variation							
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li><b>[CCS/Buyer to insert]</b> original Clauses or Paragraphs to be varied and the changed clause]</li> </ul>						
Financial variation:	<table border="1"> <tr> <td>Original Contract Value:</td> <td>£ <b>[insert]</b> amount]</td> </tr> <tr> <td>Additional cost due to variation:</td> <td>£ <b>[insert]</b> amount]</td> </tr> <tr> <td>New Contract value:</td> <td>£ <b>[insert]</b> amount]</td> </tr> </table>	Original Contract Value:	£ <b>[insert]</b> amount]	Additional cost due to variation:	£ <b>[insert]</b> amount]	New Contract value:	£ <b>[insert]</b> amount]
Original Contract Value:	£ <b>[insert]</b> amount]						
Additional cost due to variation:	£ <b>[insert]</b> amount]						
New Contract value:	£ <b>[insert]</b> amount]						

1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the **[delete]** as applicable: CCS / Buyer]

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address



# Joint Schedule 3 (Insurance Requirements)

## 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than:
  - 1.1.1 the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
  - 1.1.2 the Call-Off Contract Effective Date in respect of the Additional Insurances.
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

## 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if you aren't insured**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or in part. The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables, the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## Joint Schedule 4 (Commercially Sensitive Information)

### 8. What is the Commercially Sensitive Information?

- 8.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 8.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 8.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1.	Call off signature	Supplier Pricing	Call Off term + 2 years
2.	Call off Signature	Supplier Specific Solution	Call Off term +2 years

# Joint Schedule 5 (Corporate Social Responsibility)

## 1. What we expect from our Suppliers

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government. ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf))
- 1.2 CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

## 2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
  - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

## 3. Modern Slavery, Child Labour and Inhumane Treatment

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
  - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;

- 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 3.1.8 shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

#### **4. Income Security**

##### **4.1 The Supplier shall:**

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- 4.1.3 All workers shall be provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars

of their wages for the pay period concerned each time that they are paid;

4.1.4 not make deductions from wages:

- (a) as a disciplinary measure
- (b) except where permitted by law; or
- (c) without expressed permission of the worker concerned;

4.1.5 record all disciplinary measures taken against Supplier Staff; and

4.1.6 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **5. Working Hours**

5.1 The Supplier shall:

5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;

5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;

5.1.3 ensure that use of overtime used responsibly, taking into account:

- (a) the extent;
- (b) frequency; and
- (c) hours worked;

by individuals and by the Supplier Staff as a whole;

5.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.

5.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:

5.3.1 this is allowed by national law;

5.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;

appropriate safeguards are taken to protect the workers' health and safety; and

5.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

5.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **6. Sustainability**

- 6.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>



## Joint Schedule 11 (Processing Data)

### Status of the Controller

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA. A Party may act as:
  - (a) "Controller" in respect of the other Party who is "Processor";
  - (b) "Processor" in respect of the other Party who is "Controller";
  - (c) "Joint Controller" with the other Party;
  - (d) "Independent Controller" of the Personal Data where the other Party is also "Controller",  
  
in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### Where one Party is Controller and the other Party its Processor

2. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
  - (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so

required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

- (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*);
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its

- best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 6. Subject to paragraph 7 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
  - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 7. The Processor's obligation to notify under paragraph 6 of this Joint Schedule 11 shall include the provision of further information to the Controller in phases, as details become available.
- 8. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event; and/or

- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
    - (a) the Controller determines that the Processing is not occasional;
    - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
    - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  10. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
  11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
  12. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
    - (a) notify the Controller in writing of the intended Subprocessor and Processing;
    - (b) obtain the written consent of the Controller;
    - (c) enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and
    - (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
  13. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
  14. The Relevant Authority may, at any time on not less than 30 Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
  15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **Where the Parties are Joint Controllers of Personal Data**

16. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11 (*Processing Data*).

## **Independent Controllers of Personal Data**

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 17 of this Joint Schedule 11, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
21. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;
  - (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

23. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
25. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).

27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
28. Notwithstanding the general application of paragraphs 2 to 15 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 27 of this Joint Schedule 11.

## Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are: [REDACTED]
- 1.2 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

### A) Personal Data Processing Template

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>• <b>Names, addresses (home and office locations) and email addresses of HMRC and VOA Staff</b></li></ul>
Duration of the Processing	For the life of the call off contract including any optional extensions taken.
Nature and purposes of the Processing	For the delivery of software automation.
Type of Personal Data	HMRC staff names, email address and home address



Categories of Data Subject	<i>HMRC Staff</i>
Plan for return and destruction of the data once the Processing is complete  UNLESS requirement under Union or Member State law to preserve that type of data	All personal data to be destroyed upon contract end.

**B) Framework Contract Personal Data Processing**

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>CCS is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraphs 2 to paragraph 15 and for the purposes of the Data Protection Legislation, CCS is the Controller and the Supplier is the Processor of the Personal Data recorded below</p>
Duration of the Processing	Up to 7 years after the expiry or termination of the Framework Contract
Nature and purposes of the Processing	<p>To facilitate the fulfilment of the Supplier's obligations arising under this Framework Contract including</p> <ul style="list-style-type: none"> <li>i. Ensuring effective communication between the Supplier and CCS</li> <li>ii. Maintaining full and accurate records of every Call-Off Contract arising under the Framework Agreement in accordance with Core Terms Clause 15 ( Record Keeping and Reporting)</li> </ul>

Type of Personal Data	<p>Includes:</p> <ul style="list-style-type: none"> <li>i. Contact details of, and communications with, CSS staff concerned with management of the Framework Contract</li> <li>ii. Contact details of, and communications with, Buyer staff concerned with award and management of Call-Off Contracts awarded under the Framework Contract,</li> <li>iii. Contact details, and communications with, Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Contract</li> </ul> <p>Contact details, and communications with Supplier staff concerned with management of the Framework Contract</p>
Categories of Data Subject	<p>Includes:</p> <ul style="list-style-type: none"> <li>i. CSS staff concerned with management of the Framework Contract</li> <li>ii. Buyer staff concerned with award and management of Call-Off Contracts awarded under the Framework Contract</li> <li>iii. Sub-contractor staff concerned with fulfilment of the Supplier's obligations arising from this Framework Contract</li> </ul> <p>Supplier staff concerned with fulfilment of the Supplier's obligations arising under this Framework Contract</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p>	<p>All relevant data to be deleted 7 years after the expiry or termination of this Framework Contract unless longer retention is required by Law or the terms of any Call-Off Contract arising hereunder</p>

## Annex 2 - Joint Controller Agreement

N/A

## Call-Off Schedule 5 (Pricing Details)

Redacted

## Call-Off Schedule 6 (ICT Services)

### 1 Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**"Buyer Property"** the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;

**"Buyer Software"** any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;

**"Buyer System"** the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables

**"Defect"** any of the following:

- (a) any error, damage or defect in the manufacturing of a Deliverable; or
- (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or
- (c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or
- (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;

**"Emergency Maintenance"** ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;

**"ICT Environment"** the Buyer System and the Supplier System;

**"Licensed Software"** all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Call Off Contract, including any COTS Software;

**"Maintenance Schedule"** has the meaning given to it in paragraph 8 of this Schedule;

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

**"New Release"** an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

**"Open Source Software"** computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;

**"Operating Environment"** means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:

- (a) the Deliverables are (or are to be) provided; or
- (b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or
- (c) where any part of the Supplier System is situated

**"Permitted Maintenance"** has the meaning given to it in paragraph 8.2 of this Schedule;

**"Quality Plans"** has the meaning given to it in paragraph 6.1 of this Schedule;

**"Sites"** has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;

**"Software"** Specially Written Software, COTS Software and non-COTS Supplier and third party Software;

**"Software Supporting Materials"** has the meaning given to it in paragraph 9.1 of this Schedule;

**"Source Code"** computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

**"Specially Written Software"** any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

**"Supplier System"** the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

## **2 When this Schedule should be used**

- 2.1 This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT services which are part of the Deliverables.

## **3 Buyer due diligence requirements**

- 3.1 This paragraph 3 applies where the Buyer has conducted a Further Competition. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
- 3.1.1 suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
  - 3.1.2 operating processes and procedures and the working methods of the Buyer;
  - 3.1.3 ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
  - 3.1.4 existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
- 3.2 The Supplier confirms that it has advised the Buyer in writing of:
- 3.2.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Deliverables;
  - 3.2.2 the actions needed to remedy each such unsuitable aspect; and
  - 3.2.3 a timetable for and the costs of those actions.

## **4 Software warranty**

- 4.1 The Supplier represents and warrants that:
- 4.1.1 it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;
  - 4.1.2 all components of the Specially Written Software shall:
    - 4.1.2.1 be free from material design and programming errors;
    - 4.1.2.2 perform in all material respects in accordance with the relevant specifications and Documentation; and
    - 4.1.2.3 not infringe any IPR.

## **5 Provision of ICT Services**

- 5.1 The Supplier shall:
- 5.1.1 ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with any interface requirements of the Buyer specified in this Contract and (except in

relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;

- 5.1.2 ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- 5.1.3 ensure that the Supplier System will be free of all encumbrances;
- 5.1.4 ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
- 5.1.5 minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables;

## **6 Standards and Quality Requirements**

- 6.1 The Supplier shall, where specified by the Buyer as part of their Further Competition, and in accordance with agreed timescales, develop quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3 Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4 The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
  - 6.4.1 be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
  - 6.4.2 apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
  - 6.4.3 obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## **7 ICT Audit**

- 7.1 The Supplier shall allow any auditor access to the Supplier premises to:
  - 7.1.1 inspect the ICT Environment and the wider service delivery environment (or any part of them);
  - 7.1.2 review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 7.1.3 review the Supplier's quality management systems including all relevant Quality Plans.

## 8 Maintenance of the ICT Environment

- 8.1 If specified by the Buyer undertaking a Further Competition, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2 Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 8.3 The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.
- 8.4 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## 9 Intellectual Property Rights in ICT

### 9.1 Assignments granted by the Supplier: Specially Written Software

- 9.1.1 The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
  - 9.1.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software; and
  - 9.1.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").
- 9.1.2 The Supplier shall:
  - 9.1.2.1 inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
  - 9.1.2.2 deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
  - 9.1.2.3 without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall

grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

- 9.1.3 The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

## **9.2 Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

- 9.2.1 Unless the Buyer gives its Approval the Supplier must not use any:

- (a) of its own Existing IPR that is not COTS Software;
- (b) third party software that is not COTS Software

- 9.2.2 Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

- 9.2.3 Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

- 9.2.3.1 notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

- 9.2.3.2 only use such third party IPR as referred to at paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

- 9.2.4 Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

- 9.2.5 The Supplier may terminate a licence granted under paragraph 9.2.2 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

## **9.3 Licenses for COTS Software by the Supplier and third parties to the Buyer**

- 9.3.1 The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less



favourable than those standard commercial terms on which such software is usually made commercially available.

- 9.3.2 Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
- 9.3.3 Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
- 9.3.4 The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:
  - 9.3.4.1 will no longer be maintained or supported by the developer; or
  - 9.3.4.2 will no longer be made commercially available

#### **9.4 Buyer's right to assign/novate licences**

- 9.4.1 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:
  - 9.4.1.1 a Central Government Body; or
  - 9.4.1.2 to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.
- 9.4.2 If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2.

#### **9.5 Licence granted by the Buyer**

- 9.5.1 The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

#### **9.6 Open Source Publication**

- 9.6.1 Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:
  - 9.6.1.1 suitable for publication by the Buyer as Open Source; and
  - 9.6.1.2 based on Open Standards (where applicable),  
and the Buyer may, at its sole discretion, publish the same as Open Source.
- 9.6.2 The Supplier hereby warrants that the Specially Written Software and the New IPR:
  - 9.6.2.1 are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will

not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;

9.6.2.2 have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;

9.6.2.3 do not contain any material which would bring the Buyer into disrepute;

9.6.2.4 can be published as Open Source without breaching the rights of any third party;

9.6.2.5 will be supplied in a format suitable for publication as Open Source ("the Open Source Publication Material") no later than the date notified by the Buyer to the Supplier; and

9.6.2.6 do not contain any Malicious Software.

9.6.3 Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

9.6.3.1 as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and

9.6.3.2 include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## **9.7 Malicious Software**

9.7.1 The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

9.7.2 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

9.7.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:

9.7.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

9.7.3.2 by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

## **10 Supplier-Furnished Terms**

### **10.1 Software Licence Terms**

- 10.1.1.1 Terms for licensing of non-COTS third party software in accordance with Paragraph 9.2.3 are detailed in Annex A of this Call-Off Schedule 6.
- 10.1.1.2 Terms for licensing of COTS software in accordance with Paragraph 9.3 are detailed in Annex B of this Call-Off Schedule 6.

## **11 CUSTOMER PREMISES**

### **11.1 Licence to occupy Customer Premises**

- 11.1.1 Any Customer Premises shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Call- Off Contract. The Supplier shall have the use of such Customer Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of this Call-Off Contract [ and in accordance with Call-Off Schedule 10 (Exit Management)].
- 11.1.2 The Supplier shall limit access to the Buyer Premises to such Supplier Staff as is necessary to enable it to perform its obligations under this Call-Off Contract and the Supplier shall co-operate (and ensure that the Supplier Staff co-operate) with such other persons working concurrently on such Buyer Premises as the Buyer may reasonably request.
- 11.1.3 Save in relation to such actions identified by the Supplier in accordance with paragraph 3.2 of this Call-Off Schedule 6 and set out in the Order Form (or elsewhere in this Call Off Contract), should the Supplier require modifications to the Buyer Premises, such modifications shall be subject to Approval and shall be carried out by the Buyer at the Supplier's expense. The Buyer shall undertake any modification work which it approves pursuant to this paragraph 11.1.3 without undue delay. Ownership of such modifications shall rest with the Buyer.
- 11.1.4 The Supplier shall observe and comply with such rules and regulations as may be in force at any time for the use of such Buyer Premises and conduct of personnel at the Buyer Premises as determined by the Buyer, and the Supplier shall pay for the full cost of making good any damage caused by the Supplier Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 11.1.5 The Parties agree that there is no intention on the part of the Buyer to create a tenancy of any nature whatsoever in favour of the Supplier or the Supplier Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Call-Off Contract, the Buyer retains the right at any time to use any Buyer Premises in any manner it sees fit.

## **12 Security of Buyer Premises**

- 12.1.1 The Buyer shall be responsible for maintaining the security of the Buyer Premises. The Supplier shall comply with the reasonable security requirements of the Buyer while on the Buyer Premises.

- 12.1.2 The Buyer shall afford the Supplier upon Approval (the decision to Approve or not will not be unreasonably withheld or delayed) an opportunity to inspect its physical security arrangements.

### **13 Buyer Property**

- 13.1 Where the Buyer issues Buyer Property free of charge to the Supplier such Buyer Property shall be and remain the property of the Buyer and the Supplier irrevocably licences the Buyer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Buyer Property.
- 13.2 The Supplier shall not in any circumstances have a lien or any other interest on the Buyer Property and at all times the Supplier shall possess the Buyer Property as fiduciary agent and bailee of the Buyer.
- 13.3 The Supplier shall take all reasonable steps to ensure that the title of the Buyer to the Buyer Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Buyer's request, store the Buyer Property separately and securely and ensure that it is clearly identifiable as belonging to the Buyer.
- 13.4 The Buyer Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Buyer otherwise within five (5) Working Days of receipt.
- 13.5 The Supplier shall maintain the Buyer Property in good order and condition (excluding fair wear and tear) and shall use the Buyer Property solely in connection with this Call-Off Contract and for no other purpose without Approval.
- 13.6 The Supplier shall ensure the security of all the Buyer Property whilst in its possession, either on the Sites or elsewhere during the supply of the Services, in accordance with Call- Off Schedule 9 (Security) and the Buyer's reasonable security requirements from time to time.
- 13.7 The Supplier shall be liable for all loss of, or damage to the Buyer Property, (excluding fair wear and tear), unless such loss or damage was solely caused by a Buyer Cause. The Supplier shall inform the Buyer immediately of becoming aware of any defects appearing in or losses or damage occurring to the Buyer Property.

### **14 Supplier Equipment**

- 14.1 Unless otherwise stated in this Call Off Contract, the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.
- 14.2 The Supplier shall not deliver any Supplier Equipment nor begin any work on the Buyer Premises without obtaining Approval.
- 14.3 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to the Sites and/or any Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Call-Off Expiry Date the Supplier shall be responsible for the removal of all relevant Supplier Equipment from the Sites and/or any Buyer

Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal.

- 14.4 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.
- 14.5 Subject to any express provision of the BCDR Plan (if applicable) to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Call Off Contract, including the Service Levels.
- 14.6 The Supplier shall maintain all Supplier Equipment within the Sites and/or the Buyer Premises in a safe, serviceable and clean condition.
- 14.7 The Supplier shall, at the Buyer's written request, at its own expense and as soon as reasonably practicable:
  - 14.7.1 remove from the Buyer Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Buyer is either hazardous, noxious or not in accordance with this Call-Off Contract; and
  - 14.7.2 replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

## **ANNEX A**

Non-COTS Third Party Software Licensing Terms as per clause 9.2.3

## ANNEX B

### COTS Licensing Terms

Third party software (if any) shall be licensed subject to the third party licensor's standard license terms which shall govern the supply, the Buyer's use of and obligations relating to the software in their entirety and which shall prevail in the event of any conflict with the terms and conditions of this Call-Off Contract.

[Kolverion-EULA-May-2018.pdf](#)

END USER LICENSE AGREEMENT PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SOFTWARE. BY USING THE SOFTWARE OR CLICKING AGREE YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU AGREE TO THESE TERMS ON BEHALF OF A LEGAL ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE NECESSARY AUTHORITY TO BIND THAT LEGAL ENTITY TO THESE TERMS.

This agreement is between Kolverion North America, Inc., a Florida corporation (if customer is located in the United States and Canada), and Kolverion UK Limited, a company incorporated in England and Wales (if customer is located outside of the United States and Canada) (Kolverion), and the customer entering into this agreement (Customer). The Kolverion software, modification, enhancements, documentation, and license keys provided to Customer (Software) are licensed and are not sold.

#### 1. SCOPE.

This agreement describes the licensing of the Software and Support provided to Customer under an order.

#### 2. LICENSE.

A. License. Subject to the other terms of this agreement, Kolverion grants Customer, under an order, a non-exclusive, and non-transferable license (for the license duration specified on the order), up to the license capacity purchased to use the Software only in the territory specified in the order and Customer's internal business operations. The following license capacity metrics apply, in addition to the quantity of licenses purchased: Integration Packs and Orchestrator Solutions licensed per Microsoft System Center Orchestrator database. Runbook Studio licensed per device. Integration Modules and Azure Solutions licensed per Microsoft Azure Subscription or per device. Automation Portal licensed per Automation Portal database. B. Trial. If Customer has registered for a trial of the Software, Kolverion grants Customer a nonexclusive license, for the duration specified by Kolverion, to operate the Software to decide if it wants to purchase a paid license. The Software is provided AS IS, with no warranty.

3. WARRANTY, REMEDY, AND DISCLAIMER. A. Warranty. For new license purchases, Kolverion warrants that the Software will perform in substantial accordance with its accompanying product documentation for a period of 60

days from the date of the order. This warranty will not apply to any problems caused by software not licensed to Customer by Kolverion, use other than in accordance with the technical documentation, or misuse of the Software. The warranty only covers problems reported to Kolverion during the warranty period or 15 days after. Customer will cooperate with Kolverion in resolving any warranty claim. EXCLUSIVE REMEDY AND SOLE LIABILITY. KOLVERION WILL USE COMMERCIALY REASONABLE EFFORTS TO REMEDY COVERED WARRANTY CLAIMS WITHIN A REASONABLE PERIOD OF TIME OR REPLACE THE SOFTWARE, OR IF KOLVERION CANNOT DO SO, IT WILL REFUND TO CUSTOMER THE LICENSE FEE PAID. THIS REMEDY IS CUSTOMER'S EXCLUSIVE REMEDY AND KOLVERION'S SOLE LIABILITY FOR THESE WARRANTY CLAIMS. B. DISCLAIMER. KOLVERION DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS THAT THE SOFTWARE MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.

4. PAYMENT. Customer will pay all fees within 30 days of receipt of an invoice, unless otherwise provided on an order, plus applicable sales, use, and other similar taxes.

#### 5. MUTUAL CONFIDENTIALITY.

A. Definition of Confidential Information. Confidential Information means all non-public information disclosed by a party (Discloser) to the other party (Recipient), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information). Kolverion's Confidential Information includes, without limitation, the Software, its user interface design and layout, technical documentation and pricing information.

B. Protection of Confidential Information. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

C. Exclusions. Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.

6. KOLVERION PROPERTY. A. Reservation of Rights. The Software, workflow processes, user interface, designs, technical documentation, and other technologies provided by Kolverion as part of the Software are the proprietary property of Kolverion and its licensors, and all right, title, and



interest in and to such items, including all associated intellectual property rights, remain only with Kolverion and its licensors. The Software is protected by applicable copyright and other intellectual property laws. Customer may not remove any product identification, copyright, trademark, or other notice from the Software. Kolverion reserves all rights unless expressly granted in this agreement.

B. Restrictions. Customer may not (i) transfer, assign, sublicense, rent the Software, create derivative works of the Software, or use it in any type of service provider environment; (ii) interfere with or disrupt the integrity or performance of the Software; (iii) reverse engineer, decompile, disassemble, or translate the Software, except as allowed by applicable law despite this limitation; or (iv) evaluate the Software for the purpose of competing with Kolverion, or operate the Software other than in accordance with its technical documentation.

## 7. TERM AND TERMINATION.

A. Term. This agreement expires at the end of the license period specified in the accompanying order.

B. Mutual Termination for Material Breach. If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured. Confidential

C. Return Kolverion Property Upon Termination. Upon termination of this agreement or a license for any reason, Customer must discontinue using the Software, de-install, and destroy or return the Software and all copies within 5 days. Upon Kolverion's request, Customer will confirm in writing its compliance with this destruction or return requirement.

8. LIABILITY LIMIT. A. Exclusion of Indirect Damages. Kolverion is not liable for any indirect, special, incidental, or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue, or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable. B. Total Limit on Liability. Except for Kolverion's indemnity obligations in Clause 10, Kolverion's total liability arising out of or related to this agreement (whether in contract, tort, or otherwise) does not exceed the amount paid or payable by Customer for the license to the Software.

## 9. ANNUAL SUPPORT.

Kolverion's annual technical support and maintenance services (Support) is included with new term licenses and available for an annual fee for perpetual licenses (unless the Support is sunsetted). Support may be provided in subsequent years if Customer and Kolverion agree on the support renewal for that year. Support is provided under the Support policies then in effect. Kolverion may change its Support terms, but Support will not materially degrade during any Support term. More details on Support are located at <http://www.kolverion.com/support>

## 10. CUSTOMER INDEMNITY.

Defense of Third Party Claims. Kolverion will defend or settle any third-party claim against Customer to the extent that such claim alleges that the Software violates a copyright, patent, trademark, or other intellectual property right, if Customer promptly notifies Kolverion of the claim in writing, cooperates with

Kelverion in the defense, and allows Kelverion to solely control the defense or settlement of the claim. Costs. Kelverion will pay infringement claim defense costs it incurs in defending Customer, and Kelverion negotiated settlement amounts, and court awarded damages. Process. If such a claim appears likely, then Kelverion may modify the Software, procure the necessary rights, or replace it with the functional equivalent. If Kelverion determines that none of these are reasonably available, then Kelverion may terminate the Software and refund (as applicable) any prepaid and unused fees, service fees, and the license fee for perpetual licenses (amortized over a 5-year period from the date of the order). Exclusions. Kelverion has no obligation for any claim arising from: Kelverion's compliance with Customer's specifications; a combination of the Software with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by Kelverion. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND KELVERION'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS. 11. GOVERNING LAW AND FORUM.

A. If Customer is located in the United States: This agreement is governed by the laws of the State of Delaware (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for the State of Delaware and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

B. If Customer is located in the Canada: This agreement is governed by the laws of the State of Delaware (US), without regard to conflict of laws principles. Any dispute between Customer and Kelverion arising out of or related to this agreement must be exclusively determined by binding arbitration in the State of Delaware, US in English, under the then current commercial or international rules of The International Centre For Dispute Resolution. The decisions of the arbitrators may be entered in any court of competent jurisdiction. Nothing in this agreement prevents either party from seeking injunctive relief in any court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.

C. If Customer is located outside of the United States and Canada: This agreement is governed by the laws of England and Wales for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the courts of England and Wales.

## 12. OTHER TERMS.

A. Entire Agreement and Changes. This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise, or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Kelverion. No waiver is effective unless the party waiving the right signs a waiver in writing.

B. No Assignment. Neither party may assign or transfer this agreement to a third party, nor delegate any duty, except that the agreement and all orders may be assigned, without the consent of Customer, as part of a merger or sale of substantially all or part the businesses or assets of Kolverion.

C. Independent Contractors. The parties are independent contractors with respect to each other.

D. Enforceability and Force Majeure. If any term of this agreement is invalid or unenforceable, then it shall be deemed deleted but it shall not affect the validity and enforceability of the remainder of the agreement and the other terms shall remain in effect. If any provision or part provision of this agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events.

E. Money Damages Insufficient. Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

F. No Additional Terms. Kolverion rejects additional or conflicting terms of a Customer's form purchasing document.

G. Order of Precedence. If there is an inconsistency between this agreement and an order, this agreement prevails.

H. Survival of Terms. Any terms, that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including, without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply. I. Compliance Audit. No more than once in any 12-month period and upon at least 30 days' advance notice, Kolverion (or its representative) may audit Customer's usage of the Software at any Customer facility. Customer will cooperate with such audit. Customer agrees to pay within Confidential 30 days of written notification any fees applicable to Customer's use of the Software in excess of the license.

J. Export Compliance. Customer must comply with all applicable export control laws of the United States, foreign jurisdictions, and other applicable laws and regulations. K. U.S. Government Restricted Rights. If Customer is a United States government agency or acquired the license to the Software hereunder pursuant to a government contract or with government funds, then as defined in FAR §2.101, DFAR §252.227-7014(a)(1), and DFAR §252.227-7014(a)(5), or otherwise, all Software provided in connection with this agreement are "commercial items," "commercial computer software," or "commercial computer software documentation." Consistent with DFAR §227.7202 and FAR §12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution by or for the United States government is governed solely by the terms of this agreement and is prohibited except to the extent permitted by the terms of this agreement.

L. Open Source Software Licenses. The Software may contain embedded open source software components, which are provided as part of the Software and for which additional terms may be included in the technical documentation, the Software or Kolverion website. LOCAL COUNTRY TERMS: If Customer is located outside of the United States and Canada, then notwithstanding what

is provided above, the below specific terms apply instead of Section 8 Liability Limit above:

A. Customer acknowledges that the Software has not been developed to meet its individual requirements, and that it is therefore its responsibility to ensure that the facilities and functions of the Software as described in the technical documents meet its requirements.

B. Kolverion is not in any circumstances whatever liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Software for: loss of profits, sales, business, or revenue; business interruption; loss of anticipated savings; loss or corruption of data or information; loss of business opportunity, goodwill or reputation; or any indirect or consequential loss or damage.

C. Other than the losses set out in B above (for which we are not liable), Kolverion's maximum aggregate liability under or in connection with this agreement whether in contract, tort (including negligence) or otherwise, will in all circumstances be limited to the amount paid by Customer to Kolverion in the 12 month period prior to the event which gave rise to the claim. This maximum cap does not apply to Section D below.

D. Nothing in this agreement will limit or exclude Kolverion's liability for: death or personal injury resulting from Kolverion's negligence; fraud or fraudulent misrepresentation; any other liability that cannot be excluded or limited by applicable law



## **Core Terms**

### **1 Definitions used in the contract**

1.1 Interpret this Contract using Joint Schedule 1 (Definitions).

### **2 How the contract works**

2.1 The Supplier is eligible for the award of Call-Off Contracts during the Framework Contract Period.

2.2 CCS doesn't guarantee the Supplier any exclusivity, quantity or value of work under the Framework Contract.

2.3 CCS has paid one penny to the Supplier legally to form the Framework Contract. The Supplier acknowledges this payment.

2.4 If the Buyer decides to buy Deliverables under the Framework Contract it must use Framework Schedule 7 (Call-Off Award Procedure) and must state its requirements using Framework Schedule 6 (Order Form Template and Call-Off Schedules). If allowed by the Regulations, the Buyer can:

- make changes to Framework Schedule 6 (Order Form Template and Call-Off Schedules)
- create new Call-Off Schedules
- exclude optional template Call-Off Schedules
- use Special Terms in the Order Form to add or change terms

2.5 Each Call-Off Contract:

- is a separate Contract from the Framework Contract
- is between a Supplier and a Buyer
- includes Core Terms, Schedules and any other changes or items in the completed Order Form
- survives the termination of the Framework Contract

2.6 Where the Supplier is approached by an eligible buyer requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this

Framework Contract before accepting their order. The Supplier will promptly notify CCS if the eligible buyer won't use this Framework Contract.

- 2.7 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.
- 2.8 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
- verify the accuracy of the Due Diligence Information
  - properly perform its own adequate checks
- 2.9 CCS and the Buyer won't be liable for errors, omissions or misrepresentation of any information.
- 2.10 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### **3 What needs to be delivered**

#### **3.1 All deliverables**

- 3.1.1 The Supplier must provide Deliverables:
- that comply with the Specification, the Framework Tender Response and, in relation to a Call-Off Contract, the Call-Off Tender (if there is one)
  - to a professional standard
  - using reasonable skill and care
  - using Good Industry Practice
  - using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract
  - on the dates agreed
  - that comply with Law
- 3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

#### **3.2 Goods clauses**

- 3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- 3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.
- 3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

- 3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- 3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

### **3.3 Services clauses**

- 3.3.1 Late Delivery of the Services will be a Default of a Call-Off Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.
- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **4 Pricing and payments**

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Order Form.
- 4.2 CCS must invoice the Supplier for the Management Charge and the Supplier must pay it using the process in Framework Schedule 5 (Management Charges and Information).
- 4.3 All Charges and the Management Charge:
- exclude VAT, which is payable on provision of a valid VAT invoice
  - include all costs connected with the Supply of Deliverables
- 4.4 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Order Form.

- 4.5 A Supplier invoice is only valid if it:
- includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer
  - includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)
  - doesn't include any Management Charge (the Supplier must not charge the Buyer in any way for the Management Charge)
- 4.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 4.7 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, CCS or the Buyer can publish the details of the late payment or non-payment.
- 4.8 If CCS or the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then CCS or the Buyer may either:
- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items
  - enter into a direct agreement with the Subcontractor or third party for the relevant item
- 4.9 If CCS or the Buyer uses Clause 4.8 then the Framework Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.
- 4.10 CCS and the Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:
- the relevant item being made available to the Supplier if required to provide the Deliverables
  - any reduction in the Framework Prices (and where applicable, the Charges) excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges
- 4.11 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

## **5 The buyer's obligations to the supplier**

- 5.1 If Supplier Non-Performance arises from an Authority Cause:
- neither CCS or the Buyer can terminate a Contract under Clause 10.4.1
  - the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract
  - the Supplier is entitled to additional time needed to make the Delivery
  - the Supplier cannot suspend the ongoing supply of Deliverables
- 5.2 Clause 5.1 only applies if the Supplier:
- gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware



- demonstrates that the Supplier Non-Performance only happened because of the Authority Cause
- mitigated the impact of the Authority Cause

## **6 Record keeping and reporting**

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for 7 years after the End Date.
- 6.3 The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.
- 6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.
- 6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - tell the Relevant Authority and give reasons
  - propose corrective action
  - provide a deadline for completing the corrective action
- 6.6 The Supplier must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:
  - the methodology of the review
  - the sampling techniques applied
  - details of any issues
  - any remedial action taken
- 6.7 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline.

## **7 Supplier staff**

- 7.1 The Supplier Staff involved in the performance of each Contract must:
  - be appropriately trained and qualified
  - be vetted using Good Industry Practice and the Security Policy
  - comply with all conduct requirements when on the Buyer's Premises
- 7.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.
- 7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.
- 7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

- 7.5 The Supplier indemnifies CCS and the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## **8 Rights and protection**

- 8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform each Contract
- each Contract is executed by its authorised representative
- it is a legally valid and existing organisation incorporated in the place it was formed
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract
- it is not impacted by an Insolvency Event
- it will comply with each Call-Off Contract

- 8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

- 8.3 The Supplier indemnifies both CCS and every Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the Contract
- non-payment by the Supplier of any tax or National Insurance

- 8.4 All claims indemnified under this Contract must use Clause 26.

- 8.5 CCS or a Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.

- 8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Buyer.

- 8.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **9 Intellectual Property Rights (IPRs)**

- 9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables
- make use of the deliverables provided by a Replacement Supplier

- 9.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

- 9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.
- 9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
  - replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables

## **10 Ending the contract**

- 10.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.
- 10.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

### **10.3 Ending the contract without a reason**

- 10.3.1 CCS has the right to terminate the Framework Contract at any time without reason or liability by giving the Supplier at least 30 days' notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.
- 10.3.2 Each Buyer has the right to terminate their Call-Off Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated Clause 10.5.2 to 10.5.7 applies.

### **10.4 When CCS or the buyer can end a contract**

- 10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier:
- there's a Supplier Insolvency Event
  - there's a Contract Default that is not corrected in line with an accepted Rectification Plan
  - the Relevant Authority rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
  - there's any material default of the Contract
  - there's a Default of Clauses 2.10, 9, 14, 15, 27, 32 or Framework Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract
  - there's a consistent repeated failure to meet the Performance Indicators in Framework Schedule 4 (Framework Management)

- there's a Change of Control of the Supplier which isn't pre-approved by the Relevant Authority in writing
- there's a Variation to a Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded
- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring CCS or the Buyer into disrepute or diminish the public trust in them

10.4.2 CCS may terminate the Framework Contract if a Buyer terminates a Call-Off Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If there is a Default, the Relevant Authority can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.4.4 When the Relevant Authority receives a requested Rectification Plan it can either:

- reject the Rectification Plan or revised Rectification Plan, giving reasons
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties

10.4.5 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- must give reasonable grounds for its decision
- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.4.6 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Relevant Authority has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.7 applies.

## **10.5 What happens if the contract ends**

Where the Relevant Authority terminates a Contract under Clause 10.4.1 all of the following apply:

- 10.5.1 The Supplier is responsible for the Relevant Authority's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- 10.5.2 The Buyer's payment obligations under the terminated Contract stop immediately.
- 10.5.3 Accumulated rights of the Parties are not affected.
- 10.5.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.
- 10.5.5 The Supplier must promptly return any of CCS or the Buyer's property provided under the terminated Contract.
- 10.5.6 The Supplier must, at no cost to CCS or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.5.7 The following Clauses survive the termination of each Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## **10.6 When the supplier can end the contract**

10.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

10.6.2 If a Supplier terminates a Call-Off Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier
- the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated
- Clauses 10.5.4 to 10.5.7 apply

## **10.7 When subcontracts can be ended**

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Relevant Authority in writing
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4
- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority

## **10.8 Partially ending and suspending the contract**

10.8.1 Where CCS has the right to terminate the Framework Contract it can suspend the Supplier's ability to accept Orders (for any period) and the Supplier cannot enter into any new Call-Off Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Contracts that have already been signed.

10.8.2 Where CCS has the right to terminate a Framework Contract it is entitled to terminate all or part of it.

10.8.3 Where the Buyer has the right to terminate a Call-Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a Contract it can provide the Deliverables itself or buy them from a third party.

10.8.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.8.5 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

- reject the Variation
- increase the Charges, except where the right to partial termination is under Clause 10.3

10.8.6 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.

## **11 How much you can be held responsible for**

11.1 Each Party's total aggregate liability in each Contract Year under this Framework Contract (whether in tort, contract or otherwise) is no more than £100,000.

11.2 Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Call-Off Order Form

11.3 No Party is liable to the other for:

- any indirect Losses
- Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect)

11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law
- its obligation to pay the required Management Charge or Default Management Charge

11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.8 or Call-Off Schedule 2 (Staff Transfer) of a Contract.

11.6 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

11.7 When calculating the Supplier's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.5

11.8 If more than one Supplier is party to a Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## **12 Obeying the law**

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 The Supplier indemnifies CCS and every Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with a Contract.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## 13 Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Order Form.

## 14 Data protection

- 14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).
- 14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.
- 14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.
- 14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:
- tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier
  - restore the Government Data itself or using a third party
- 14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless CCS or the Buyer is at fault.
- 14.8 The Supplier:
- must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request
  - must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading
  - must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
  - securely erase all Government Data and any copies it holds when asked to do so by CCS or the Buyer unless required by Law to retain it
  - indemnifies CCS and each Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## 15 What you must keep confidential

- 15.1 Each Party must:
- keep all Confidential Information it receives confidential and secure

- not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the Contract
  - immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information
- 15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure
  - if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party
  - if the information was given to it by a third party without obligation of confidentiality
  - if the information was in the public domain at the time of the disclosure
  - if the information was independently developed without access to the Disclosing Party's Confidential Information
  - to its auditors or for the purposes of regulatory requirements
  - on a confidential basis, to its professional advisers on a need-to-know basis
  - to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010
- 15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.
- 15.4 CCS or the Buyer may disclose Confidential Information in any of the following cases:
- on a confidential basis to the employees, agents, consultants and contractors of CCS or the Buyer
  - on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Buyer transfers or proposes to transfer all or any part of its business to
  - if CCS or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
  - where requested by Parliament
  - under Clauses 4.7 and 16
- 15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.
- 15.6 Transparency Information is not Confidential Information.
- 15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.



## **16 When you can share information**

- 16.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.
- 16.2 Within the required timescales the Supplier must give CCS and each Buyer full co-operation and information needed so the Buyer can:
- publish the Transparency Information
  - comply with any Freedom of Information Act (FOIA) request
  - comply with any Environmental Information Regulations (EIR) request
- 16.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision, which does not need to be reasonable.

## **17 Invalid parts of the contract**

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

## **18 No other terms apply**

The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

## **19 Other people's rights in a contract**

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20 Circumstances beyond your control**

- 20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:
- provides a Force Majeure Notice to the other Party
  - uses all reasonable measures practical to reduce the impact of the Force Majeure Event
- 20.2 Either party can partially or fully terminate the affected Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 20.3 Where a Party terminates under Clause 20.2:
- each party must cover its own Losses
  - Clause 10.5.2 to 10.5.7 applies

## **21 Relationships created by the contract**

No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## **22 Giving up contract rights**

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

## **23 Transferring responsibilities**

- 23.1 The Supplier can not assign a Contract without the Relevant Authority's written consent.
- 23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Relevant Authority.
- 23.3 When CCS or the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that CCS or the Buyer specifies.
- 23.4 The Supplier can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.
- 23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 23.6 If CCS or the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
  - their name
  - the scope of their appointment
  - the duration of their appointment

## **24 Changing the contract**

- 24.1 Either Party can request a Variation to a Contract which is only effective if agreed in writing and signed by both Parties
- 24.2 The Supplier must provide an Impact Assessment either:
  - with the Variation Form, where the Supplier requests the Variation
  - within the time limits included in a Variation Form requested by CCS or the Buyer
- 24.3 If the Variation to a Contract cannot be agreed or resolved by the Parties, CCS or the Buyer can either:
  - agree that the Contract continues without the Variation
  - terminate the affected Contract, unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them
  - refer the Dispute to be resolved using Clause 34 (Resolving Disputes)

- 24.4 CCS and the Buyer are not required to accept a Variation request made by the Supplier.
- 24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Framework Prices or the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Supplier must give CCS and the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, Framework Prices or a Contract and provide evidence:
- that the Supplier has kept costs as low as possible, including in Subcontractor costs
  - of how it has affected the Supplier's costs
- 24.7 Any change in the Framework Prices or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

## **25 How to communicate about the contract**

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.
- 25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address in the Framework Award Form.
- 25.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Order Form.
- 25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## **26 Dealing with claims**

- 26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.
- 26.2 At the Indemnifier's cost the Beneficiary must both:
- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim
  - give the Indemnifier reasonable assistance with the claim if requested
- 26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which can not be unreasonably withheld or delayed.
- 26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money
- the amount the Indemnifier paid the Beneficiary for the Claim

## **27 Preventing fraud, bribery and corruption**

27.1 The Supplier must not during any Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
- do or allow anything which would cause CCS or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them

27.2 The Supplier must during the Contract Period:

- create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same
- keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Buyer on request
- if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures

27.3 The Supplier must immediately notify CCS and the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency
- received a request or demand for any undue financial or other advantage of any kind related to a Contract
- suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies CCS or the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take

## **28 Equality, diversity and human rights**

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which CCS or the Buyer reasonably imposes related to equality Law

28.2 The Supplier must take all necessary steps, and inform CCS or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

## **29 Health and safety**

29.1 The Supplier must perform its obligations meeting the requirements of:

- all applicable Law regarding health and safety
- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier

29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of a Contract.

## **30 Environment**

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## **31 Tax**

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Buyer cannot terminate a Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Charges payable under a Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify CCS and the Buyer of it within 5 Working Days including:

- the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant
- other information relating to the Occasion of Tax Non-Compliance that CCS and the Buyer may reasonably need

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:

- comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions
- indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding
- the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer
- the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements
- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management

## **32 Conflict of interest**

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to CCS and each Buyer if a Conflict of Interest happens or is expected to happen.

32.3 CCS and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

## **33 Reporting a breach of the contract**

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to CCS or the Buyer any actual or suspected breach of:

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

## **34 Resolving disputes**

- 34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
- 34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.
- 34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- determine the Dispute
  - grant interim remedies
  - grant any other provisional or protective relief
- 34.4 The Supplier agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.
- 34.6 The Supplier cannot suspend the performance of a Contract during any Dispute.

## **35 Which law applies**

This Contract and any issues arising out of, or connected to it, are governed by English law.

## ANNEX 1: HMRC Mandatory Terms



HM Revenue  
& Customs

### AUTHORITY'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for Her Majesty's Revenue and Customs).
- B. The Agreement incorporates the Authority's mandatory terms set out in this Schedule Annex 1 of the framework schedule 6 order form.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule Annex 1 will supersede any other terms in the Agreement.
- D. For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Authority's mandatory terms in this Schedule Annex 1 are the definitions set out at Clause 1 of this Schedule Annex 1.

#### 1. Definitions

<b>"Affiliate"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Authority Data"</b>	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"><li>(i) supplied to the Supplier by or on behalf of the Authority; and/or</li><li>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</li></ul> <p>(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;</p>
<b>"Charges"</b>	the charges for the Services as specified in Framework Schedule 6 order form.
<b>"Connected Company"</b>	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
<b>"Control"</b>	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by



<b>“Controller”, “Processor”, “Data Subject”, “Data Protection Legislation”</b>	contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly; take the meaning given in the UK GDPR;  (a) "the data protection legislation" as defined in section 3(9) of the Data Protection Act 2018; and; (b) all applicable Law about the processing of personal data and privacy;
<b>“Key Subcontractor”</b>	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
<b>“Law”</b>	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Personal Data”</b>	has the meaning given in the UK GDPR;
<b>“Purchase Order Number”</b>	the Authority’s unique number relating to the supply of the Services;
<b>“Services”</b>	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
<b>“Subcontract”</b>	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>“Subcontractor”</b>	any third party with whom: (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;
<b>“Supplier Personnel”</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
<b>“Supporting Documentation”</b>	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;

**“Tax”**

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

**“Tax Non-Compliance”**

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

**“UK GDPR”**

the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

**“VAT”**

value added tax as provided for in the Value Added Tax Act 1994.

**2. Payment and Recovery of Sums Due**

**2.1 The Supplier shall invoice the Authority as specified in Clause Framework Schedule 6 order form of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:**

**2.1.1 the Supplier does so at its own risk; and**

**2.1.2 the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.**

**2.2** Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority’s electronic transaction system.

**2.3** If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then

due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

### **3. Warranties**

#### **3.1** The Supplier represents and warrants that:

- 3.1.1** in the three years prior to the 11/11/2023, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;
- 3.1.2** it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and
- 3.1.3** no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the 11/11/2023.

#### **3.2** If at any time the Supplier becomes aware that a representation or warranty given by it under Clause in the three years prior to the 11/11/2023, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established; it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and and/or no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

#### **3.3** In the event that the warranty given by the Supplier pursuant to Clause it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

### **4. Promoting Tax Compliance**

- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4** If, at any point during the 12 months, there is Tax Non-Compliance, the Supplier shall:

- 4.4.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 4.4.2 promptly provide to the Authority:
  - (a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b) such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
- 4.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause **Error! Not a valid bookmark self-reference.** shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 4.6 Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7 If the Supplier:
  - 4.7.1 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established., notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and and/or Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations. this may be a material breach of the Agreement;
  - 4.7.2 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement. on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
  - 4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause promptly provide to the Authority: which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

- 4.8 The Authority may internally share any information which it receives under Clauses The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-

assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement. to If, at any point during the 12 months, there is Tax Non-Compliance, the Supplier shall: (inclusive) and Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations., for the purpose of the collection and management of revenue for which the Authority is responsible.

## **5. Use of Off-shore Tax Structures**

- 5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.
- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business. above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses Subject to the principles of non-discrimination against undertakings based either in member countries

of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (“**Prohibited Transactions**”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business. and The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place., the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.

- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clause 5.3. The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place. and In the event of a Prohibited Transaction being entered into in breach of Clause 5.3. Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (“**Prohibited Transactions**”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business. above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clause 5.3. Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Compa-

nies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (“**Prohibited Transactions**”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business. and The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place., the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement. shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## **6 Data Protection and off-shoring**

**6.1** The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement:

**6.1.1** not process or permit to be processed Personal Data outside of the United Kingdom unless the prior explicit written consent of the Authority has been obtained and the following conditions are fulfilled:

- (a)** the Supplier or any applicable Processor has provided appropriate safeguards in relation to any transfer of the Personal Data (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Authority or the Supplier when it is the Controller;
- (b)** the Data Subject has enforceable rights and effective legal remedies;
- (c)** the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is processed (or, if it is not so bound, uses its best endeavours to assist either the Authority or the Supplier when it is the Controller in meeting its obligations); and
- (d)** the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

**6.2** Failure by the Supplier to comply with the obligations set out in Clause The parties agree that the Supplier shall, whether it is the Controller or Processor, in relation to any Personal Data processed in connection with its obligations under the Agreement: shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

## **7 Commissioners for Revenue and Customs Act 2005 and related Legislation**

**7.1** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out

in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.

- 7.2** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in the Official Secrets Acts 1911 to 1989 and the obligations set out in Section 182 of the Finance Act 1989.
- 7.4** The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.5** The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.
- 7.6** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause **Commissioners for Revenue and Customs Act 2005 and related Legislation**, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## **8 Confidentiality, Transparency and Publicity<sup>[1]</sup>**

**8.1** The Supplier shall not, and shall take reasonable steps to ensure that the Supplier Personnel shall not:

**8.1.1** make any press announcement or publicise the Agreement or any part of the Agreement in any way; or

**8.1.2** use the Authority's name or brand in any promotion or marketing or announcement of orders, except with the prior written consent of the Authority.

**8.2** Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

**8.3** The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 ("FOIA"), the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Authority to publish the Agreement in its entirety, (but any information which is exempt from disclosure in accordance with the provisions of the FOIA may be redacted by the Authority) including from time-to-time agreed changes to the Agreement, to the general

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public. The Authority may consult with the Supplier to inform its decision regarding any redactions, but the Authority shall have the final decision at its absolute discretion.

**8.4** The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

## **9 Security Requirements**

**9.1** The Supplier shall comply with the security management plan set out at ("Security Management Plan") and the security policy identified as such within the Security Management Plan ("Security Policy").

**9.2** The Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.'

## Annex 1

### Excerpt from HMRC's "Test for Tax Non-Compliance"

#### Condition one (An in-scope entity or person)

1. There is a person or entity ("X") which is either:
  - (a) The Economic Operator or Essential Subcontractor ("EOS");
  - (b) Part of the same group of companies as EOS. An entity will be treated as within the same group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*<sup>2</sup>;
  - (c) Any director, shareholder or other person ("P") which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

#### Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:
  - a. Fraudulent evasion<sup>3</sup>;
  - b. Conduct caught by the General Anti-Abuse Rule<sup>4</sup>;
  - c. Conduct caught by the Halifax Abuse principle<sup>5</sup>;
  - d. Entered into arrangements caught by a DOTAS or VADR scheme<sup>6</sup>;
  - e. Conduct caught by a recognised 'anti-avoidance rule'<sup>7</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
  - f. Entered into an avoidance scheme identified by HMRC's published Spotlights list<sup>8</sup>;
  - g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

#### Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

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<sup>2</sup> <https://www.iasplus.com/en/standards/ifrs/ifrs10>

<sup>3</sup> 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

<sup>4</sup> "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

<sup>5</sup> "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

<sup>6</sup> A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

<sup>7</sup> The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

<sup>8</sup> Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:
- (a) In respect of 2(a), either X:
    - (i) Has accepted the terms of an offer made under a Contractual Disclosure Facility ("CDF") pursuant to the Code of Practice 9 (COP9) procedure<sup>9</sup>; or,
    - (ii) Has been charged with an offence of fraudulent evasion.
  - (b) In respect of 2(b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB: Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
  - (c) In respect of 2(b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
  - (d) In respect of 2(f) this condition is satisfied without any further steps being taken.
  - (e) In respect of 2(g) the foreign equivalent to each of the corresponding steps set out above in 3(a) to (c).

For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

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<sup>9</sup> The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

**Annex 2 Form**

**CONFIDENTIALITY DECLARATION**

CONTRACT REFERENCE: SR1612682056 Start Date 11/11//2023 ('the Agreement')

DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED:
FULL NAME:
POSITION:
COMPANY:
DATE OF SIGNATURE: