

Crown Commercial Service

Call Off Order Form for Management Consultancy Services

SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision of Complex and transformation consultancy services (Lot 3) dated **04 September 2018**.

The Supplier agrees to supply the Services specified below on and subject to the terms of this Call Off Contract.

For the avoidance of doubt this Call Off Contract consists of the terms set out in this Template Call Off Order Form and the Call Off Terms.


Order Number	TBC
From	HM Revenue & Customs (HMRC) ("CUSTOMER")
To	Ernst & Young (EY) ("SUPPLIER")
Date	03/08/2020 ("DATE")

SECTION B

1. CALL OFF CONTRACT PERIOD

1.1.	Commencement Date: 06/07/2020
1.2.	Expiry Date: 05/01/2022 (18 months) End date of Initial Period: 30/09/2020 End date of Extension Period: 05/01/2022 Minimum written notice to Supplier in respect of extension: Not Applicable

2. SERVICES

2.1	<p>Services required:</p> <p>In Call Off Schedule 2 (Services)</p> <p></p> <p>This will include delivery of key activities across a number of HMRC Borders Design to Delivery (BD2D) Directorate projects and programmes.</p> <p>The services required for the first Statement of Work package are as per the RFP (Request for Proposal) published in the Tender documentation and SoW for Phase 1, as embedded in section 10.12 and provided as Appendix C at the end of this Order Form in the signed DocuSign version of this contract.</p> <p>Where co-location of the Supplier's team and the Customer's team is required for the delivery of Services relating to any individual Statement of Works package, the Customer will provide all office accommodation at either of the following addresses:</p> <ul style="list-style-type: none">• HMRC, 10 South Collonade, Canary Wharf, London E14 4PU• HMRC, 100 Parliament Street, Westminster, London, SW1A 2BQ• HMRC, 1 Ruskin Square, Croydon, CR0 2WF <p>The Customer will provide any equipment needed, such as personal computer (Microsoft Surface Pro), to any member of the Supplier's team as required for the duration period agreed in any Statement of Works package. Upon completion of the Statement of Works package the Supplier must ensure that all the Supplier's team members return any equipment provided by the Customer in full working order. Where any such equipment is not returned then the Supplier will be responsible for any replacement costs.</p> <p>Throughout the term of the contract, the Customer will be permitted to request services using a Statement of Works package format. No commitment is given to the extent as to which further Statement of Works packages will be commissioned.</p> <p>Should any further Statement of Work packages be required under the auspices of this Order Form then the following process will be used:</p> <ol style="list-style-type: none">1. The Customer will make a Request for Proposal (RFP) in writing to the Supplier which will include a specification of requirements detailing the work needed, the outcomes required, and the date the Supplier's proposal is required by.2. Upon receipt of the RFP the Supplier will provide a proposal to the Customer, which will include a Project Plan of the milestones needed to deliver the outcomes.3. Upon receipt, the Customer will review the proposal and reserves the right to request any changes to the proposal as may be required to ensure the required outcomes will be delivered to the Customer's satisfaction.4. Once the content of the final proposal is agreed by both parties, the Customer will attach/include the proposal to the formal Call Off Variation Form, (Schedule 12 of the Call Off terms) and distribute via DocuSign for both parties to sign.
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	5. Once the formal Call Off Variation Form is signed by both parties this will provide the authorisation needed for the work to commence.
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3. PROJECT PLAN

3.1.	Project Plan: Within each Statement of Work package proposal, the Supplier shall provide the Customer with a draft Project Plan. Any changes to the Draft Project plan, must be agreed within 7 days of the Statement of Works commencement date. For the first work package, the draft project plan must be agreed within 28 days of the Call Off Commencement Date.
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4. CONTRACT PERFORMANCE

4.1.	Standards: Applicable standards for this contract are per Section 11, Standards and Quality, detailed in the Call Off terms for RM6008 which can be accessed via the CCS website.
4.2	Service Levels/Service Credits: Not applied
4.3	Critical Service Level Failure: Not applied
4.4	Performance Monitoring: Not applied
4.5	Period for providing Rectification Plan: Applicable period for providing Rectification Plan can be viewed in 39.2.1(a) of the Call Off terms for RM6008 which can be accessed via the CCS website.

5. PERSONNEL

5.1	Key Personnel: As per Section 27, Key Personnel, detailed in the Call Off terms for RM6008 which can be accessed via the CCS website. The Key Personnel for the first Statement of Works package are as provided by the Supplier in their Call Off Tender “EY Response – Team CV’s” and “SoW for Phase 1” as embedded in 10.12 below and as provided as Appendix C at the end of this Order Form in the signed DocuSign version of this contract. Key Personnel must be named in any subsequent Statement of Works packages commissioned under the terms of this Call Off Order Form.
5.2	Relevant Convictions (Clause 28.2 of the Call Off Terms):

	As per Clause 28.2 of the Call Off terms for RM6008 which can be accessed via the CCS website.
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6. PAYMENT

6.1	<p>Call Off Contract Charges (including any applicable discount(s), but excluding VAT):</p> <p>In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)</p> <p>The charging principles for this Call Off Contract can be found in the charging model, titled “EY Final Charging Model Schedule” and “SoW for Phase 1” as embedded in 10.12 below and as provided as Appendix C at the end of this Order Form in the signed DocuSign version of this contract.</p> <p>The fixed contract value for the first Statement of Works package is [REDACTED]</p> <p>The charging principles, including the additional expected investment approach, should be used to determine the charges for any subsequent Statement of Works package and will require approval via the Customer’s internal governance processes and confirmation with the Supplier through a formal contract variation process.</p> <p>The maximum aggregated value of Statement of Works packages during the overall contract term will be £9,000,000.</p>
6.2	<p>Payment terms/profile (including method of payment e.g. Government Procurement Card (GPC) or BACS):</p> <p>In Annex 2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)</p> <p>The payment method for this Call-Off Contract is by BACS transfer through the HMRC Ariba network. The Supplier will issue an electronic invoice. The Customer will pay the Supplier within 30 days of receipt of a valid invoice.</p> <p>The payment terms/profile for any services commissioned as part of this Call Off Order Form will be for payments to be made upon:</p> <ul style="list-style-type: none"> the completion by the Supplier of the milestone deliverables/outcomes stated in the Statement of Works and acceptance by the Customer that the deliverables/outcomes have been completed to the Customer’s satisfaction.
6.3	<p>Reimbursable Expenses:</p> <p>Reimbursable Expenses are not permitted within the M25 Greater London area unless expressly permitted by the HMRC Work Manager. Reimbursable Expenses incurred for activity outside of the M25 Greater London area will be permitted with the prior agreement of the HMRC Work Manager, but any expenses incurred must be in accordance with HMRC T&S Policy as provided at Appendix A.</p>
6.4	<p>Customer billing address (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</p> <p>The supplier will issue electronic invoices via the Ariba Network.</p>
6.5	<p>Call Off Contract Charges fixed for (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</p> <p>Call Off Contract Charges are fixed for the contract duration from the contract commencement date to the contract expiry date.</p>

6.6	Supplier periodic assessment of Call Off Contract Charges (paragraph 9.2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)) will be carried out on: Not Applicable
6.7	Supplier request for increase in the Call Off Contract Charges (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Not Permitted

7. LIABILITY AND INSURANCE

7.1	Estimated Call Off Contract Charges: As detailed in Section 6.1
7.2	Supplier's limitation of Liability (Clause 37.2.1 of the Call Off Terms); Applicable Supplier's total aggregated liability are available in Clause 37.2.1 of the Call Off terms for RM6008 which can be accessed via the CCS website.
7.3	Insurance (Clause 38.3 of the Call Off Terms): Applicable insurance terms are available in Clause 38.3 of the Call Off terms for RM6008 which can be accessed via the CCS website.

8. TERMINATION AND EXIT


8.1	Termination on material Default (Clause 42.2 of the Call Off Terms): In Clause 42.2.1(c) of the Call Off terms
8.2	Termination without cause notice period In Clause 42.7 of the Call Off terms
8.3	Undisputed Sums Limit: In Clause 43.1.1 of the Call Off terms
8.4	Exit Management: In Call Off Schedule 9 (Exit Management) Under the terms of the Contract, the Supplier must commit to co-operating with the customer to ensure efficient Exit Management as Statement of Works packages are completed. The Supplier must ensure that knowledge transfer to the Customer's team is a fundamental part of the Exit Management process. Four weeks prior to the planned end date of the completion of the work, at the Customer's request, the Supplier must provide an Exit Management Plan. The Exit Management Plan must describe: <ul style="list-style-type: none"> what further activities are needed by the Customer to continue to deliver the Programme effectively;

	<ul style="list-style-type: none"> • how any knowledge retained by the Supplier's team needed to complete such activities efficiently will be transferred to the Customer team (on the understanding that the Customer's team may include contractors and third parties) and • the content format and location for any formal knowledge transfer sessions where required.
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9. SUPPLIER INFORMATION

9.1	Supplier's inspection of Sites, Customer Property and Customer Assets: Not applicable
9.2	Commercially Sensitive Information: The Supplier proposal document presented to the Customer and all of its content is considered to be Commercially Sensitive Information. The Supplier charging model document presented to the Customer and all of its content is considered to be Commercially Sensitive Information.

10. OTHER CALL OFF REQUIREMENTS

10.1	Recitals (in preamble to the Call Off Terms): Refer to the preamble of the Call Off terms for RM6008 which can be accessed via the CCS website. Recitals B to E Recital C - date of issue of the Request for Proposal document: 01/06/2020 Recital D - date of receipt of Call Off Tender: 12/06/2019
10.2	Call Off Guarantee (Clause 4 of the Call Off Terms): Not required
10.3	Security: Short form security requirements (paragraphs 1 to 5 of Schedule 7) Security contained in the Call Off terms for RM6008 and Security Management Plan embedded below  Security Management Plan.pdf
10.4	ICT Policy: The Supplier's team must ensure that when they are using equipment provided by the Customer they must comply with the Customer's ICT/Security policies. When the Supplier's team members are accessing the Customer's systems using the Customer's equipment the ICT/Security policies can be located at the following URL: https://intranet.prod.dop.corp.hmrc.gov.uk/section/how-do-i/get-help-security/security-information-zone

	The Supplier must ensure that all team members are made aware of the need to comply with ICT/Security policies and that team members are directed to where the security policies are located.
10.6	Business Continuity & Disaster Recovery: Not applied
10.7	NOT USED
10.8	Protection of Customer Data (Clause 35.2.3 of the Call Off Terms): It is not envisaged that this contract will involve the processing of Customer Data but should this arise then Clause 35.2.3 of the Call Off Terms for RM6008 which can be accessed via the CCS website will apply.
10.9	Notices (Clause 56.6 of the Call Off Terms): Customer's postal address and email address: HMRC Commercial Directorate 5W Ralli Quays 3 Stanley Street Salford M60 9LA [REDACTED] Supplier's postal address and email address: Ernst & Young LLP 1 More London Place London SE1 2AF [REDACTED]
10.10	Transparency Reports Not applied
10.11	Alternative and/or Additional Clauses from Call Off Schedule 14 and if required, any Customer alternative pricing mechanism: Customer's additional Clauses will apply as provided in Appendix B.
10.12	Call Off Tender: Call Off Tender response and subsequent updates consists of: <ul style="list-style-type: none"> • RFP (Services - Appendix C) • EY RFP Response • EY Response - Team CV's • Ariba Extract - Ernst & Young Full Tender Response (as extracted from the Customer's e-sourcing portal) [REDACTED] [REDACTED]

10.13	Publicity and Branding (Clause 36.3.2 of the Call Off Terms) As per Clause 36.3.2 of the Call Off Terms for RM6008 which can be accessed via the CCS website.																		
10.14	Staff Transfer Call Off Terms for RM6008 which can be accessed via the CCS website, Schedule 10, Staff Transfer Parts A and B Not Applied.																		
10.15	Processing Data Not Applicable due to no processing of data If the processing of data changes in any way throughout the contract duration, the below table should be completed. <table border="1"> <tr> <td>Contract Reference:</td><td>SR402776449</td></tr> <tr> <td>Date:</td><td></td></tr> <tr> <td>Description of Authorised Processing</td><td>Details</td></tr> <tr> <td>Identity of the Controller and Processor</td><td></td></tr> <tr> <td>Use of Personal Data</td><td></td></tr> <tr> <td>Duration of the processing</td><td></td></tr> <tr> <td>Nature and purposes of the processing</td><td></td></tr> <tr> <td>Type of Personal Data</td><td></td></tr> <tr> <td>Categories of Data Subject</td><td></td></tr> </table>	Contract Reference:	SR402776449	Date:		Description of Authorised Processing	Details	Identity of the Controller and Processor		Use of Personal Data		Duration of the processing		Nature and purposes of the processing		Type of Personal Data		Categories of Data Subject	
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FORMATION OF CALL OFF CONTRACT

BY SIGNING AND RETURNING THIS CALL OFF ORDER FORM (which may be done by electronic means) the Supplier agrees to enter a Call Off Contract with the Customer to provide the Services in accordance with the terms Call Off Order Form and the Call Off Terms.

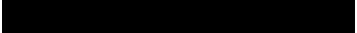


The Parties hereby acknowledge and agree that they have read the Call Off Order Form and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

In accordance with paragraph 7 of Framework Schedule 5 (Call Off Procedure), the Parties hereby acknowledge and agree that this Call Off Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Call Off Order Form from the Supplier within two (2) Working Days from such receipt.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

APPENDIX A

HMRC T&S Policy

Travel may be expected between the other Delivery Group and Client sites. Expenses will be paid as per agreed HMRC expenses policy.

1. Travel to and from the Primary Location will be met from the day rate.
2. Expenses are payable where travel to other locations is required as part of the assignment forming part of this agreement. Where an overnight stay is required HMRC will pay for actual bed and breakfast costs within the current maximum limits detailed below. Any other subsistence or incidental expenses are not payable. Receipts must be provided.
3. All other expenses will be payable at the discretion of HMRC. The Contractor shall not incur such expenses without the prior approval of the HMRC Work Manager. Any expense incurred by the Contractor without prior approval shall not be reimbursed.

Short-term Night Subsistence Allowances Bed and Breakfast Capped Rates Effective from 01/04/2017. The rates below include the applicable VAT.	
Location	Maximum nightly rate
London / within M25 (excluding Heathrow Airport)	£130 per night
Bristol; Heathrow Airport	£100 per night
Oxford; Portsmouth	£90 per night

Short-term Night Subsistence Allowances
Bed and Breakfast Capped Rates
Effective from 01/04/2017. The rates below include the applicable
VAT.

Elsewhere	£90 per night
Travel	
Mileage allowance	25 pence per mile
Rail Travel	Standard Class
Air Travel	Economy Class

APPENDIX B

Authoritory'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 12
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 12 will supersede any other terms in the Agreement.

1. Definitions

"Affiliate"	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;
"Authority Data"	(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: <ul style="list-style-type: none">(i) supplied to the Supplier by or on behalf of the Authority; and/or(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or (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;
"Charges"	the charges for the Services as specified in "Call-Off Contract Charges and Payment".
"Connected Company"	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;
"Control"	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 contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller", "Processor", "Data Subject",	take the meaning given in the GDPR;

“Data Protection Legislation”	<p>(a) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;</p> <p>(b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;</p> <p>(c) all applicable Law about the processing of personal data and privacy;</p>
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679);
“Key Subcontractor”	<p>any Subcontractor:</p> <p>(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</p> <p>(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;</p>
“Law”	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;
“Personal Data”	has the meaning given in the GDPR;
“Purchase Order Number”	the Authority’s unique number relating to the supply of the Services;
“Services”	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
“Subcontract”	<p>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;</p>
“Subcontractor”	<p>any third party with whom:</p> <p>(a) the Supplier enters into a Subcontract; or</p> <p>(b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;</p>

“Supplier Personnel”	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;
“Supporting Documentation”	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;
“Tax”	<p>(a) all forms of tax whether direct or indirect;</p> <p>(b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</p> <p>(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</p> <p>(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</p> <p>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
“Tax Non-Compliance”	<p>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:</p> <p>(a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and</p> <p>(b) any “Essential Subcontractor” means any Key Subcontractor;</p>
“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 “Call-Off Contract Charges and Payment” section 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:
- 2.2** the Supplier does so at its own risk; and
- 2.3** the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.
- 2.4** 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.
- 2.5** 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 Effective Date, 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 Effective Date.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 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 3.1.2 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 Term, 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 4.5 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 4.2, 4.4.1 and/or 4.6 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 4.3 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 4.4.2 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 4.3 to 4.4 (inclusive) and 4.6, 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 5.1 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 5.1 and 5.2, 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 Clauses 5.2 and 5.3 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 Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
 - 6.1.1 not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) 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;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) 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
 - (d) the 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 Processor to comply with the obligations set out in Clause 6.1 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 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 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4** 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.
- 7.5** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, 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).

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 which is either: ("X")
 - 1) The Economic Operator or Essential Subcontractor (EOS)
 - 2) Part of the same Group of companies of 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*¹;
 - 3) 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 evasion²;
 - b. Conduct caught by the General Anti-Abuse Rule³;
 - c. Conduct caught by the Halifax Abuse principle⁴;

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

² '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.

³ "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

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

- d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;
- e. Conduct caught by a recognised 'anti-avoidance rule'⁶ 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 list⁷;
- 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))

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:

i. In respect of (a), either X:

- 1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁸; or,
- 2. Has been charged with an offence of fraudulent evasion.

ii. In respect of (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

⁵ 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.

⁶ 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.

⁷ 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>

⁸ 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.

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.

iii. In respect of (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.

iv. In respect of (f) this condition is satisfied without any further steps being taken.

v. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

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.

Annex 2 Form

CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE: [for Supplier to insert Contract reference number and contract date] ('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:

APPENDIX C



APPENDIX D

