

HMRC – Project Management

**SCHEDULE OF AMENDMENTS TO THE
JCT CONSULTANCY AGREEMENT (PUBLIC SECTOR) 2016
relating to Ridge & Partners Change Delivery HMRC Consultancy Agreement Public Sector
2016**

ARTICLES

Article 1 Consultant's Obligations

After "Conditions" INSERT "as modified by the Schedule of Amendments annexed hereto."

INSERT the following at the end of this Article:

"The Conditions and Schedules shall be construed as varied accordingly and if there is any discrepancy between the Conditions or the Schedules and the Schedule of Amendments the wording of the Schedule of Amendments shall prevail."

[the above amendments to Article 1 to be endorsed on / added to the printed conditions]

Article 3 : Principal Designer

After "CDM Regulations" INSERT "and Building Regulations"

Conditions

Section 1 Definitions and Interpretation

1.1 Amend the following definitions:

Conditions at the end of the definition of "Conditions" insert "(all as amended by the Schedule of Amendments annexed hereto)"

"Services" delete "the services listed in Annex B that are to be performed by the Consultant (including such of" and delete ")" after "time" in line 3

Insert the following additional definitions:

"Building Regulations" Part 2A of the Building Regulations 2010 (dutyholders and competence), inserted by Regulation 11 of SI 2023 911 Building Regulations etc. (Amendment) (England) Regulations 2023"

"KPI" key performance indicators and/or other measurements specified in Annex C"

"Security Management Plan" the requirements and measures set out in Annex E"

"Senior Representatives an individual appointed on behalf of the Client and an individual appointed on behalf of the Consultant each of appropriate standing with authority to act pursuant to Clause 12.1A"

Insert the following as new clauses:

"1.7 Reliance

The Client and the Consultant each acknowledge and agree that in entering into this Contract it has not relied upon, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than those statements expressly set out in this Contract provided that this clause shall not exclude any liability for, or

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remedy in respect of, fraud or fraudulent misrepresentation.

1.8 Severance

If any term, condition or provision in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

1.9 Counterparts

The Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

1.10 Liability period

The period of limitation applicable to any claim or claims arising out of or in connection with this Contract shall be twelve (12) years from [the date of practical completion of the Project pursuant to the terms of the Building Contract] [completion of the Services]¹

Section 2 Consultant's General Obligations

2.1 Performing the Service

- 2.1 In line 5 after "the Programme" insert "KPIs". Insert the following at the end of the clause: "Without prejudice to the generality of the foregoing, the Consultant shall comply with the additional requirements set out in Schedule 3 Additional Requirements, Schedule 4 Business Continuity and Disaster Recovery and the Security Management Plan".

- 2.1A Insert the following new clause: "The Consultant shall comply with all its duties under the CDM Regulations, shall be a "designer" as defined in the CDM Regulations and shall fulfil in relation to the Project all the obligations of a designer as set out in or reasonably to be inferred from the CDM Regulations and the guidance published by the Health and Safety Executive in relation to the CDM Regulations and no such compliance or fulfilment shall give rise to any claim for additional payment or additional time or otherwise."

2.2 Compliance with instructions

Insert the following at the end of the existing clause: "When the Consultant completes a stage of the Services, the Consultant shall advise the Client and shall not proceed to the next stage of the Services without the approval of the Client."

2.3 Co-operation and supply of Design Information

Insert new clause 2.3A as follows:

- 2.3A "If a Programme was not identified in the Contract Particulars, the Consultant shall submit a first Programme within two weeks of the date of this Contract. The Consultant shall update the Programme on a monthly basis (or as otherwise agreed by the Parties) and issue it to the Client in the format reasonably required by the Client. In addition to the requirements set out in the Contract Particulars, each Programme shall show:
- the order and timing of the work the Consultant plans to do to carry out the Services (revised as appropriate to show actual progress and/or proposals for resolution of delays);
 - the order and timing of information required from the Client as agreed with the Client or as stated in the Client's Brief;
 - stage gateways requiring Client approval before proceeding to the next stage of the Services;
 - dates when access to site is necessary to enable provision of the Services; and

¹ Use the second option only if there is no applicable building contract for the Project

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- any other information required by the Client's Brief."

2.4 Specification of Materials

At the end of the clause insert: "The Consultant warrants and undertakes to the Client that it shall not specify for use or knowingly permit to be used by or on behalf of the Consultant in relation to the Project anything which, at the time of specification or use, is Deleterious. For the purposes of this clause, 'Deleterious' means any materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (i) posing a threat to the health and safety of any person;
- (ii) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (iii) reducing, or possibly reducing, the normal life expectancy of the completed Project or any part or component of the Project;
- (iv) not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (v) having been supplied or placed on the market in breach of the Construction Products Regulations."

Insert new clause 2.4A as follows:

- 2.4A "In carrying out the Services, the Consultant shall take full account of the Client's obligations notified to it with regard to the Client's net zero and sustainability goals. In particular but without limitation, the Consultant shall comply with the Environmental Objectives of the Client as defined in the relevant Third Party Agreement."

2.8 Records and time charge estimates

Insert new clause 2.8.3 as follows:

- 2.8.3 "The Consultant shall keep full records of its performance against the KPIs and also its performance against its social value obligations, where not included within the KPIs."

2.9 Limitations on Consultant's obligations

In clause 2.9.3 delete "failure or" in line 1 and at the end of clause 2.9.3 after "beyond his control" insert "provided the Consultant gives written notice to the Client as soon as he considers he is so prevented and uses all reasonable endeavours to mitigate any delay."

2.11.1 Limitations of Consultant's liability

Following clause 2.11.1 add and max £5,000,000 for fire safety claims which shall also be limited to the actual loss, costs and expenses of rectification which are the direct result of the negligence of the Consultant.

Section 4 Client's General Obligations

4.1 Supply of Client information

In clause 4.1 in line 1 insert "use reasonable endeavours" after "shall".

Section 7 Payment

7.6 Final Date for Payment

At the end of line 1 delete "14" and insert "21".

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Section 9 Use of Consultant's Design Information, Confidentiality etc.**9.1 Use of Consultant's Design Information**

9.1 Delete entire clause and insert the following:

- 9.1 All intellectual property rights in any materials provided by the Client to the Consultant for the purposes of this Contract shall remain the property of the Client but the Client hereby grants the Consultant a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Contract for the sole purpose of enabling the Consultant to perform its obligations under this Contract.
- 9.2 All Consultant's Design Information in any materials created or developed by the Consultant pursuant to this Contract or arising as a result of the provision of the Services shall vest in the Consultant. If, and to the extent, that any intellectual property rights in such materials vest in the Client by operation of law, the Client hereby assigns to the Consultant by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Consultant's Design Information all its rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Consultant hereby grants the Client a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to copy and use all Consultant's Design Information in the materials created or developed pursuant to this Contract and any Consultant's Design Information arising as a result of the provision of the Services for any purpose relating to the Project including (without limitation) its construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, alteration, refurbishment and repair. The licence shall enable the Client to copy and use the Consultant's Design Information for an extension of the Project but (unless terms for such use are stated in paragraph 9 of Annex A) not to reproduce any designs contained in the Consultant's Design information for any such extension.
- 9.4 The Consultant shall indemnify, and keep indemnified, the Client in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client as a result of or in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Consultant.
- 9.5 The Consultant shall have no liability for any use of the Consultant's Design Information other than for the purposes for which it was originally intended.

Section 10 Assignment, Novation, Third Party Rights and Collateral Warranties**10.1 Restrictions on assignment**

Delete the existing clause and insert: " The Client shall be entitled to assign, charge or transfer all or any of the Client's rights or obligations under this Contract at any time and the Client shall notify the Consultant of any assignment, charge or transfer within twenty-eight (28) days of its date. The Consultant shall not assign or transfer any rights or obligations under this Contract to any person without the Client's prior written consent."

Section 11 Suspension by the Client and Termination**11.1 Suspension by the Client**

In line 1 delete "14" and insert "7".

11.5 Termination

11.5.1 In line 1 delete "14" and insert "7".

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11.5.3 In line 3 after “14 days” insert: “(or within 30 days where the defaulting party is the Client)”

Insert new clause 11.5.3A as follows:

11.5.3A “If the Consultant commits more than one breach of his obligations, the cumulative effect of such breaches being (i) sufficient to justify the inference that the Consultant would continue to deliver a sub-standard performance in relation to the requirements of Section 2 and/or Section 3 of this Contract over a reasonable period of the remaining portion of his Services or (ii) serious in the broadest sense of having a serious effect on the benefit which the Client would have otherwise derived in relation to the obligations of Section 2 and/or Section 3 of this Contract over a reasonable period of the remaining portion of his Services then the Client may give notice to the Consultant terminating the Consultant’s engagement with immediate effect.”

11.6 Consequences of termination

11.6.2.3 in line 2 after “clause” insert “11.5.3A or”.

11.6.2.4 Delete this sub-clause.

Section 12 Settlement of Disputes

12.1 Mediation

Insert the following at the start of the clause:

12.1 “If the Client and Consultant agree, a dispute arising under or in connection with this Contract shall be referred to the Senior Representatives. The Party referring a dispute notifies the Senior Representatives and the other Party of the dispute it wishes to resolve. Each Party is required to submit its statement of case to the other within one week of notification. Each statement of case shall be limited to no more than 5 (five) sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties. The Senior Representatives shall attend as many meetings (which may be online) and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the Senior Representatives shall produce a list of the issues agreed and not agreed. The Client and Consultant shall put into effect the issues agreed. No evidence of the statement of case or discussions may be disclosed, used or referred to in any subsequent proceedings before an adjudicator, arbitrator or in legal proceedings.”

Schedule 1 Third Party Rights

Paragraph 3 Delete

Paragraph 4 insert at the end of the paragraph: “save that the Consultant shall not be entitled to any right of set off or counterclaim against the Beneficiary to which the Consultant is entitled against the Client.”

Schedule 3 Additional Requirements

Insert the following as a new Schedule 3:

SCHEDULE 3 Additional Requirements

(A) For the avoidance of doubt, references to ‘the Agreement’ mean the attached Contract between the Supplier and the Authority. References to ‘the Authority’ mean the Commissioners for His Majesty’s Revenue and Customs and references to the Supplier mean the Consultant.

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- (B) The Agreement incorporates the Authority's mandatory terms set out in this Schedule 3.
- (C) In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 3 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 3 are the definitions set out at Clause 1 of this Schedule 3.

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: (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;
"BPSS"	the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
"Charges"	the charges for the Services as specified in the Agreement;
"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 UK GDPR;
"Data Protection Legislation"	(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

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	data and privacy;
“Key Subcontractor”	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;
“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 UK 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;
“Subcontract”	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;
“Subcontractor”	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;
“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”	(a) all forms of tax whether direct or indirect;

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	(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 4.3; 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 Section 7 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

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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 date of this Contract, 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 date of this Contract.
- 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 Section 11 of the Agreement.

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 of the Contract, 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.

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- 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 Section 11 of 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

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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 Section 11 of the Agreement.

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 6.1 shall allow the Authority to terminate the Agreement pursuant to Section 11 of the Agreement.

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

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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 7.1 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 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to Section 11 of the Agreement.

8. CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

- 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 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 Annex E of this Agreement ("Security Management Plan") and the security policy identified as such within the Security Management Plan ("Security Policy").

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- 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*²;
 - (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 evasion³;
 - b. Conduct caught by the General Anti-Abuse Rule⁴;
 - c. Conduct caught by the Halifax Abuse principle⁵;
 - d. Entered into arrangements caught by a DOTAS or VADR scheme⁶;
 - e. Conduct caught by a recognised 'anti-avoidance rule'⁷ 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 list⁸;
 - 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:
 - (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) procedure⁹; or,

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

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

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- (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.

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.

DocuSigned by:

SIGNED:	
FULL NAME	
POSITION:	
COMPANY:	Ridge and Partners LLP
DATE OF SIGNATURE:	14 March 2024

will not pursue a criminal investigation into the conduct disclosed.

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Schedule 4 – Business Continuity and Disaster Recovery**1. Definitions**

1.1 In this Schedule, the following definitions shall apply:

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Related Service Provider"	any person who provides services to the Client in relation to this Contract from time to time;
"Review Report"	has the meaning given to it in Paragraph 6.3 of this Schedule; and
"Consultant's Proposals"	has the meaning given to it in Paragraph 6.3 of this Schedule,
"Working Day"	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

2. BCDR Plan

2.1 At least forty (40) Working Days from the date of this Contract the Consultant shall prepare and deliver to the Client for the Client's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Consultant shall follow to:

2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and

2.1.2 the recovery of the Services in the event of a Disaster.

2.2 The BCDR Plan shall be divided into three sections:

2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;

2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and

2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).

2.3 Following receipt of the draft BCDR Plan from the Consultant, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then any disputed matters shall be resolved in accordance with the Section 12 of this Contract.

3. General Principles of the BCDR Plan (Section 1)

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3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Services and any services provided to the Client by a Related Service Provider;
- 3.1.3 contain an obligation upon the Consultant to liaise with the Client and any Related Service Providers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Client and any of its other Related Service Provider in each case as notified to the Consultant by the Client from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Services and processes for managing those risks;
 - (c) identification of risks arising from insolvency of the Consultant, any sub-contractors and/or Consultant parent (where applicable);
 - (d) identification of risks arising from the interaction of the provision of Services with the services provided by a Related Service Provider; and
 - (e) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Consultant (and any sub-contractors) and for the Client;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Client has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Client as required by the Client to inform decisions in support of the Client's business continuity plans.

3.2 The BCDR Plan shall be designed so as to ensure that:

- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
- 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;

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- 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
- 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services and the business operations supported by the provision of the Services.
- 3.4 The Consultant shall not be entitled to any relief from its obligations under the KPIs, or to any increase in the Fee to the extent that a Disaster occurs as a consequence of any breach by the Consultant of this Contract.

4. Business Continuity (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including:
 - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of the Services; and
 - 4.1.2 the steps to be taken by the Consultant upon resumption of the provision of the Services in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
 - 4.2.1 address the various possible levels of failures of or disruptions to the provision of the Services;
 - 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services;
 - 4.2.3 specify any applicable KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs in respect of the provision of other Services during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Consultant ensures continuity of the business operations of the Client supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Consultant's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Client premises affected by the Project;
 - 5.2.2 loss of utilities to the Client premises affected by the Project;
 - 5.2.3 loss of the Consultant's helpdesk or CAFM system;
 - 5.2.4 loss of a sub-contractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;

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- 5.2.7 staff training and awareness;
- 5.2.8 BCDR Plan testing;
- 5.2.9 post implementation review process;
- 5.2.10 any applicable KPIs with respect to the provision of the disaster recovery services and details of any agreed relaxation to the KPIs in respect of the provision of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.2.11 details of how the Consultant shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.2.12 access controls to any disaster recovery sites used by the Consultant in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

6. Review and changing the BCDR Plan

- 6.1 The Consultant shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
 - 6.1.3 where the Client requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Consultant shall conduct such reviews in accordance with the Client's written requirements. Prior to starting its review, the Consultant shall provide an accurate written estimate of the total costs payable by the Client for the Client's approval. The costs of both Parties of any such additional reviews shall be met by the Client except that the Consultant shall not be entitled to charge the Client for any costs that it may incur above any estimate without the Client's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Consultant within such period as the Client shall reasonably require.
- 6.3 The Consultant shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Client a report (a "**Review Report**") setting out the Consultant's proposals (the "**Consultant's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Consultant's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Consultant's Proposals. If the Parties are unable to agree Review Report and the Consultant's Proposals within twenty (20) Working Days of its submission, then any disputed matters shall be resolved in accordance with the Section 12 of this Contract.
- 6.5 The Consultant shall as soon as is reasonably practicable after receiving the approval of the Consultant's Proposals effect any change in its practices or procedures necessary so as to give effect to the Consultant's Proposals. Any such change shall be

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at the Consultant's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. Testing the BCDR Plan

7.1 The Consultant shall test the BCDR Plan:

- 7.1.1 regularly and in any event not less than once in every Contract Year;
- 7.1.2 in the event of any major reconfiguration of the Services;
- 7.1.3 at any time where the Client considers it necessary (acting in its sole discretion).

7.2 If the Client requires an additional test of the BCDR Plan, it shall give the Consultant written notice and the Consultant shall conduct the test in accordance with the Client's requirements and the relevant provisions of the BCDR Plan. The Consultant's costs of the additional test shall be borne by the Client unless the BCDR Plan fails the additional test in which case the Consultant's costs of that failed test shall be borne by the Consultant.

7.3 The Consultant shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Client and shall liaise with the Client in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Client.

7.4 The Consultant shall ensure that any use by it or any subcontractor of "live" data in such testing is first approved with the Client. Copies of live test data used in any such testing shall be (if so required by the Client) destroyed or returned to the Client on completion of the test.

7.5 The Consultant shall, within twenty (20) Working Days of the conclusion of each test, provide to the Client a report setting out:

- 7.5.1 the outcome of the test;
- 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
- 7.5.3 the Consultant's proposals for remedying any such failures.

7.6 Following each test, the Consultant shall take all measures requested by the Client to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Consultant, at its own cost, by the date reasonably required by the Client.

8. Invoking the BCDR Plan

In the event of a complete loss of service or in the event of a Disaster, the Consultant shall immediately invoke the BCDR Plan (and shall inform the Client promptly of such invocation). In all other instances the Consultant shall invoke or test the BCDR Plan only with the prior consent of the Client.