

Schedule 31 (Buyer Specific Terms)

HMRC Specific Terms

- A. For the avoidance of doubt, references to 'the Agreement' in this Schedule 31 means the attached services contract between the Supplier and the Buyer with the contract reference SR977701801.
- B. The Agreement incorporates the Buyers mandatory terms set out in this Schedule 31.
- C. In case of any ambiguity or conflict, the Buyers mandatory terms in this Schedule 31 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 Buyers mandatory terms in this Schedule 31 are the definitions set out at Clause 1 of this Schedule 31.

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;
- "Buyer 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 Buyer; 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 Buyer 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 Schedule 3
- "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", "Data Protection Legislation"** take the meaning given in the UK GDPR;
- a. "the data protection legislation" as defined in section 3(9) of the Data Protection Act 2018; and;
 - b. all applicable Law about the processing of personal data and privacy;
- "Key Subcontractor"** any Subcontractor:
- a. which, in the opinion of the Buyer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or

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	<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 Agreement;</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 UK GDPR;
“Purchase Order Number”	The Buyer’s unique number relating to the supply of the Services;
“Services”	the services to be supplied by the Supplier to the Buyer under the Agreement, including the provision of any Goods;
“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: <p>a. the Supplier enters into a Subcontract; or</p> <p>b. a third party under (a) above enters into a Subcontract,</p> 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 Buyer 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> 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, of this Schedule 31 where: <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>

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"UK GDPR"	the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679); and
"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 Buyer as specified in Clause 4 of the Core Terms of the Agreement and Section 21 of the Award Form . Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Buyer 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 Buyer 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 Buyer from time to time via the Buyer'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 Buyer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Buyer 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 Buyer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Buyer 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 Buyer 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 Buyer 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 Buyer of the relevant occurrence in sufficient detail to enable the Buyer 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 Buyer shall be entitled to terminate the Agreement pursuant to the Agreement clause which provides the Buyer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

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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 Buyer 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 Buyer 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 Buyer, 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:
1. notify the Buyer in writing of such fact within five (5) Working Days of its occurrence; and
 2. promptly provide to the Buyer:
 - 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 Buyer may reasonably require.
- 4.5 The Supplier shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Buyer 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 Buyer not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Buyer.
- 4.6 Upon the Buyer's request, the Supplier shall provide (promptly or within such other period notified by the Buyer) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7 If the Supplier:
1. fails to comply (or if the Buyer 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;
 2. fails to comply (or if the Buyer receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Buyer 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
 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 Buyer are acceptable this shall be a material breach of the Agreement;

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

- 4.8 The Buyer 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 Buyer 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 Buyer) 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 Buyer 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 Buyer 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 Buyer within a reasonable time to allow the Buyer 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 Buyer 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 Buyer) 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 Buyer to terminate the Agreement pursuant to the Agreement that provides the Buyer the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

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 Buyer 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 Buyer 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

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endeavours to assist either the Buyer 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 Buyer to terminate the Agreement pursuant to the Agreement that provides the Buyer 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, Buyer 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 Buyer Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) 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, Buyer 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 Buyer) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

7.3 The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Buyer 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, Buyer 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, Buyer 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 Buyer upon demand.

7.6 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Buyer reserves the right to terminate the Agreement with immediate effect pursuant to the Agreement that provides the Buyer the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

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

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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 Buyer 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 Buyer 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 Buyer) including from time-to-time agreed changes to the Agreement, to the general public. The Buyer may consult with the Supplier to inform its decision regarding any redactions, but the Buyer shall have the final decision at its absolute discretion.

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

9 Security Requirements

9.1 The Supplier shall comply with the security management plan set out at Schedule 16 ("Security Management Plan") and the security policy identified as such within the Security Management Plan ("Security Policy").

9.2 The Buyer 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*;
 - 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 evasion⁷;
 - b. Conduct caught by the General Anti-Abuse Rule⁸;
 - c. Conduct caught by the Halifax Abuse principle⁹;
 - d. Entered into arrangements caught by a DOTAS or VADR scheme¹⁰;
 - e. Conduct caught by a recognised 'anti-avoidance rule'¹¹ 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;

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- f. Entered into an avoidance scheme identified by HMRC's published Spotlights list¹²;
- 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) procedure¹³; or,
 - ii. Has been charged with an offence of fraudulent evasion.
- b. In respect of 2(b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB: Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
- c. In respect of 2(b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
- d. In respect of 2(f) this condition is satisfied without any further steps being taken.
- e. In respect of 2(g) the foreign equivalent to each of the corresponding steps set out above in 3(a) to (c).

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

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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 Buyer 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 Buyer Data provided to me.

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