

London Procurement Partnership Request for Drawdown Services

SECTION A

This Request For Drawdown Services is issued in accordance with the provisions of the Framework Agreement. The Service Provider agrees to supply the Services specified below on and subject to the terms of the Contract and for the avoidance of doubt the Contract consists of the terms set out in this Request for Drawdown Services and the Call-off Terms and Conditions.

REQUEST DATE: 22/02/2021

CUSTOMER PURCHASE ORDER NUMBER: n/a

SUPPLIER SERVICE OFFER REFERENCE:

LPP-L2.4-BT0018 (Mobile Voice & Data Services), LPP-2.4-BT0019 (Total Resource)
and LPP-2.4-BT0011 (Additional Network Equipment Solution)

BT VALIDATION REFERENCE: 013279

SUPPLIER CONTRACT REFERENCE: BTLPP00013

FRAMEWORK AGREEMENT URN: CDSIM&T10035

THE CUSTOMER:

CUSTOMER NAME HM Revenue and Customs

REPRESENTATIVE NAME XXXXXXXXX

POSTAL ADDRESS XXXXXXXXXXXXXXXXX

EMAIL XXXXXXXXX

CONTACT NUMBER XXXXXXXXX

THE SERVICE PROVIDER:

BRITISH TELECOMMUNICATIONS PLC
81, NEWGATE STREET, LONDON, EC1A 7AJ.

SECTION B

1. TERM

- 1.1. Service Commencement Date: Any agreed changes to tariffs will be effective from the next billing date after the Call Off order is counter signed by the Service Provider. This is provided that the counter signature date is at least 10 working days before the Customer's billing date. If it is not, then the change will take effect on the billing date a month later.
- 1.2. Call Off Start Date is the date where the final party has signed the contract. Call Off Expiry Date is the date on which the initial period of the contract ends.

- 1.3. Call Off Initial Period: 20 months with option to extend for a further 12 months
- 1.4. End date of the term of the Request for Drawdown Services (which cannot exceed ten (10) years from the Service Commencement Date aside from Services under Lot 1 which cannot exceed a term of five (5) years).

2. CUSTOMER CORE SERVICES REQUIREMENTS

2.1. Services required

2.1.1. Services required are for contract period of 20 months

Service Order Reference Number (from the price cards*)	Price Card Description	Volume	Existing Connections	New Connections	One Off Charge	Recurring Charges		Total
BT-L2-0317	Inclusive Voice Plan	XXXXX	XXXXX	0	NA	Per month	XXX	£0.00
BT-L2-0318	Aggregated Data 2GB	XXXXX	XXXXX	0	NA	Per month	XXX	£1,920,000.00
BT-L2-0313	Total Resource Band H				NA	Per month	XXX0	£160,000.00
	Total Connections	XXXXX	XXXXX	0			Total	£2,080,000.00

*The service orders are covered within the Service Offers LPP-L2.4-BT00018 (Mobile Voice & Data Services) and LPP-2.4-BT0019 (Total Resource).

- 2.1.2. A fund of XXXXX is transferred from the CCS Network Services RM1045 contract, to this contract and available only to order services from the Suppliers Service Offer LPP-L2.4-BT0011 Additional Network Equipment Solution Service.

XXXXXXX

- 2.1.3. Technology Fund may only be used to pay for any Equipment charges under this Call Off Contract. It is not transferable and cannot be used as payment towards the Supplier's mobile airtime services.
- 2.1.4. Total Call-Off Contract Charges: £2,080,000.00
- 2.1.5. Aggregated Data

If any review by the Service Provider (whenever conducted) determines that the Customer has exceeded its total aggregated data allowance under any Aggregated Data Tier in a three-month period then the Service Provider shall move the Customer to a higher tier, as shown in the table below, appropriate for the Customer's actual data usage.

BT Service Order Reference Number	Service Description	Shared Data Bundle Per User Per Month	Monthly Recurring Charge Per User
BT-L2-0319	Aggregated Data	2.5GB	XXXX
BT-L2-0320	Aggregated Data	3GB	XXXX
BT-L2-0321	Aggregated Data	3.5GB	XXXX
BT-L2-0322	Aggregated Data	4GB	XXXX

BT Service Order Reference Number	Service Description	Shared Data Bundle Per User Per Month	Monthly Recurring Charge Per User
BT-L2-0323	Aggregated Data	4.5GB	XXXX
BT-L2-0324	Aggregated Data	5GB	XXXX
BT-L2-0325	Aggregated Data	5.5GB	XXXX
BT-L2-0326	Aggregated Data	6GB	XXXX
BT-L2-0327	Aggregated Data	6.5GB	XXXX

2.2. Location/Sites of Delivery

2.2.1. Not Used

2.3. Dates for delivery of the Services

- 2.3.1. Service Commencement Date: Any agreed changes to tariffs will be effective from the next billing date after the Call Off order is counter signed by the Service Provider. This is provided that the counter signature date is at least 10 days before the Customer's billing date. If it is not, then the change will take effect on the billing date a month later

2.4. Installation Works

- 2.4.1. Not Used.

2.5. Implementation Plan

- 2.5.1. Not Used.

2.6. Standards

- 2.6.1. As set out in the BT Service Offer, reference LPP-L2.4-BT0018 clause 2.5.

2.7. Service Levels and Service Credits

- 2.7.1. As set out in the BT Service Offer, reference LPP-L2.4-BT0018 clause 4 Service Level Agreement.

2.8. Service Incidents

- 2.8.1. Not applicable.

2.9. Performance Monitoring

- 2.9.1. Not applicable.

2.10. Period for providing the BCDR Plan

- 2.10.1. Not applicable.

2.11. Exit Management

2.11.1. As set out in the BT Service Offer, reference LPP-L2.4-BT0018 clause 2.8 Mobile switching from EE.

2.11.2. Exit management process complies with OFCOM Regulations.

2.12. Specially Written Software, Service Provider Software and Third-Party Software.

2.12.1. Not applicable

3. SERVICE PROVIDER'S INFORMATION

3.1. Service Provider's inspection of Sites and Customer Furnished Items

3.1.1. Not applicable

3.2. Commercially Sensitive Information

3.2.1. As detailed below:

Exempted Information (cross reference to Response)	Reason for Exemption	Exemption to be Applied	Time Period for Exemption
Finance Technical	<p>BT is providing information in commercial confidence and considers that the information would be exempt from disclosure under the FOIA. BT expects the Customer Authority to respect that confidence. Section 41 of the FOIA exempts the Customer Authority from disclosing that information as the disclosure (otherwise than under the FOIA) would constitute an actionable breach of confidence.</p> <p>Disclosure of the information would also be commercially prejudicial to BT's interests and accordingly exempt from disclosure by virtue of section 43 of the FOIA</p>	Section 41 & 43 of the FOIA	7 Years from end of Agreement

Exempted Information (cross reference to Response)	Reason for Exemption	Exemption to be Applied	Time Period for Exemption
	<p>BT believes that the public interest in maintaining the confidentiality of the information outweighs the public interest in its disclosure for the following reason:</p> <p>If the information was disclosed this would undermine competition in the markets in which these services are offered. The interests of consumers would not be best served by such a development. It is in the public interest to ensure that competition in the market is not distorted by competitors having access to commercially sensitive information about each other. Placing one company at a disadvantage to another by commercially prejudicing its position in the marketplace is contrary to the public policy goal of maintaining and encouraging competition in the market.</p>		

4. CUSTOMER RESPONSIBILITIES

4.1. Customer Responsibilities

- 4.1.1. As set out in the BT Service Offer, reference LPP-L2.4-BT0018, LPP-2.4-BT0019 and LPP-L2.4-BT0011.

5. CALL-OFF TERMS AND CONDITIONS CHARGES AND PAYMENT

5.1. As set out in the BT Service Offer and Price Card reference LPP-L2.4-BT0018, LPP-L2.4-BT0019 and LPP-L2.4-BT0011.

5.2. Details of where invoices should be sent:

Customer Contact Name:

XXXXXXXXXX

Title:

CDIO Accounts Payable

Contact Number:

XXXXXX

Email address:

XXXXX

Postal address:

XX

Payment Method: BACS

SECTION C

6. CUSTOMER - OTHER CONTRACTUAL REQUIREMENTS

6.1. Guarantee

6.1.1. Not applicable

6.2. Staffing and TUPE

6.2.1. Not applicable

6.3. Relevant Convictions

6.3.1. Not applicable

6.4. Maintenance of the ICT Environment

6.4.1. As set out in the BT Service Offer reference LPP-L2.4-BT0018, LPP-L2.4-BT0019 and LPP-L2.4-BT0011.

6.5. Protection of Customer Data

6.5.1. As set Schedule 2-22.

6.6. Limitations on Liability

6.6.1. As per standard limitations detailed at Clause 14 of the Call Off Contract.

6.7. Insurance

6.7.1.

Class	Sum Insured
Public Liability	£10,000,000.00
Employers Liability	In accordance with any legal requirement for the time being in force.
Professional Indemnity	£10,000,000.00
Product Liability	£10,000,000.00

6.8. Termination without cause notice period

- 6.8.1. As set out in the BT Service Offer reference LPP-L2.4-BT0018, LPP-L2.4-BT0019 and LPP-L2.4-BT0011.

7. EXTRA CALL-OFF TERMS AND CONDITIONS

7.1. Supplemental requirements to the Call-off Terms and Conditions

- 7.1.1. Not applicable

7.2. Amendments to/refinements of the Call-off Terms and Conditions

- 7.2.1. Not applicable

7.3. Extra Call-off Terms and Conditions (select from Call Off Schedule 2-23 (Extra Call-off Terms and Conditions))

- 7.3.1. HMRC Mandatory Terms

8. SUB-CONTRACTORS

- 8.1. Not Applicable

9. FORMATION OF CALL OFF CONTRACT

By signing and returning this Request for Drawdown Services (which may be done by electronic means) the Service Provider agrees to enter a Contract with the Customer to provide the Services.

The parties hereby acknowledge and agree that they have read the Request for Drawdown Services and the Call-off Terms and Conditions and by signing below agree to be bound by the Contract.

The parties hereby acknowledge and agree that this Contract shall be formed when the Customer acknowledges (which may be done by electronic means) the receipt of the signed copy of the Request for Drawdown Services from the Service Provider within two (2) Working Days from receipt.

For and on behalf of the Service Provider:

Name	XXXXXXXXXXXXXXXXXX
Title	XXXXXXXXXXXXXXXXXX
Email Address	XXXXXXXXXXXXXXXXXX
Contact Telephone	XXXXXXXXXXXXXXXXXXXX
Signature	XXXXXXXXXXXXXXXXXXXX
Date	28/05/2021

The buyer consents to the transfer to and processing of data in the UK.

For and on behalf of the Customer:

Name	XXXXXXXXXXXXXXXXXXXX
Title	XXXXXXXXXXXXXXXXXXXX
Email Address	XXXXXXXXXXXXXXXXXXXX
Contact Telephone	XXXXXXXXXXXXXXXXXXXX
Signature	XXXXXXXXXXXXXXXXXXXX
Date	28/05/2021

SCHEDULE 2-22

Data – Customer Data, Data Protection, Processing, Personal Data and Data Subjects

- 1.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 1.2 The Service Provider shall not store, copy, disclose, process or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Customer.
- 1.3 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer in the format specified in Schedule 2-7 (Contract, Service Management and Reporting) or by the Customer from time to time.
- 1.4 The Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data in accordance with the Data Protection Act.
- 1.5 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 1.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default, the Customer may:
 - 1.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with the requirements specified in the BCDR Plan and the Service Provider shall do so as soon as practicable but not later than the period specified in Schedule 2-16 (BCDR Plan); and/or
 - 1.6.2 itself restore or procure the restoration of Customer Data to a standard that enables the Services to be provided under this Contract, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 1.7 If at any time the Service Provider suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Customer immediately and inform the Customer of the remedial action the Service Provider proposes to take.
- 1.8 The Service Provider shall indemnify and keep the Customer indemnified at all times from and against all losses sustained by the Customer in the event of any loss, destruction, corruption, degradation or inaccuracy of Customer Data arising by reason of any act, omission or Default of the Service Provider in the provision of the Services under this Contract.

- 1.9 If any third party makes a claim or intimates the intention to make a claim against either party to this Contract, which may reasonably be considered as likely to give rise to liability for acts conducted under this Contract, the Service Provider agrees to indemnify the Customer at all times for all losses that arise by reason of any act, omission or Default of the Service Provider in the provision of the Services under this Contract.
- 1.10 Either party shall inform the other immediately, or as soon as practically possible, in writing of:
- 1.10.1 the nature of the relevant claim;
 - 1.10.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other party; and
 - 1.10.3 give the other party and its professional advisors reasonable access to its records and premises so that the claim can be properly investigated.
- 1.11 Each party shall ensure that they comply with, and not breach the provisions of the Data Protection Act and FOIA.

2. DATA PROTECTION

- 2.1 4.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in Schedule 2-22 by the Customer and may not be determined by the Service Provider.
- 2.2 4.2 The Service Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 2.3 The Service Provider shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

2.4 The Service Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) process that Personal Data only in accordance with Schedule 2-22, unless the Contractor is required to do otherwise by Law. If it is so required the Service Provider shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Customer may reasonably reject (but the failure to reject shall not amount to approval by the Customer of the adequacy of the Protective Measures) having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures;
- c) ensure that :
 - i. the Service Provider personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2-22);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Service Provider personnel who have access to the Personal Data and ensure that they:
 - a) are aware of and comply with the Service Provider's duties under this Clause;
 - b) are subject to appropriate confidentiality undertakings with the Service Provider or any Sub-processor;
 - c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Contract; and
 - d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- i. the Customer or the Service Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Service Provider 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 Customer in meeting its obligations); and
 - iv. the Service Provider complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Contract unless the Service Provider is required by Law to retain the Personal Data.

2.5 Subject to paragraph 4.6, the Service Provider shall notify the Customer immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

2.6 The Service Provider's obligation to notify under paragraph 4.5 shall include the provision of further information to the Customer in phases, as details become available.

2.7 Taking into account the nature of the processing, the Service Provider shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint,

communication or request made under paragraph 4.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- a) the Customer with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Customer following any Data Loss Event;
- e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

2.8 The Service Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Service Provider employs fewer than 250 staff, unless:

- a) the Customer determines that the processing is not occasional;
- b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

2.9 The Service Provider shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

2.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

2.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Service Provider must:

- a) notify the Customer in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Customer;

- c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 4
 - d) such that they apply to the Sub-processor; and
 - e) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 2.12 The Service Provider shall remain fully liable for all acts or omissions of any Sub-processor.
- 2.13 The Customer may, following the Contract Change Procedure, request to revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 2.14 The Parties agree to take account of any binding guidance issued by the Information Commissioner's Office. The Customer may, following the Contract Change Procedure, request to amend this Contract to ensure that it complies with any binding guidance issued by the Information Commissioner's Office.
- 2.15 Authorised processing is set out in BT Service Offer reference LPP-L2.4-BT0018 Annex 1.

Schedule 2-23 (Extra Call-off Terms and Conditions)

AUTHORITY'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for Her Majesty's Revenue and Customs).
- B. The Agreement incorporates the Authority's mandatory terms set out in this Schedule 2-23.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 2-23 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"	<ul style="list-style-type: none">(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 [insert relevant document as per Call-Off template];
"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 GDPR; <ul style="list-style-type: none">(a) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;(b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;(c) all applicable Law about the processing of personal data and privacy;

“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679);
“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 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”	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”	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Subcontractor of the Service Provider engaged in the performance of the Service Provider’s obligations under the Contract;
“Supporting Documentation”	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;
“Tax”	means (a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for

goods or services supplied or performed or to be performed) and withholdings; and

(d) (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"

"means 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 Service Provider or any agent, Service Provider or Subcontractor of the Service Provider requested to be replaced pursuant to Clause 4.3; and

(b) any "Essential Subcontractor" means any Key Subcontractor;

"VAT"

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

2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Authority as specified in Clause 5 above. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

2.1.1 the Supplier does so at its own risk; and

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

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

2.3 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

3. Warranties

3.1 The Supplier represents and warrants that:

3.1.1 in the three years prior to the 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 Service Provider 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 Customer) 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 Customer under or pursuant to this Contract 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 Service Provider under or pursuant to the applicable Key Subcontract ("Prohibited Transactions"). Prohibited Transactions shall not include transactions made between the Service Provider 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 Service Provider shall notify the Customer in writing (with reasonable supporting detail) of any proposal for the Service Provider or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Service Provider shall notify the Customer within a reasonable time to allow the Customer 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 2.1 above, or in the event that circumstances arise which may result in such a breach, the Service Provider and/or the Key Subcontractor (as applicable) shall discuss the situation with the Customer and, in order to ensure future compliance with the requirements of Clauses 2.1 and 2.2, the Parties (and the Service Provider shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Customer) 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 Service Provider (or a Key Subcontractor) to comply with the obligations set out in Clauses 2.2 and 2.3 shall allow the Customer to terminate the Contract pursuant to the Clause that provides the Customer the right to terminate the Contract for Service Provider fault (termination for Service Provider 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;
 - 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 affected 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;

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 powers 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>

- 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 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.

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.

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:

