



Crown  
Commercial  
Service

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**Call Off Order Form for Management Consultancy Services**

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**FRAMEWORK SCHEDULE 4**

**CALL OFF ORDER FORM AND CALL OFF TERMS**

## PART 1 – CALL OFF ORDER FORM

### SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement 'Management Consultancy Framework' **RM3745** dated [ *4<sup>th</sup> September 2017/21<sup>st</sup> November 2017* ].

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

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

<b>Order Number</b>	<b>SR535297265</b>
<b>From</b>	<b>HM Revenue and Customs (HMRC) ("CUSTOMER")</b>
<b>To</b>	<b>KPMG LLP ("SUPPLIER")</b>

### SECTION B

#### CALL OFF CONTRACT PERIOD

<b>1.1.</b>	<b>Commencement Date: 23/02/2021</b>
	<b>Expiry Date:</b> End date of Initial Period <b>22/11/2021 (9 Months)</b> Minimum written notice to Supplier in respect of extension: <b>Not Applicable</b>

#### SERVICES

## 2.1 Services required:

In Call Off Schedule 2 (Services)

### 1. PURPOSE

- 1.1. Given the complex and technical nature of Technology Sourcing Programme (TSP), Change Assurance & Investment (CAI) have identified a need for technical expertise to offer independent (of CDIO) assurance that the Outline Business Cases (OBCs) and Full Business Cases (FBCs) for each contract in line with the preferred option and for approval to tender, are best case/value for money proposals.

### 2. BACKGROUND TO THE AUTHORITY

- 2.1. CAI are aware that Internal Audit (IA) have a contract in place with KPMG, as KPMG have the existing corporate knowledge for HMRC we do not intend to present this opportunity out to the wider market. CAI are looking to engage the services of KPMG utilising a similar contract as per the one IA have in place. [REDACTED] CAI Director is the Business Sponsor and funding has been agreed by [REDACTED] CFO Finance Director and [REDACTED] CFO Director General.

### 3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

- 3.1. The Technology Sourcing Programme is a CDIO transformation programme focussed on disaggregating the technology supply chain to deliver value for money, improve competition and reduce risk in the HMRC IT estate. To enable this the IT strategy must be reset, the CDIO organisation capability must be uplifted and way of working must significantly change.
- 3.2. To achieve the full deliverables to HMRC the original focus on 11 sourcing packages has been widened to encompass the whole of the CDIO supply chain with a comprehensive end to end review, strategy and approach. TSP will deliver:
  - 3.2.1 New contracts by the end of June 2022 for all expiring contracts and support for technical debt and cyber interventions.
  - 3.2.2 Investment in CDIO enterprise process, skills, and tools to support all services, technology debt and cyber interventions.
  - 3.2.3 Clear definition of roles and accountability for HMRC and industry.
- 3.3. TSP defines HMRC's optimal IT supply chain and sets out pragmatic options for how this can be achieved, managed and maintained.

### 4. DEFINITIONS AND ACRONYMS

Expression or Acronym	Meaning
CFO	Chief Finance Office
CDIO	Chief Digital Information Office

### 5. THE REQUIREMENT

- 5.1. Given the complex and technical nature of TSP, CAI have identified a need for technical expertise to offer independent (of CDIO) assurance that the Outline Business Cases (OBCs) and Full Business Cases (FBCs) for each contract in line with the preferred option and for approval to tender, are best case/value for money proposals.
- Reviewing each business case as they come through the pipeline over the next 18-24 months.
- 5.1.1 Ensuring each case is aligned to the strategic direction of TSP and HMRC as agreed within the approved Programme level Business Case –strategy document and IT Roadmap.
- 5.1.2 Provide assurance from a in-source v out-source perspective, is the proposed solution the right approach, have all risks associated been identified and mitigated.
- 5.1.3 Does the proposed approach to market provide a level playing field that does not unfairly favour the current incumbent.
- 5.1.4 Understanding the service and market – [REDACTED]
- 5.1.5 Are the options feasible and doable within the timeframes of the proposals.
- 5.1.6 Does the proposed solution offer value for money.
- 5.1.7 Exclusions to be discussed on a case by case basis, with KMPG lead and CAI.

**6. KEY MILESTONES**

- 6.1. The Potential Provider should note the following project milestones that the Authority will measure the quality of delivery against:

Milestone	Description	Timeframe
1	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]

**7. AUTHORITY’S RESPONSIBILITIES**

- 7.1. None

**8. REPORTING**

- 8.1. Outputs on each review to be shared only with CAI.

**9. CONTINUOUS IMPROVEMENT**

	<p>9.1. The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.</p> <p>9.2. Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.</p> <p><b>10. SUSTAINABILITY</b></p> <p>10.1. N/A</p> <p><b>11. ACCREDITATION</b></p> <p>11.1. N/A</p> <p><b>12. STAFF AND CUSTOMER SERVICE</b></p> <p>12.1. Potential Provider's staff assigned to the Contract shall have independent technical expertise in relation to the complex and technical nature of the Technology Sourcing Programme and its projects to review OBCs and FBCs on behalf of CAI and the experience to deliver the Contract.</p> <p><b>13. SERVICE LEVELS AND PERFORMANCE</b></p> <p>13.1. The Authority will measure the quality of the Supplier's delivery by:</p> <table border="1" data-bbox="300 936 1414 1173"> <thead> <tr> <th>KPI/SLA</th> <th>Service Area</th> <th>KPI/SLA description</th> <th>Target</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Delivery timescales</td> <td>To review OBC/FBC and feedback to CAI with Review within a pre-agreed timescale between the Parties.</td> <td>100%</td> </tr> </tbody> </table> <p><b>14. SECURITY REQUIREMENTS</b></p> <p>14.1. All resources provided by the Supplier need, as a minimum, Baseline Personnel Security Standard Clearance (BPSS).</p> <p><b>15. PAYMENT</b></p> <p>15.1. The payment method for this Call-Off Contract is by BACS transfer through the HMRC Ariba network. The Supplier will issue electronic invoices via the Ariba Network. The Customer will pay the Supplier within 30 days of receipt of a valid invoice.</p> <p><b>16. BASE LOCATION</b></p> <p>16.1. In light of current COVID workplace restrictions the base location is not an issue.</p>	KPI/SLA	Service Area	KPI/SLA description	Target	1	Delivery timescales	To review OBC/FBC and feedback to CAI with Review within a pre-agreed timescale between the Parties.	100%
KPI/SLA	Service Area	KPI/SLA description	Target						
1	Delivery timescales	To review OBC/FBC and feedback to CAI with Review within a pre-agreed timescale between the Parties.	100%						

## PROJECT PLAN

<b>3.1.</b>	<p><b>Project Plan:</b></p> <p>In Call Off Schedule 4 (Project Plan)</p> <p>Not Applicable</p>
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## CONTRACT PERFORMANCE

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

## PERSONNEL

<b>5.1</b>	<p><b>Key Personnel:</b></p> <p>This Call Off Contract is working with resource provided by The Supplier. Key Personnel to be discussed and agreed between the Parties per 'Review' following the commencement date.</p>
<b>5.2</b>	<p><b>Relevant Convictions (Clause 28.2 of the Call Off Terms):</b></p> <p>As per Clause 28.2 of the Call Off terms for RM6008 which can be accessed via the CCS website.</p>

## PAYMENT

**6.1 Call Off Contract Charges** (including any applicable discount(s), but excluding VAT):

In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)

Call Off Contract Charges working on 'Fee per Review' basis.

Estimated Reviews in Contract Life: 20 Reviews

Maximum Fee: £300,000

Charges will be based on the below rate card and HMRC will be invoiced on a monthly basis based on work completed that month. The Supplier will provide a breakdown of works and billable hours on a weekly basis for review and tracking purposes.

Director – Specialist	████████
Senior Manager – Specialist	████████
Manager – Specialist	████████
Assistant Manager - Specialist	████████

Typical resource make-up per review:



**Example fee per review:**

Grade	Days	Day Rate	Total
████████	████████	████████	████████
████████	████████	████████	████████
████████	████████	████████	████████
████████	████████	████████	████████

**6.2 Payment terms/profile** (including method of payment e.g. Government Procurement Card (GPC) or BACS):

In Annex 2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)

	The payment method for this Call-Off Contract is by BACS transfer through the HMRC Ariba network. The Supplier will issue electronic invoices. The Customer will pay the Supplier within 30 days of receipt of a valid invoice.
<b>6.3</b>	<b>Reimbursable Expenses:</b> Not Applicable
<b>6.4</b>	<b>Customer billing address</b> (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): The supplier will issue electronic invoices via the Ariba Network.
<b>6.5</b>	<b>Call Off Contract Charges fixed for</b> (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): <b>9</b> Call Off Contract Months from the Call Off Commencement Date
<b>6.6</b>	<b>Supplier periodic assessment of Call Off Contract Charges</b> (paragraph 9.2 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)) will be carried out on: <b>Not Applicable</b>
<b>6.7</b>	<b>Supplier request for increase in the Call Off Contract Charges</b> (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Not Permitted

## LIABILITY AND INSURANCE

<b>7.1</b>	<b>Estimated Year 1 Call Off Contract Charges:</b> The sum of £ 300,000
<b>7.2</b>	<b>Supplier's limitation of Liability</b> (Clause 37.2.1 of the Call Off Terms); Applicable Supplier's total aggregated liability are available in Clause 37.2.1 of the Call Off terms for RM6008 which can be accessed via the CCS website
<b>7.3</b>	<b>Insurance</b> (Clause 38.3 of the Call Off Terms): Applicable insurance terms are available in Clause 38 of the Call Off terms for RM6008 which can be accessed via the CCS website

## TERMINATION AND EXIT

<b>8.1</b>	<b>Termination on material Default</b> (Clause 42.2.1(c) of the Call Off Terms): In Clause 42.2.1(c) of the Call Off Terms
<b>8.2</b>	<b>Termination without cause notice period</b> (Clause 42.7.1 of the Call Off Terms):

	In Clause 42.7.1 of the Call Off Terms
<b>8.3</b>	<b>Undisputed Sums Limit:</b> In Clause 43.1.1 of the Call Off Terms
<b>8.4</b>	<b>Exit Management:</b> In Call Off Schedule 9 (Exit Management)

## SUPPLIER INFORMATION

<b>9.1</b>	<b>Supplier's inspection of Sites, Customer Property and Customer Assets:</b> <b>Not Applicable</b>
<b>9.2</b>	<b>Commercially Sensitive Information:</b> <b>The below details are deemed Commercially Sensitive and will, therefore, be redacted from any publishing of Contract documentation.</b> Any Supplier Breakdown of Pricing Supplier Security Responses Any Supplier proposal Supplier's personal data

## OTHER CALL OFF REQUIREMENTS

<b>10.1</b>	<b>Recitals</b> (in preamble to the Call Off Terms): Recital A
<b>10.2</b>	<b>Call Off Guarantee (Clause 4 of the Call Off Terms):</b> Not required
<b>10.3</b>	<b>Security:</b> Select short form security requirements [REDACTED] Security Policy
<b>10.4</b>	<b>ICT Policy:</b> To be provided by the Customer before the Commencement Date.
<b>10.6</b>	<b>Business Continuity &amp; Disaster Recovery:</b> Not applied

<b>10.7</b>	NOT USED
<b>10.8</b>	<b>Protection of Customer Data</b> (Clause 35.2.3 of the Call Off Terms): As per Clause 35.2 of the Call Off Terms for RM6008 which can be accessed via the CCS website will apply.
<b>10.9</b>	<b>Notices</b> (Clause 56.6 of the Call Off Terms): Customer's postal address and email address: <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px;"></div> Supplier's postal address and email address: <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px;"></div>
<b>10.10</b>	<b>Transparency Reports</b> In Call Off Schedule 13 (Transparency Reports)
<b>10.11</b>	<b>Alternative and/or additional provisions (including any Alternative and/or Additional Clauses under Call Off Schedule 14 and if required, any Customer alternative pricing mechanism):</b> Customer's additional Clauses will apply as provided in Appendix A.
<b>10.12</b>	<b>Call Off Tender:</b> In Call Off Schedule 16 <i>Not Applicable</i>
<b>10.13</b>	<b>Publicity and Branding (Clause 36.3.2 of the Call Off Terms)</b> As per Clause 36.3 of the Call Off Terms for RM6008 which can be accessed via the CCS website
<b>10.14</b>	<b>Staff Transfer</b> Not Applicable
<b>10.15</b>	<b>Processing Data</b> Call Off Schedule 17

	Not Applicable. The Supplier will not be processing any personal data. The Short Form Security Requirements can be found in 10.3 of the Call Off Order Form and Appendix B.
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## **FORMATION OF CALL OFF CONTRACT**

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

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

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

**For and on behalf of the Supplier:**

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	[REDACTED]

**For and on behalf of the Customer:**

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	[REDACTED]

## Appendix A – Customer Additional Terms



HM Revenue  
& Customs

### HM REVENUE & CUSTOM'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.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule will supersede any other terms in the Agreement.

#### 1. Definitions

- "Affiliate"** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
- "Authority Data"** (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
- (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 the contract;
- "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;

<b>“Controller”, “Processor”, “Data Subject”,</b>	take the meaning given in the GDPR;
<b>“Data Protection Legislation”</b>	(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;
<b>“GDPR”</b>	the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“Key Subcontractor”</b>	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
<b>“Law”</b>	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Personal Data”</b>	has the meaning given in the GDPR;
<b>“Purchase Order Number”</b>	the Authority’s unique number relating to the supply of the Services;
<b>“Services”</b>	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
<b>“Subcontract”</b>	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>“Subcontractor”</b>	any third party with whom: (a) the Supplier enters into a Subcontract; or (b) a third party under (a) above enters into a Subcontract,

<b>“Supplier Personnel”</b>	or the servants or agents of that third party; all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
<b>“Supporting Documentation”</b>	sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;
<b>“Tax”</b>	<ul style="list-style-type: none"> <li>(a) all forms of tax whether direct or indirect;</li> <li>(b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</li> <li>(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</li> <li>(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</li> </ul> <p>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
<b>“Tax Non-Compliance”</b>	<p>where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) any “Essential Subcontractor” means any Key Subcontractor;</li> </ul>
<b>“VAT”</b>	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 THE AGREEMENT. WITHOUT PREJUDICE TO THE GENERALITY OF THE INVOICING PROCEDURE SPECIFIED IN THE AGREEMENT, THE SUPPLIER SHALL PROCURE A PURCHASE ORDER NUMBER FROM THE AUTHORITY PRIOR TO THE COMMENCEMENT OF ANY SERVICES AND THE SUPPLIER ACKNOWLEDGES AND AGREES THAT SHOULD IT COMMENCE SERVICES WITHOUT A PURCHASE ORDER NUMBER:**

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

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

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

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

### **3. Warranties**

- 3.1** The Supplier represents and warrants that:

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

- 3.2** If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

- 3.3** In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

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

- 4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.
- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4** If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:
- 4.4.1** notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 4.4.2** promptly provide to the Authority:

- (a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - (b) such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
- 4.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 4.6 Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7 If the Supplier:
  - 4.7.1 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
  - 4.7.2 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
  - 4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

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

- 4.8 The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

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

- 5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or

them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (“**Prohibited Transactions**”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.

- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

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

- 6.1** The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1** not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a)** the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (b)** the Data Subject has enforceable rights and effective legal remedies;
  - (c)** the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (d)** the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 6.2** Failure by the Processor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

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

- 7.1** The Supplier shall comply with and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2** The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
- 7.3** The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4** The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.
- 7.5** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

## Annex 1

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

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

1. There is a person or entity which is either: ("X")
  - 1) The Economic Operator or Essential Subcontractor (EOS)
  - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*<sup>1</sup>;
  - 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 evasion<sup>2</sup>;
  - b. Conduct caught by the General Anti-Abuse Rule<sup>3</sup>;
  - c. Conduct caught by the Halifax Abuse principle<sup>4</sup>;
  - d. Entered into arrangements caught by a DOTAS or VADR scheme<sup>5</sup>;

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

<sup>2</sup> 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

<sup>3</sup> "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any

future legislation introduced into Parliament to counteract tax advantages arising from abusive

arrangements to avoid national insurance contributions

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

<sup>5</sup> A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions

- e. Conduct caught by a recognised ‘anti-avoidance rule’<sup>6</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not 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 list<sup>7</sup>;
- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

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

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

- 1. 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) procedure<sup>8</sup>; or,
  - 2. Has been charged with an offence of fraudulent evasion.
- 2. 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.
- 3. 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.
- 4. In respect of (f) this condition is satisfied without any further steps being taken.
- 5. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

1.1.1 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

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(Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

<sup>6</sup> The full definition of ‘Anti-avoidance rule’ can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

<sup>7</sup> Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

<sup>8</sup> The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

re-enacted from time to time including any implementing or successor legislation.

**Annex 2 Form**

**CONFIDENTIALITY DECLARATION**

CONTRACT REFERENCE:

(‘the Agreement’)

DECLARATION:

I solemnly declare that:

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

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

**Appendix B – Security Management Plan**



**Security Plan Questionnaire - Medium**

[Redacted content]