

THE OPTIMIZEZY SOFTWARE SUBSCRIPTION AGREEMENT ORDER FORM

This Order Form is entered into between *Episerver AB (t/a Optimizely)*, a limited liability company under the laws of Sweden, with a principal place of business at Torsgatan 11, Box 7007, 103 86 Stockholm, Sweden, with corporate registration number [REDACTED] and its Affiliates ("*Optimizely*"); and

Customer Details	HM Revenue and Customs ("Customer") 100 Parliament Street London, - NE1 United Kingdom [REDACTED]	<u>Billing Contact</u> Contact Name: Payments Team Address: Teville Gate House, 25 Railway Approach, Worthing, BN11 1UR Telephone: 03000514066 Contact Email: N/A Invoice Distribution Email: payments.team@hmrc.gov.uk	<u>Primary Technical Contact</u> Contact Name: [REDACTED] Address: [REDACTED] Telephone: [REDACTED] Email: [REDACTED] <u>Secondary Technical Contact</u> Contact Name: [REDACTED] Address: N/A Telephone: [REDACTED] Email: [REDACTED]
Purchase Orders	____ No, a P.O. is NOT required for the Orders. <u>X</u> Yes, a P.O. is required for the Orders and will be provided to Optimizely within five business days from Effective Date.		
Optimizely Sales Contact Details: Agreement Number:	Name: [REDACTED] Email: [REDACTED] Agreement: [REDACTED]		

Parties. Optimizely and Customer are individually referred to as a "Party" and collectively as the "Parties".

Whole Agreement. This Software Subscription Agreement Order Form ("Order Form"), all incorporated appendices, and other expressly incorporated documents, comprise the whole agreement between the Parties with respect to the Software Service and the Subscription (collectively the "Software Subscription Agreement").

Signature & Acceptance. This Order Form, as issued by Optimizely to Customer, is an offer by Optimizely. When signed in the form received by the Customer from Optimizely, without any alteration by the Customer, and returned to Optimizely by Customer, becomes a binding agreement between the Parties for the Software Service(s) listed in this Order Form, and also under subsequent Orders (subject to the terms of those subsequent Orders), including any professional services under the Orders. Electronic signature via DocuSign or such other similar means as determined by Optimizely is deemed an original signature of the Customer. The authorized signatory represents and warrants to Optimizely that they have full authority to accept the terms of this Order Form, and to bind the Customer to this Agreement.





Effective Date: This Order Form will be effective on the date of the Customer's signature ("Effective Date").

Index to this Order Form





1. Contractual Documents and Priority
2. The Order Table – the Software Service Subscriptions
3. The Subscription Term
4. Fees, Payment, Interest, Taxes & POs
5. Non-Renewal
6. Permitted use of logo
7. Special Conditions
8. Definitions Glossary



Accepted by Customer

Authorised Signature: 
Name: 
Title: 
Date: 

Episerver AB (t/a Optimizely)

Authorised Signature: 
Name: 
Title: 
Date: 

1. CONTRACTUAL DOCUMENTS AND PRIORITY

1.1 The following documents are applicable to the Subscribed Software Service, and in the following order of precedence of those documents (collectively, the "Agreement")

1.1.1 [REDACTED]

1.1.2 [REDACTED]

1.1.3 [REDACTED]

1.1.4 [REDACTED]

1.1.5 [REDACTED]

1.1.6 [REDACTED]

This Agreement shall further serve as the agreement for all future subscriptions of the Subscribed Software Service.

2. THE ORDER TABLE – THE SOFTWARE SERVICE SUBSCRIPTIONS

Subject to Customer's payment of Fees, and its performance of its other obligations under this Agreement, Optimizely will provide Customer with the following Subscriptions of Software Service.

Initial Subscription Term – In the absence of any specified start date, the Subscription commences on the Effective Date.

Order Terms			
Order Subscription Term Start Date: 1 October 2022	Payment Term: [REDACTED]	Payment cadence: [REDACTED]	Support Tier: Standard
SLA: [REDACTED]	Currency: GBP	Offer expiration date (unless signed before): [REDACTED]	Onboarding hours expiration date: [REDACTED]

2.1 Hosting region for Experimentation will be United States.

Software Services Ordered and Price				
SKU Detail	Qty	Description	Price*	Initial Subscription Term
OPT-PLATPLATBUS	1	Optimizely Experimentation - Platform Business Tier	Contract Year 1: [REDACTED] Contract Year 2: [REDACTED]	24 months from and including 1 October 2022
OPT-USEIMPO - 25 Million	1	Optimizely Experimentation - Impressions Usage 0 - 25 Million	[REDACTED]	As above
OPTSERVCUSTOM	1	Optimizely Experimentation - Onboarding (Custom Package)	[REDACTED]	[REDACTED]
Total Price* (*plus Applicable Taxes)			[REDACTED]	[REDACTED]

Usage Summary *		
(*The following Usage Volumes represent the agreed annual quantity of the Usage Metric over a 12-month period, except where the Subscription Term is less than one year. In that case, the stated Usage Volume will be actual prorated amount).		
	Usage Metric	Usage Volume
Content Usage Summary	Agreed consumption metric: Pageviews / API Calls	Agreed annual consumption volume: N/A
B2C Commerce Cloud Usage Summary	Transactional Orders	N/A
Market Orchestration Usage Summary	Admin seats:	N/A
	Collaborator seats	N/A
	Creator seats	N/A
	Guest seats	N/A
Experimentation Usage Summary	Impressions	[REDACTED]
	Accounts	[REDACTED]
	Authorized Users:	N/A
B2B Usage Summary	Transactional Orders	N/A
	Authorized Users for B2B Cloud Analytics:	N/A
Optimizely Data Platform Usage Summary	Included sites:	N/A
Marketing Automation Usage Summary	Marketing Automation Email Volume per Year (CEY):	N/A
	Marketing Automation SMS Volume per Year	N/A
Marketing Automation by Delivra Usage	Marketing Automation Email Volume/ Contacts:	N/A

3. SUBSCRIPTION TERM

3.1 *Subscription Term* – Each Subscription commences on the Effective Date of each Order, and continues until cancelled, or this Agreement is otherwise terminated, in accordance with the Agreement.

3.2 *Initial Subscription Term* – The Subscription term as stated in each Order, from (and including) a specified date within the Order, or if no date given, then the Effective Date (“Initial Subscription Term”).

3.3 *Auto Renewal* – [REDACTED]

3.4 *Price Increase* – [REDACTED]

4. FEES, PAYMENT, TAXES & PO's

4.1 *Fees* - Customer's Use of the Software Service is subject to the Agreement, including the Usage Volume stated in tables in section 2 above.

4.2 *Overage*. [REDACTED]

4.3 *Payment* – All Fees are payable as set out in this Order Form.

4.4 *Suspension and Interest* - Customer shall pay all correctly-invoiced Fees in accordance with this Agreement. If Customer fails or refuses to pay Fees, Optimizely may, in addition to all other available remedies, suspend Customer's Use of the applicable Software Service under section 5.2.3 below until payment is made. Optimizely will provide Customer with reasonable prior written notice (email sufficient) before any such suspension. Unpaid Fees will accrue interest at the maximum legal under the applicable law of this Agreement.

4.5 *Taxes* – All Fees are subject to applicable Taxes, which will be charged in addition to Fees (unless Fees are stated as expressly inclusive of Tax). Customer is responsible for all applicable Taxes levied upon or otherwise related to this Agreement, its Subscription, and its Use of the Software Services, and receipt of any other service ("Applicable Taxes"). Optimizely will invoice Customer for all such Applicable Taxes based on the Fees.

4.6 *Purchase Orders* – Customer's purchase orders are for Customer's administrative convenience only. Optimizely may issue an invoice and collect payment without a corresponding purchase order. This Order shall take precedence over any additional terms in any purchase order, and no terms included in any such purchase order shall apply to the Subscription.

4.7 *No Withholding or Set Off* – Customer may not withhold, reduce or set-off Fees owed.

4.8 *No Reduction of Usage Volume* – Customer may not reduce Usage Volume during a Subscription Term.

5. NON-RENEWAL

5.1 *Renewal Cancellation* – [REDACTED]

5.2 *Effect of Cancellation* – Further to section 5.1 above:

5.2.1 *End of the Software Services* – At the conclusion of the Subscription Term, Customer must immediately: (i) stop using the applicable Software Service; and (ii) cease accessing any Customer Data in the applicable Software Service. Furthermore, Optimizely may delete all Customer Data at any time after thirty (30) days from the last date of the expired Subscription.

5.2.2 *Payments* – Notwithstanding notice of non-renewal, outstanding correctly-invoiced Fees for the active Subscription Term remain payable.

5.2.3 *Non-Payment of Fees – Suspension* – If any correctly-invoiced Fee remains unpaid ten days after the date due payment of Optimizely's invoice, Optimizely may (in addition to any other rights) suspend Customer's access to the applicable Software Service. However, Optimizely will not suspend the Software Service if Customer has given prompt notice of a dispute, and the dispute is made in good faith, and cooperates diligently to resolve the dispute. If the Software Service is suspended, Optimizely may charge a reasonable re-activation fee appropriate for the reinstatement of the Software Service.

6. PERMITTED USE OF LOGO

6.1 Optimizely may request inclusion of Customer's name and logo in Optimizely's published customer list, website, and collateral, or press release, subject to Customer's written acceptance, and subject to Customer's logo and trademark guidance as communicated to Optimizely's Marketing Department.

7. SPECIAL CONDITIONS

7.1 Further to section 4.5 of the Order Form, each Party will be responsible, as required under applicable law, for identifying and paying all applicable Taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on that Party upon or with respect to this Agreement, the Subscription, Customer's Use of the Software Services, and Optimizely's delivery of, and, Customer's receipt, of any other service under this Agreement. Customer will provide such information to Optimizely as is reasonably required for Optimizely to determine whether Optimizely is obligated to collect Applicable Taxes (as defined in section 4.5) from Customer. Optimizely will not collect from Customer, and Customer will not be obliged to remit to Optimizely, any Applicable Tax in respect of which Customer furnishes to Optimizely a properly completed exemption certificate or a direct payment permit certificate for which Optimizely may claim an available exemption from Applicable Tax. All payments made by Customer to Optimizely under this Agreement will be made free and clear of any withholding or deduction for Applicable Taxes. If any such Applicable Taxes (for example, international withholding taxes) are required to be withheld on any payment, Customer will pay such additional amounts as are necessary so that the net amount received by Optimizely is equal to the amount then due and payable under the Agreement. Optimizely will provide Customer with such tax forms as are reasonably requested in order to reduce or eliminate the amount of any withholding or deduction for Applicable Taxes in respect of payments made under the Agreement.

7.2 The UK Addendum to the EU Commission Standard Contractual Clauses: In cases of data transfer from and to the United Kingdom, Exhibit 3 of the Optimizely DPA [International Data Transfer Addendum To The EU Commission Standard Contractual Clauses (Controllers To Processors)] will apply and supersede the Standard Contractual Clauses in Exhibit 2 of the Optimizely DPA.

7.3 Transfer of Software Service(s): As of 1 October 2022, Customer is transferring their existing Software Service(s) (Optimizely Web Enterprise with 25M Impression Package, hereby "Legacy Software") from partner, [REDACTED], to be licensed directly between Customer and Episerver ("Transferred Software").

7.4 Upgrade Clarification: As of 1 October 2022, Customer is upgrading their Legacy Software, to the Software Service(s) stated above and as further described in the Usage Summary as stated herein ("Upgraded Software") for a new total annual fee defined of [REDACTED]

8. DEFINITIONS GLOSSARY

8.1 "*Agreement*" (in the context of each Order Form) means the Order Form, and all incorporated schedules, exhibits and other appendices.

8.2 "*Authorized User*" means any individual to whom Customer grants access authorization to Use the Software Service that is an employee, agent, contractor or representative of Customer, Customer's Affiliates, or Customer's and Customer's Affiliates' Business Partners.

8.3 "*Business Partner*" means a legal entity that requires use of a Software Service in connection with Customer's and its Affiliates' internal business operations, which may include service providers and customers and/or suppliers of Customer and its Affiliates.

8.4 "*Contract Year*" means the one-year period from (and including) a Subscription start date state in Order Form, or if no date given, then from the Effective Date, and each anniversary.

8.5 "*Fees*" means all fees set out in an Order for Software Services, and any included Optimizely-provided professional services.

8.6 "*Onboarding*" is reference to pre-paid pre-defined scope-limited professional service that Optimizely provides Customer as part of the Software Service if Subscribed, and which provides for a technical overview for configuration, implementation support, and a pre-launch checklist.

8.7 "*Order Form*" (or "*Order*") means any Optimizely ordering documentation, online sign-up, or subscription flow that references this Agreement.

8.8 "*Overage*" means Use over and above the applicable Usage Volume for the Subscription as set out in this Order Form.

8.9 "*Overage Fees*" are the Fees for Overage.

8.10 "*Product Supplement*" (or "*PS*") means additional product terms for the applicable Software Service, as identified in, and incorporated into, this Order Form.

8.11 "*Service Level Agreement*" or ("*SLA*") means the service level agreement for the Software Service, as identified in, and incorporated into, in this Order Form.

8.12 "*Software Service*" means the cloud-based software services as detailed in this Order Form.

8.13 "*Support*" means the support provided by Optimizely for the applicable Software Service, as identified in, and incorporated into, this Order Form.

8.14 "*Subscription*" means Customer's subscription for the Software Service as specified in this Order Form, and "Subscribed" shall have a corresponding meaning.

8.15 "*Subscription Term*" (or "*Term*") means the Initial Subscription Term and the Extended Subscription Term.

8.16 "*Tax*" (or "*Taxes*") means all transactional taxes, levies, and similar charges (and any related interest and penalties) such as federal, state or local sales tax, value added tax, goods and services tax, use tax, excise tax, service tax or similar taxes.

8.17 "*Usage Volume*" means the Usage Metric volume for the applicable Software Service as set out in this Order Form.

8.18 "*Usage Metric*" means the standard of measurement for determining the permitted Use, and calculating the Fee for a Software Service as set out in this Order Form and the Product Supplement.

8.19 "*Use*" means access to, and to otherwise activate the processing capabilities of the Software Service, and to load, execute, access, employ, display, gather and receive information resulting from such capabilities.

End Notes. The singular includes the plural. Defined words include their grammatic forms.

END OF THIS ORDER FORM

Appendix 1 – Customer’s Mandatory Terms



**HM Revenue
& Customs**

AUTHORITY’S MANDATORY TERMS

- A.** For the avoidance of doubt, references to ‘the Agreement’ mean the Agreement as defined in Section 8.1. 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 existing incorporated terms or Optimizely’s terms will prevail.
- D.** For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Authority’s mandatory terms in this Schedule are the definitions set out at Clause 1 of this Schedule.

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”	<p>(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:</p> <p>(i) supplied to the Supplier by or on behalf of the Authority; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</p> <p>(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;</p>
“Charges”	the charges for the Services as specified in the Order Form above;
“Connected Company”	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
“Control”	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;

“Controller”, “Processor”, “Data Subject”,	take the meaning given in the UK GDPR;
“Data Protection Legislation”	(a) "the data protection legislation" as defined in section 3(9) of the Data Protection Act 2018; and; (b) all applicable Law about the processing of personal data and privacy;
“Key Subcontractor”	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Personal Data”	has the meaning given in the UK GDPR;
“Purchase Order Number”	the Authority’s unique number relating to the supply of the Services;
“Services”	the services to be supplied by the Supplier to the Authority under the Agreement, 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”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

“Supporting Documentation”

sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;

“Tax”

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
- (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax NonCompliance”

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax NonCompliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
- (b) any “Essential Subcontractor” means any Key Subcontractor;

“UK GDPR”

the UK General Data Protection Regulation, the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);

“VAT”

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

2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Authority as specified in the Agreement. 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.

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.

3.1.2

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. If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:

4.3.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

4.3.2 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.

4.4 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 4.4 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.

4.5 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.

4.6 4.24.3.14.54.34.3.2 The Authority may internally share any information which it receives under Clauses 4.3 to 4.3 (inclusive) and 4.5, for the purpose of the collection and management of revenue for which the Authority is responsible.

5. Use of Off-shore Tax Structures

1.1 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, 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 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 on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

1.2 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies 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.

1.3 In the event of a Prohibited Transaction being entered into in breach of Clause 1.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 1.1 and 1.2, the Parties 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.

1.21.3

2 Data Protection and off-shoring

2.1 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:

- 2.1.1** not process or permit to be processed Personal Data outside of the United Kingdom unless a general written consent is granted following the approval of this contract by both parties as well as the following conditions are fulfilled:
- (a)** the Supplier or any applicable Processor has provided appropriate safeguards in relation to any transfer of the Personal Data (whether in accordance with UK GDPR Article 46 or, where relevant, section 75 of the Data Protection Act 2018) as determined by either the Authority or the Supplier when it is the Controller;
 - (b)** the Data Subject has enforceable rights and effective legal remedies;
 - (c)** the Supplier or any applicable Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is processed (or, if it is not so bound, uses its best endeavours to assist either the Authority or the Supplier when it is the Controller in meeting its obligations); and
 - (d)** the Supplier or any applicable Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

2.1

3 Compliance with applicable laws

3.1 The Software Services as provided by Company shall conform and comply with all applicable laws and in accordance with Company's applicable service descriptions and specifications.



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 effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
 - f. Entered into an avoidance scheme identified by HMRC's published Spotlights list⁷;

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

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

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

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

⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

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

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

- 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) procedure⁸; 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).

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: 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 intentionally, recklessly and knowingly disclose any Authority Data provided to me.

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

