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

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## PART 1 – CALL OFF ORDER FORM

### SECTION A

This Call Off Order Form is issued in accordance with the provisions of the Framework Agreement for the provision of External and Specialist Audit Services dated 04 September 2018.

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>TBC</b>
<b>From</b>	HM Revenue and Customs <b>("CUSTOMER")</b>
<b>To</b>	KPMG LLP <b>("SUPPLIER")</b>

### SECTION B

#### CALL OFF CONTRACT PERIOD

<b>1.1.</b>	<b>Commencement Date: 25/09/2020</b>
	<b>Expiry Date:</b>  End date of Initial Period <b>25/09/2021</b>  End date of Extension Period <b>25/09/2023</b>  Minimum written notice to Supplier in respect of extension: <b>1 Month</b>

## SERVICES

<b>2.1</b>	<p><b>Services required:</b></p> <p>In Call Off Schedule 2 (Services)</p> <p>The services required are to provide external support to deliver a 3 year IT Audit strategy regarding the Customer's annual internal audit plan. Provision of the service will be reviewed annually by the Customer with potential breakpoints at the end of year 1 and 2. This is to ensure the service is up to the standard the Customer requires.</p> <p>The majority of the support is required around technical IT audits (inc. Data Analytics) but may also be needed in other areas if the Customer does not have the bandwidth to complete the audit plan with existing resources.</p> <p>A range of Commercial deliverables are required, including:</p> <ul style="list-style-type: none"><li>• Generalists;</li><li>• Specialist requirements</li></ul> <p>The Specialist requirements will include the ability to support the Customer's in-house Internal Audit (IA) unit implementing the following assurance areas as set out in the Customers' IT audit Strategy:</p> <ul style="list-style-type: none"><li>• Strategic IT risks - coverage is based on a detailed risk assessment. All key risks to be covered over the next 3 years;</li><li>• Process risks - as processes are largely technology enabled their related IT controls (both general and application layer) need to be considered alongside broader business controls;</li><li>• Portfolio, programme and project risks - many change programmes will be driven by technology solutions. Technical assurance needs to be embedded (e.g. data migration / test strategy); and</li><li>• Data Analytics - to help introduce our DA strategy while supporting the embedding of requirements into departmental processes.</li></ul> <p>To support the annual IA plan (to be reviewed annually) the requirements of the Supplier will be to support, provide and deliver the following in the life of this contract:</p> <ul style="list-style-type: none"><li>• Have a proven record of success in an organisation of similar size, complexity and risk profile;</li><li>• Be able to evidence demonstrable innovation and impact from the use of data analytics in audit work;</li><li>• Provide suitable, named, high calibre representatives to support maintenance of an effective relationship with senior management in the Customer's Chief Digital Information Office (CDIO);</li><li>• Provide appropriately skilled, qualified and experienced specialists, with a level of consistency so that the Suppliers internal auditors become familiar with the Customer's risk, governance and control arrangements and supporting business processes;</li></ul>
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	<ul style="list-style-type: none"> <li>• The ability to call-off other specialist resources as and when needed and to flex the Supplier's (audit partner's) time to ensure the right people and skills are in place throughout the period of engagement;</li> <li>• Communicate effectively in meetings, presentations and reports;</li> <li>• Provide a professional, high quality audit service that meets recognised auditing standards, including audit planning, execution, reporting and quality assurance (QA) arrangements. Specifically, delivery and QA of technical reviews, partnering with the Customer's in-house team where possible, across all coverage areas in the 20/21 IT audit plan, as follows: <ul style="list-style-type: none"> <li>○ Reviews of strategic risks;</li> <li>○ Process audits, comprising all technology layers, including general IT controls; application controls and reporting; and</li> <li>○ IT programme assurance, e.g. data migration, test strategies and functional controls</li> </ul> </li> <li>• Provide ad-hoc assistance and advice to the IA leadership team to such extent as may be required from time to time;</li> <li>• Support development of the annual IT audit plan, starting with 2021/22;</li> <li>• Provide access to established and tested technology risk and control frameworks, including provision of insight on current and emerging technology trends and risks; and</li> <li>• Upskill the in-house IT audit team. This will entail upskilling our internal IT audit team on a review by review basis and, in addition, will include wider initiatives (to be agreed), such as leading risk and control workshops with 2<sup>nd</sup> line and our team, sharing data analytics expertise, sharing best practice tools and techniques.</li> </ul>
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## PROJECT PLAN

<b>3.1.</b>	<b>Project Plan:</b>  Not applied
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## CONTRACT PERFORMANCE

<b>4.1.</b>	<b>Standards:</b>  Applicable standards for this contract are per Section 11, Standards and Quality, detailed in the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website.  In addition, <a href="#">Public Sector Audit Standards</a> apply, which can be accessed via the GOV.UK website.
<b>4.2</b>	<b>Service Levels/Service Credits:</b>  Not applied
<b>4.3</b>	<b>Critical Service Level Failure:</b>  Not applied

<b>4.4</b>	<b>Performance Monitoring:</b> Performance against the requirements of the contract will be monitored via a joint monthly meeting (agenda and inputs to be agreed).
<b>4.5</b>	<b>Period for providing Rectification Plan:</b> In Clause 39.2.1(a) of the Call Off Terms

## PERSONNEL

<b>5.1</b>	<b>Key Personnel:</b> As per Section 27, Key Personnel, detailed in the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website.  <i>Redacted</i>
<b>5.2</b>	<b>Relevant Convictions</b> (Clause 28.2 of the Call Off Terms): Refer to Clause 28.2 of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website

## PAYMENT

<b>6.1</b>	<b>Call Off Contract Charges</b> (including any applicable discount(s), but excluding VAT): In Annex 1 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)  The charging principles for this call off Contract can be found in the Charging model provided as Appendix A
<b>6.2</b>	<b>Payment terms/profile</b> (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 the call off contract is BACS. The payment profile for this call off order form will be monthly in arrears. Electronic invoices to be issued by the Contractor monthly in arrears. The Buyer will pay the contractor within 30 days of receipt of a valid invoice. The payment terms/profile for any services commissioned as part of this Call Off Order Form will be for payments to be made upon: <ul style="list-style-type: none"> <li>• the completion by The Supplier of the deliverables/outcomes stated in the RFP within the agreed timetable;</li> <li>• acceptance by the Customer that the deliverables/outcomes have been completed to the Customer's satisfaction; and</li> <li>• where delays have been incurred due to quality issues and any known or discovered error, omission, or other defects, The Supplier shall be responsible for any associated costs.</li> </ul>
<b>6.3</b>	<b>Reimbursable Expenses:</b> Not permitted

6.4	<p><b>Customer billing address</b> (paragraph 7.6 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</p> <p>The Supplier agrees and acknowledges that it shall not raise an invoice without having procured a purchase order number generated with HMRC's e-Portal trading system (myBUY) and that discrete purchase order numbers shall be used in respect of each Service and each Order.</p>
6.5	<p><b>Call Off Contract Charges fixed for</b> (paragraph 8.2 of Schedule 3 (Call Off Contract Charges, Payment and Invoicing)):</p> <p>Call Off Contract Charges shall be reviewed annually for the term of the Contract Term.</p>
6.6	<p><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:</p> <p><i>Not applicable.</i></p>
6.7	<p><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)):</p> <p>Not Permitted Charges will be reviewed annually by the supplier in discussion and in agreement with the Customer</p>

## LIABILITY AND INSURANCE

7.1	<p><b>Estimated Year 1 Call Off Contract Charges:</b></p> <p>As detailed in Section 6.1</p>
7.2	<p><b>Supplier's limitation of Liability</b> (Clause 37.2.1 of the Call Off Terms);</p> <p>Applicable Supplier's total aggregated liability are available in Clause 37.2.1 of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website.</p>
7.3	<p><b>Insurance</b> (Clause 38.3 of the Call Off Terms):</p> <p>Applicable insurance terms are available in Clause 38.3 of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website.</p>

## TERMINATION AND EXIT

8.1	<p><b>Termination on material Default</b> (Clause 42.2.1(c) of the Call Off Terms)):</p> <p>The Customer may terminate this Call Off Order Form in accordance with clause 42.2.1(c) of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website, by issuing a termination notice of 10 Working Days.</p>
8.2	<p><b>Termination without cause notice period</b> (Clause 42.7.1 of the Call Off Terms):</p>

	In accordance with clause 42.7 of the Call off Terms for RM6008 which can be accessed via the CCS website.
<b>8.3</b>	<b>Undisputed Sums Limit:</b> In Clause 43.1.1 of the <a href="#">Call Off Terms</a> for RM6008 which can be accessed via the CCS website.
<b>8.4</b>	<b>Exit Management:</b> In Call Off Schedule 9 (Exit Management)  Under the terms of the Contract, the Supplier must commit to co-operating with the customer to ensure efficient Exit Management as Packages of Works are completed. The Supplier must ensure that knowledge transfer to the Customer's team is a fundamental part of the Exit Management process. Four weeks prior to the planned end date of the completion of the work, at the Customer's request, the Supplier must provide an Exit Management Plan. The Exit Management Plan must describe: <ul style="list-style-type: none"> <li>• what further activities are needed by the Customer to continue to deliver the Programme effectively;</li> <li>• how any knowledge retained by the Supplier's team needed to complete such activities efficiently will be transferred to the Customer team (on the understanding that the Customer's team may include contractors and third parties) and</li> <li>• the content format and location for any formal knowledge transfer sessions where required.</li> </ul>

## SUPPLIER INFORMATION

<b>9.1</b>	<b>Supplier's inspection of Sites, Customer Property and Customer Assets:</b> Not applicable
<b>9.2</b>	<b>Commercially Sensitive Information:</b> During the conduct of this work, the contractor may see or be provided Commercially Sensitive information. In this event they must keep the information secure, do not pass on to other colleagues not involved in delivery of the Services and ensure held on the HMRC network.  Details of the Supplier's day rates and other pricing information is considered to be commercially sensitive.

## OTHER CALL OFF REQUIREMENTS

<b>10.1</b>	<b>Recitals</b> (in preamble to the Call Off Terms): Refer to the preamble of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website. Recitals B to E  Recital C - date of issue of the Statement of Requirements: 30 <sup>th</sup> June 2020 Recital D - date of receipt of Call Off Tender:10/07/2020
<b>10.2</b>	<b>Call Off Guarantee (Clause 4 of the Call Off Terms):</b>

	Not required
<b>10.3</b>	<p><b>Security:</b></p> <p>The 'Short Form - Paragraphs 1-5' Call Off Schedule 7: Security contained in the Call Off terms for RM6008 which can be accessed via the CCS website will apply.</p>
<b>10.4</b>	<p><b>ICT Policy:</b></p> <p>The Supplier's team must ensure that when they are using equipment provided by the Customer they must comply with the Customer's ICT/Security policies. When the Supplier's team members are accessing the Customer's systems using the Customer's equipment the ICT/Security policies can be located at the following URL:  <a href="https://intranet.prod.dop.corp.hmrc.gov.uk/section/how-do-i/get-help-security/securityinformation-zone">https://intranet.prod.dop.corp.hmrc.gov.uk/section/how-do-i/get-help-security/securityinformation-zone</a></p> <p>The Supplier must ensure that all team members are made aware of the need to comply with ICT/Security policies and that team members are directed to where the security policies are located.</p>
<b>10.5</b>	<p><b>Testing:</b></p> <p>Not applied</p>
<b>10.6</b>	<p><b>Business Continuity &amp; Disaster Recovery:</b></p> <p>Not applied</p>
<b>10.7</b>	NOT USED
<b>10.8</b>	<p><b>Protection of Customer Data</b> (Clause 35.2.3 of the Call Off Terms):</p> <p>It is not envisaged that this contract will involve the processing of Customer Data but should this arise then Clause 35.2.3 of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website will apply.</p>
<b>10.9</b>	<p><b>Notices</b> (Clause 56.6 of the Call Off Terms):</p> <p>Customer's postal address and email address:  <i>Redacted</i></p> <p>Supplier's postal address and email address:  <i>Redacted</i></p>
<b>10.10</b>	<p><b>Transparency Reports</b></p> <p>In Call Off Schedule 13 (Transparency Reports)</p>
<b>10.11</b>	<p><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></p> <ol style="list-style-type: none"> <li>Customer's additional Clauses will apply as provided in Appendix A1.</li> <li>Impact of Covid-19</li> </ol> <p>The timing of the Services and its performance will be dependent on all relevant information and documentation and access to personnel being made available to the Supplier promptly as and when required by the project timetable. Supplier shall use all reasonable endeavours to meet any agreed timetable. If any stakeholder</p>

or member of either team is unavailable for an extended period of time due to sickness or measures taken to control the spread of illness, there may be a delay [or temporary cessation] in the delivery of the Services and the Supplier will work with the Customer to mitigate any impact.

### 3. Open Source Publication

All deliverables under this partnership will be HMRC branded. Project Specific IPR, Deliverables and all materials provided by KPMG are expected to be excluded from Open Source publication (excluded items). As such, clauses 34.10.1 – 34.10.3 would not apply to such excluded items.

### 4. Deliverables

Notwithstanding any other provision of this Call Off Contract, except where required by Applicable Law, the Customer shall not:

- i) attribute any non-Supplier branded Deliverable to the Supplier; or
- ii) make reference to the Supplier's role in the provision of any non-Supplier branded Deliverable without the Suppliers prior agreement.

### 5. Responsibilities of management

5(a) While the Supplier may comment on processes and control procedures, the decision on whether those processes and control procedures may provide adequate assurance shall rest with the Customer in the light of the Customer's assessment of the risks. Where the Supplier makes recommendations, the Supplier shall take account of their view of good practice at the time of undertaking the work. The recommendations will reflect what the Supplier believe is practical and appropriate in the circumstances. It shall be for the Customer to determine the extent to which the Suppliers findings and recommendations may be suitable for its purpose and to assess the Suppliers findings and recommendations using its knowledge of the organisation before the Customer decides to implement any control changes. Because of the inherent limitations of any control structure, errors and irregularities may exist and may not be detected by the Supplier. The Suppliers findings and recommendations shall be based on the evidence obtained by the Supplier which must be considered as persuasive rather than conclusive.

5(b) The responsibility for the prevention and detection of fraud and irregularities rests and shall rest with the Customer. The Supplier shall report to the Customer on such risk areas as the Supplier identifies but the Services cannot be relied upon to identify all such areas nor to disclose all fraud or irregularities which may exist. The Suppliers detailed testing of transactions shall not be designed to detect fraud and irregularities unless specifically agreed in the scope of work.

5(c) The sole purpose of the Suppliers work shall be to provide information to the Customers management. Accordingly, only the Customers management may rely on any element of any deliverables provided. The Supplier consents to the disclosure of any deliverables (but not any draft deliverables) provided by the Supplier to any of the Customers employees who are required to have access to the Suppliers deliverables for the proper performance of their duties and, subject to clause 6 below, to the Customers external auditors. Save for these exceptions the Customer shall not make reference to the Supplier having conducted any Internal Audit services on the Customers behalf without the Suppliers prior agreement or represent that the Supplier has expressed any opinion as to the

adequacy, reliability and effectiveness of internal controls that have been established by the Customer.

#### 6. External auditors

6(a) The Customer shall be entitled to provide a copy of any deliverables prepared by the Supplier, in whole but not in part, to the Customers external auditors, provided that the Customer communicates to their external auditors that:

- where the deliverable is in draft, it has not been finalised and is subject to change as the Suppliers work progresses;
- the deliverable concerned will have been prepared for the sole purpose of the Supplier providing information to the Customers management in accordance with the Call Off Contract;
- there will have been particular features of the Suppliers work determined by the Customers needs at the time which may not be appropriate for their needs;
- the provision of any such deliverable (including any information, explanations and working papers which the Supplier may subsequently provide at the Suppliers sole discretion) should not be regarded as suitable for use by them or for any other purpose;
- should they choose to rely on any such deliverable (including any information, explanations and working papers which the Supplier may subsequently provide at the Suppliers sole discretion) they shall do so at their own risk; and
- the Supplier shall accept no responsibility or liability to the Customers external auditors in connection with any such deliverable.

6(b) The Supplier shall consider any request that the Customer may make for the Supplier to meet the Customers external auditors and to provide information explanations and working papers which support any deliverable issued by the Supplier and to which the Customers external auditors may have gained access pursuant to these Terms, on condition that the Supplier may, at the Suppliers sole discretion, require the external auditors to enter into an agreement with the Supplier in the form which the Supplier determines before so doing.

6(c) In the particular circumstances of the Services, neither the Supplier nor any of the Suppliers partners or directors, employees and agents, together with any other body associated with the Supplier nor each and all of their partners, directors, employees and agents shall have any liability to the Customer or to any other beneficiary of the Services, in contract or tort or under statute or otherwise, for any loss or damage suffered or costs incurred by the Customer (or by any such other party) arising from or in connection with the provision of any deliverable issued by the Supplier to the Customers external auditors (including any information explanations and working papers which the Supplier may subsequently provide), however the loss or damage is caused, including if caused by the Suppliers negligence but not if caused by the Suppliers fraud or other deliberate breach of duty. This exclusion shall not operate to exclude any liability which cannot lawfully be limited or excluded.

#### 7. Survival on termination

The following clauses of these Additional Terms shall survive expiry or termination of the Call Off Contract: clauses 5 (a), (b) and (c), and 6 (a), (b) and (c), and this clause 7.

	<p>8. Critical comments</p> <p>In addition, nothing in the contract (including clause 27) will prevent the Supplier from making critical comments in any internal audit reports regarding the Customer, if appropriate in light of the Suppliers findings from individual reviews.</p> <p>9. Rights of other Contracting Authorities</p> <p>If the Customer wishes the Supplier to owe a duty of care to other Contracting Authorities, the Customer will let the Supplier know so that their treatment as Customer can be made clear in the Call Off Contract and the Suppliers work plan adjusted to address their requirements.</p> <p>10. The Way the Supplier Works</p> <p>The Customer will inform the Supplier promptly if information or developments come to the Customers attention which might have a bearing on the Suppliers work and the Customer will promptly provide the Supplier with all information and assistance and access to documentation and personnel that the Supplier may reasonably require (and if outside the Customers immediate control the Customer will use reasonable endeavours to obtain these for the Supplier).</p> <p>The Customer is responsible for the establishment and proper operation of a system of internal control, including proper accounting records and other management information suitable for running the organisation.</p> <p>The Customer is responsible for risk management arrangements in the organisation. The identification and prioritisation of risks and the strategies put in place to deal with identified risks remain the Customers sole responsibility.</p>
<p><b>10.12</b></p>	<p><b>Call Off Tender:</b></p> <p>In Schedule 16 (Call Off Tender)</p> <p>Call Off Tender response and subsequent updates consists of:</p> <p><i>Redacted</i></p>
<p><b>10.13</b></p>	<p><b>Publicity and Branding (Clause 36.3.2 of the Call Off Terms)</b></p> <p>As per Clause 36.3.2 of the <a href="#">Call Off terms</a> for RM6008 which can be accessed via the CCS website.</p>
<p><b>10.14</b></p>	<p><b>Staff Transfer</b></p> <p><i>Not applicable.</i></p>
<p><b>10.15</b></p>	<p><b>Processing Data</b></p> <p>Call Off Schedule 17</p> <p><i>To be completed in life of contract</i></p>

**10.16**

**MOD DEFCONs and DEFFORM**

*Not applicable*

**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	<i>Redacted</i>
Signature	<i>Redacted</i>
Date	<i>Redacted</i>

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

Name and Title	<i>Redacted</i>
Signature	<i>Redacted</i>
Date	<i>Redacted</i>

Appendix A

***Redacted***



## HM Revenue & Customs

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

### 1. Definitions

<b>"Affiliate"</b>	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;
<b>"Authority Data"</b>	(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"><li>(i) supplied to the Supplier by or on behalf of the Authority; and/or</li><li>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or</li></ul> (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;
<b>"Charges"</b>	the charges for the Services as specified in Contract Call Off Charges;
<b>"Connected Company"</b>	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;
<b>"Control"</b>	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 LED and any applicable national implementing Laws as amended from time to time; (b) the DPA 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: the Supplier enters into a Subcontract; or a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;
<b>“Supplier Personnel”</b>	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>	<p>all forms of tax whether direct or indirect;</p> <p>national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</p> <p>all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and</p> <p>any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</p> <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> <p>(a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and</p> <p>(b) any “Essential Subcontractor” means any Key Subcontractor;</p>
<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 Clause 6 Section B of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:
- 2.1.1** the Supplier does so at its own risk; and
- 2.1.2** the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.
- 2.2** Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time, either:
- 2.2.1** via the Authority’s electronic transaction system; or
- 2.2.2** or such other person notified to the Supplier in writing by the Authority by email in pdf format or, if agreed with the Authority, in hard copy by post.
- 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>;
  - 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 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 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:
  - 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) procedure<sup>8</sup>; 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.

<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 (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.

**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: <i>Redacted</i>
FULL NAME: <i>Redacted</i>
POSITION: <i>Redacted</i>
COMPANY: <i>Redacted</i>
DATE OF SIGNATURE: <i>Redacted</i>