**RM6111 Cloud Compute**

**Framework Schedule 4 Annex 1**

**Template Order Form**

1. This Order Form is issued in accordance with the provisions of the Cloud Compute Framework Agreement RM6111 dated *05/04/2021* between the Supplier (as defined below) and the Minister for the Cabinet Office (the "**Framework Agreement**") and should be used by Buyers after conducting a further competition or a direct award under the Framework Agreement.
2. The Contract, referred to throughout this Order Form, means the contract (entered into pursuant to the terms of the Framework Agreement) between the Supplier and the Buyer (as defined below) consisting of this Order Form and the Call-Off Terms. The Call-Off Terms are substantially the terms set out in Annex 2 to Schedule 4 to the Framework Agreement and copies of which are available from the Crown Commercial Service website [*https://www.crowncommercial.gov.uk*](https://www.crowncommercial.gov.uk/), the agreed Call-Off Terms for the Contract being those set out in Annex 1 to this Order Form.
3. The Supplier shall provide the Services specified and/or referred to in this Order Form (including any attachments to this Order Form) to the Buyer and the Buyer Users on and subject to the terms of the Contract for the duration of the Contract Period. The Contract shall take effect on the Commencement Date (as defined below) and shall expire at the end of the Contract Period.
4. In this Order Form, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Call-Off Terms.
5. This Order Form shall comprise:
6. This document headed “Order Form”;
7. Attachment 1 – Service Descriptions and Product Terms;
8. Attachment 2 – Service Level Agreement(s);
9. Attachment 3 – Charges and Payment Profile;
10. Attachment 4 – Schedule of Standards;
11. Attachment 5 – Schedule of Processing, Personal Data and Data Subjects;
12. Attachment 6 – Alternative Clauses;
13. Attachment 7 – Supplier’s Acceptable Use Policy;
14. Attachment 8 – Data Processing Agreement (which shall include the Protective Measures (as defined in the Call-Off Terms));
15. Annex 1 – Call-Off Terms; and
16. Annex 2 – Applicability Matrix.
17. The Order of Precedence shall be as set out in Clause 2.2 of the Call-Off Terms being:
18. subject always to Clauses 2.5 and 4.2.2 of the Call-Off Terms, the Special Terms (if any);
19. this Order Form (except any Applicable Supplier Terms or Special Terms (as defined in the Call-Off Terms));
20. the Call-Off Terms (as set out in Annex 1 to this Order Form);
21. the Applicable Supplier Terms;
22. the applicable provisions of the Framework Agreement, except (and subject always to Clause 2.4 of the Call-Off Terms) Schedule 13 (Tender) of the Framework Agreement; and
23. Schedule 13 (Tender) of the Framework Agreement.
24. As an aid to interpretation of the Contract, the Applicability Matrix set out in Annex 2 (Applicability Matrix) to this Order Form identifies:
25. each of the relevant documents which contain contractual provisions that apply to the Contract; and
26. in respect of each such document the particular contractual provisions in that document which apply to the Contract.
27. Where Schedule 13 (Tender) of the Framework Agreement contains provisions which are more favourable to the Buyer in relation to this Contract such provisions of the Tender (as applicable) shall prevail. The Buyer shall in its absolute and sole discretion determine whether any provision in the Tender and/or this Contract is more favourable to it in this context.
28. Special Terms shall only apply to this Contract if they:
29. are set out in full in the section of this Order Form entitled “Special Terms”; and
30. augment and supplement this Contract and in particular do not amend the Call-Off Terms to any material extent,

and provided always that any attempt to incorporate by reference any Supplier Terms as Special Terms in this Contract shall be ineffective.

1. Alternative Clauses specified in this Order Form will take precedence over their corresponding clauses in this Contract.

**Section A - General information:**

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| **Contract Details** | |
| **Contract Reference:** | Click here to enter text. |

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| **Contract Title:** | Click here to enter text. |

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| **Contract Description:** | Click here to enter text. |

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| **Commencement Date:** this should be the date of the last signature on Section D of this Order Form | Click here to enter text. |

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| **Buyer details** |
| **Buyer organisation name:**  Click here to enter text. |

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| **Billing address:**  Your organisation’s billing address - please ensure you include a postcode.  Click here to enter text. |

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| **Buyer Authorised Representative name:**  The name of the person authorised to manage this Contract for the Buyer.  Click here to enter text. |

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| **Buyer Authorised Representative contact details:**  Email and telephone contact details for the Buyer’s representative  Click here to enter text. |

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| **Buyer User details:**  *[****Guidance Note****: add details of any class of user who are permitted to use the Services (e.g. employee of Buyer, contractor to Buyer, Affiliates, related public sector bodies, citizens, etc.)]* |

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| **Supplier details** |
| **Supplier name:**  The Supplier’s legal entity name, as it appears in the Framework Agreement.  **[REDACTED]** |

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| **Supplier address:**  Supplier’s registered office address.  **[REDACTED]** |

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| **Supplier authorised representative name:**  The name of the person authorised to manage this Contract for the Supplier. |

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| **Supplier authorised representative contact details:**  Email and telephone contact details of the Supplier’ authorised representative. |

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| **Order reference number:**  A unique number provided by the Supplier at the time of quote.  Click here to enter text. |
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| **Key Sub-Contractors and Sub-processors:** | The Supplier’s Key Sub-Contractors and Sub-processors are set out in the Supplier’s Register of Key Sub-Contractors and Sub-processors which is available at: *[insert URL for CCS’s maintained page]*  Subject always to Clause 15.12 of the Call-Off Terms, the Supplier is obliged to maintain the Register of Key Sub-Contractors and Sub-processors in accordance with Clause 15.1 of the Framework Agreement.  Where the Supplier intends to appoint or replace a Sub-processor not identified as a Sub-processor in the Supplier’s Register of Key Sub-Contractors and Sub-processors at the Commencement Date, any such changes shall be subject always to Clause 15.12 of the Call-Off Terms. |

**Section B - The Services Requirement:**

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| **Commencement Date:**  As per Section A above. |

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| **Initial Term:**  *[****Guidance Note****: This shall be a period in months from the Commencement Date, up to a maximum period of 36 months].*  **Extension Period:**  *[****Guidance Note****: if there is to be an option to extend under Clause 4.1.2 of the Call-Off Terms, state the details here. Note under Clause 4.2 of the Call-Off Terms the Contract Period must be kept to the Maximum Contract Period of 60 months (5 years)) from the Commencement Date.]* |

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| **Special Security or compliance requirements:**  Include any security, conformance or compliance requirements with which the Services must comply with.  Click here to enter text. |

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| **Special Terms:**  Insert any specific contractual provisions below which are hereby incorporated into the Contract. Should the Buyer be eligible for a Government Discount according the Supplier’s eligibility criteria and wish to activate the Government Discount, it should indicate this here and the following variations would then be treated as amending the Order Form and Call-Off Terms:  Government Discount(s)  **[REDACTED]**  *[****Guidance Note****: any Special Terms other than those relating to the activation of a Government Discount as detailed above must be agreed at the instigation of the Buyer (rather than Supplier standard terms or wording which are dealt with under “Applicable Supplier Terms”) and must have previously been included within a further competition held under the Framework Agreement and may only be used to augment and supplement the terms within this template Order Form and the template Call-Off Terms – categorically no substantial alterations are permitted.]*  Click here to enter text. |

**Services:**

This Order Form is for the Services set out or referred to below. It is acknowledged by the Parties that the volume of the Services consumed by the Buyer and/or Buyer Users may vary during the Contract as provided for below.

Please provide details of all Services required to be in scope of the Contract with appropriate references, where available, from the Catalogue as defined in Schedule 1 (Definitions) of the Framework Agreement.

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| **Services required:** | The Services to be provided by the Supplier: please see Attachment 1 (Service Descriptions and Product Terms).  *[****Guidance Note****: this must explicitly include the service type (e.g. Reserved Instance, PAYG etc. and the Supplier’s Product Terms – these cannot be included by way of hyperlink)]* |
| **Service Request process (dynamic nature of Services):** | **[REDACTED]** |
| **Geographical limitations on the location(s) from which the Services will be provided:** | **[REDACTED]** |
| **Standards:** | In addition to complying with Clause 6.2 of the Call-Off Terms, including those Standards set out in Attachment 4 (Schedule of Standards) to this Order Form and the Framework Agreement, the additional standards the Supplier is required to comply with under the Contract are:  *[****Guidance Note****: consider the need to include any applicable sector specific regulatory requirements and confirm agreed position here, including whether the Supplier is required to comply with Cyber Essentials Plus and/or any AI ethical standards.]*  *[insert additional standards (technical or otherwise) here]* |
| **Service Level Agreement or SLA:** | The relevant service levels and availability criteria applicable to each of the Services provided under this Contract are as set out or referred to in Attachment 2 (Service Level Agreement(s)). |
| **Services Suspension:** | Notwithstanding any provisions of the AUP (set out in Attachment 7 (Supplier’s Acceptable Use Policy) to this Order Form and/or any other Applicable Supplier Terms, the Supplier may only suspend the Buyer’s and any Buyer User’s access and use of all or the affected part of the Services where and to the extent it is entitled to do so and strictly in accordance with the provisions of Clause 14 (Suspension) of the Call-Off Terms. |
| **On-boarding:** | The on-boarding for the Contract is the responsibility of the Buyer except as stated here:  *[****Guidance Note****: this must be limited to generic and basic Supplier resource only – anything tailored or substantial to be procured separately from the Framework Agreement. Note the types of services excluded from being supplied under Call-Off Contracts are described in Schedule 2 of the Framework Agreement under the heading “Scope of Service Exclusions” (e.g. professional services).]*  [*insert details of Supplier support and assistance (if any) for on-boarding*] |
| **Off-boarding:** | The off-boarding for the Contract is the responsibility of the Buyer except as stated here*:*  *[****Guidance Note****: in accordance with Clause 17.3.3(a) of the Call-Off Terms, include any exit related obligations of the Supplier here. Note this is generic and basic Supplier resource only – anything tailored or substantial must be procured separately from the Framework Agreement. Note the types of services excluded from being supplied under Call-Off Contracts are described in Schedule 2 of the Framework Agreement under the heading “Scope of Service Exclusions” (e.g. ongoing professional services). The type of off-boarding obligations envisaged here includes support and assistance required to enable the Buyer to extract and/or destroy all copies of the Buyer Content and close down the Services and related account administration.]*  *[insert details of Supplier exit related support and assistance]*  The retention period for Buyer Content set out in Clause 17.3.2(b) of the Call-Off Terms shall be amended from 60 (sixty) days to:  *[****Guidance Note****: in accordance with Clause 17.3.2(b) of the Call-Off Terms, insert option for alternative period for retention of Buyer Content.]*  *[[number of days] ([insert number of days in words]] days. If no change, then delete and insert “N/A”.]* Save where expressly agreed as a Special Term and set out in this Order Form and subject to reimbursement of reasonable charges in accordance with Clause 17.3.2(b) of the Call-Off Terms, where the Buyer terminates the contract for material Default, the Supplier may not charge the Buyer and/or any Buyer User any fees, costs or expenses relating to:the Buyer’s and/or any Buyer User’s extraction, transfer and/or destruction of Buyer Content whenever and howsoever after such termination; or the Supplier complying with its exit related obligations under the Contract. |
| **Licence Terms:** | In accordance with and subject always to the minimum licence terms set out in Clause 9.4 of the Call-Off Terms, the Supplier’s licence terms taken from the Applicable Supplier Terms are set out or referred to in Attachment 1 under the heading “Product Terms”.  Where relevant licence terms are not set out or referred to in Attachment 1 (Service Descriptions and Product Terms) to this Order Form under the heading “Product Terms”, a licence meeting the minimum requirements set out in Clause 9.4 of the Call-Off Terms shall be deemed to be granted by the Supplier to the Buyer and any Buyer Users to enable it to receive and use the Services. |
| **Force Majeure:** | In respect of a Force Majeure event, the reference to 20 Working Days set out in Clause 21.4 of the Call-Off Terms shall be shortened to:  *[****Guidance Note****: in accordance with Clause 21.4 of the Call-Off Terms, where the Buyer requires a shorter period than the default position of 20 Working Days insert that period here.]*  *[[number of working days days] Working Days. If no change, then insert N/A.]* |
| **Audit:** | *[****Guidance Note****: include here any additional audit provisions which the Supplier is required to comply with during the Term.]*  In addition to the audit rights set out in Clause 12 of the Call-Off Terms, the following additional audit rights shall apply to the Contract:  *[insert details or if there are no additional audit rights, insert N/A]*  The Supplier shall not require any Buyer to disapply its audit rights under Clause 12 of the Call-Off Terms and this Order Form (if any) as a condition to providing the Services. |

**Charges and payment:**

The Charges applicable to the Contract and payment details are set out in the table immediately below.

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| **Charges**  **(including applicable discount(s)/ preferential pricing and exclusive of VAT):** | *[****Guidance Note****: set out here details of the Charges payable. If the Charges are complex in nature, use Attachment 3 (Charges and Payment Profile) to this Order Form to set out details of the Charges.]*  The Charges payable by the Buyer to the Supplier are [as follows: [insert details]] OR [as set out in Attachment 3 (Charges and Payment Profile) to this Order Form.] |
| **Charges breakdown:** | The breakdown of the Charges is *[insert* *details].* |
| **Currency:** | **[REDACTED]** |
| **Currency and currency conversion mechanism:** | **[REDACTED]** |
| **Payment method:** | The payment method for this Contract is *[insert details]*. |
| **Payment profile:** | *[****Guidance Note****: refer to the guidance issued by the CCS in respect of accepting a payment profile which requires payment in advance. If the Charges and payment profile are complex, use Attachment 3 (Charges and Payment Profile) to this Order Form.]*  The payment profile for this Contract is *[[monthly/quarterly] in [arrears]/****OR*** *[advance for those Services which the Buyer has determined in its sole discretion that such Charges shall be payable in advance]* ***OR***as set out in Attachment 3 (Charges and Payment Profile) to this Order Form.]*.* |
| **Invoice details and frequency:** | The Supplier will issue an invoice (including any Electronic Invoices) *[[monthly][quarterly] in [arrears] OR [advance]] [OR in accordance with the Payment profile set out above]*.  *[****Guidance Note****: insert the Buyer’s payment terms here – 30 days has been included but the Buyer may agree to* ***a shorter period****.]*  Pursuant to Clause 7.4 of the Call-Off Terms, the Buyer will pay the Charges to the Supplier within *[30]* days of receipt of a valid invoice. |
| **Who and where to send invoices to:** | Invoices will be sent by the Supplier to the Buyer at *[insert details].* |
| **Invoice information required:** | *[****Guidance Note****: include any required invoice information, for example, purchase order, project reference etc.]*  The Billing Entity on all invoices has to be in the UK, with a UK address and all invoices must include:  *[insert details].* |
| **Contract anticipated potential value:** | *[****Guidance Note****: state the anticipated potential range of pricing over the Contract Period including any minimum spend commitment.]*  The total anticipated potential value of the Contract is in the following potential range *[insert details].* |
| **Applicable Discounts:** | *[****Guidance Note****: set out details of any applicable discounts or preferential pricing including pursuant to Supplier’s obligation under Clause 7.3 of the Call-Off Terms.]*  Pursuant to Clause 7.3 of the Call-Off Terms, the details of any applicable discounts and/or preferential pricing are as follows:  *[insert details]* |
| **Minimum Commitments:** | *[****Guidance Note****: set out details of any minimum commitment agreed in accordance with Clause 17.4 of the Call-Off Terms and also the settlement option which shall apply in respect of Minimum Commitments in the event of early termination of this Contract for convenience.]*  For the purpose of Clause 17.4 ,the settlement option which shall apply in respect of Minimum Commitments entered into under the Contract as per Clause 17.4.2 of the Call-Off Contract is:  [   * + - * 1. *pay an amount equal to the amount of Charges necessary to satisfy the remainder of any outstanding Minimum Commitments at the effective date of termination;]*   *[****Guidance Note****: select* ***one*** *of the settlement options under Clause 17.4 to apply in respect of Minimum Commitments which have not been satisfied at the point of early termination of this Contract for convenience, Option A has been pre-selected as the default option for Direct Award and will mostly apply to smaller Minimum Commitments made under this contract such as for Reserved Instances, as opposed to specific contract-wide volume/spend commitments for discounts other than the Framework Discount for which the other options might be agreed to between the Parties]* |

**Additional Buyer terms:**

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| **Liability:** | *[****Guidance Note****: in respect of Clause 8 (Liabilities) of the Call-Off Terms, the Buyer may include alternative minimum liability limits but only if higher in respect of Clause 8.1 (general liability cap) and Clause 8.4.2 (cap on liability for Losses arising from breach of the Data Protection Legislation) of the Call-Off Terms. If there are no variations to these clauses, delete the text below and insert N/A.]*  For the purpose of Clause 8.1 of the Call-Off Terms the reference to “five hundred thousand pounds (£500,000)” is replaced with the following higher limit *[[insert higher limit in words]* (£*insert higher limit*)].  For the purpose of Clause 8.4.2 of the Call-Off Terms the reference to “ten million pounds (£10,000,000)” is replaced with the following higher limit *[[insert higher limit in words]* (£*insert higher limit*)]. |
| **Buyer specific amendments to/ refinements of the Contract terms:** | *[****Guidance Note****: this section is only to be used where Call-Off Terms clearly warrant minor variation. This section is not to be used for any amendments initiated by the Supplier. If there are no minor amendments, delete the below and insert N/A.]*  Within the scope of the Contract, the Supplier will *[insert details].* |
| **Personal Data and Data Subjects:** | See Attachment 5 (Schedule of Processing, Personal Data and Data Subjects) to this Order Form. |

**Alternative Clauses:**

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| **The following Alternative Clauses will apply:** | *[****Guidance Note:*** *any Alternative Clauses selected below shall be incorporated into the Contract as provided in Attachment 6 (Alternative Clauses) of this Order Form.]*  *[Scots Law]\**  *[Northern Ireland Law]\**  *[HMRC Terms]*  *\*delete if not applicable and insert “Not Applicable”.*  Where selected above (if any) the Alternative Clauses set out in Attachment 6 (Alternative Clauses) of this Order Form shall apply as indicated to the Contract. |

**Section C - Commercially Sensitive information:**

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| **Commercially Sensitive information:**  Any information that the Supplier considers sensitive for the duration of an awarded Contract – *use specific references to sections within the Supplier’s Tender rather than copying the relevant information here.*  Click here to enter text. |

**Section D - Contract award:**

The Contract is awarded in accordance with the provisions of the Framework Agreement.

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| **SIGNATURES** |

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

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| **Name:** |  |
| **Job role/title:** |  |
| **Signature:** |  |
| **Date:** |  |

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

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| **Name:** |  |
| **Job role/title:** |  |
| **Signature:** |  |
| **Date:** |  |

**Attachment 1 – Service Descriptions and Product Terms**

**SERVICE DESCRIPTIONS:**

*[****Guidance Note****: the Buyer must set out or refer to a description of the Services here e.g. Reserved Instances, PAYG etc. (with appropriate references from the Catalogue, where available). Ideally the Service Descriptions should be set out in full here describing the Services within scope as at the Commencement Date; however hyperlinks to the Supplier’s relevant online Service Descriptions are permitted but only where the hyperlink is directly to a URL setting out in full and in a clear and transparent manner the applicable Service Descriptions. In accordance with Clause 3.9 (Hyperlinks) of the Call-Off Terms any hyperlinks contained in the online Service Descriptions themselves are ineffective and unenforceable in seeking to include further additional documents or terms and conditions.]*

***[insert Service Descriptions here and/or hyperlinks]***

**PRODUCT TERMS:**

*[****Guidance Note****: the Product Terms applicable to the particular cloud service product provided under this Order Form. Ideally these terms should be set out in full here describing the applicable Product Terms as at the Commencement Date; however hyperlinks to the Supplier’s relevant online Product Terms are permitted but only where the hyperlink is directly to a URL setting out in full and in a clear and transparent manner the applicable Product Terms. In accordance with Clause 3.9 (Hyperlinks) of the Call-Off Terms any hyperlink contained in the online Product Terms themselves are ineffective and unenforceable in seeking to include further additional documents or terms and conditions.]*

***[insert Product Terms here and/or hyperlinks]***

**Product Terms – Licence Terms**

*[****Guidance Note****: the Buyer should set out or refer to any relevant licence terms that apply to Buyer/Buyer User’s use of the Services in accordance with and subject to the minimum licence terms in Clause 9.4 of the Call-Off Terms. The Buyer should set out or specifically incorporate by reference all relevant licence terms (including any applicable restrictions) separately under this part of this section headed “Product Terms – Licence Terms” - even if the licence terms are already included in the Product Terms set out or referred to above in this Attachment. This section is intended to provide the Buyer with a clear understanding of the relevant licence terms and applicable restrictions which apply to its use of the Services under this Contract.]*

***[insert licence terms here and/or hyperlinks]***

**Attachment 2 – Service Level Agreement(s)**

*[****Guidance Note****: the SLAs applicable to the particular cloud service products provided under this Order Form. Ideally the relevant SLA terms should be set out in full here describing the applicable Service Levels and related terms as at the Commencement Date; however hyperlinks to the Supplier’s relevant online SLAs are permitted but only where the hyperlink is directly to a URL setting out in full and in a clear and transparent manner the applicable SLAs. In accordance with 3.9 (Hyperlinks) of the Call-Off Terms any hyperlink contained in the online SLA themselves are ineffective and unenforceable in seeking to include further additional documents or terms and conditions.]*

*[****Insert relevant Supplier’s SLA here and/or hyperlinks***]

**Attachment 3 –Charges and Payment Profile**

*[****Guidance Note****: To be inserted or marked as “Not Used” where Charges and Payment Profile are set out in the Charges table above]*

**Attachment 4 – Schedule of Standards**

*[****Guidance Note****: if the Buyer has any additional or updated standards which it requires the Supplier to comply with (including any applicable AI ethical standards, then these must be set out in the “Standards” section of the Order Form – see Section B “The Services Requirement”).]*

1. The Supplier shall comply with the following Standards:
   1. the principles in the Security Policy Framework at https://www.gov.uk/government/publications/security-policy-framework and the Government Security Classification policy at https://www.gov.uk/government/publications/government-security-classifications;
   2. guidance issued by the Centre for Protection of National Infrastructure on Risk Management at https://www.cpni.gov.uk/content/adopt-risk-management-approach and Protection of Sensitive Information and Assets at https://www.cpni.gov.uk/protection-sensitive-information-and-assets;
   3. the National Cyber Security Centre’s (NCSC) information risk management guidance, available at https://www.ncsc.gov.uk/collection/risk-management-collection;
   4. government best practice in the design and implementation of system components, including network principles, security design principles for digital services and the secure email blueprint, available at https://www.gov.uk/government/publications/technology-code-of-practice/technology-code-of-practice;
   5. the security requirements of cloud services using the NCSC Cloud Security Principles and accompanying guidance at https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles;
   6. ISO 27001 Information Security Management standard, and provide the Buyer with the relevant certification, if requested by the Buyer;
   7. ISO 27017 Information technology — Security techniques — Code of practice for information security controls based on ISO/IEC 27002 for cloud services, and provide the Buyer with the relevant certification, if requested by the Buyer;
   8. ISO 27018 Information technology — Security techniques — Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors, and provide the Buyer with the relevant certification, if requested by the Buyer;
   9. BS EN ISO 9001 “Quality Management System” standard or equivalent;
   10. BS EN ISO 14001 Environmental Management System standard or equivalent; and
   11. any additional Standards set out or referred to in this Order Form.
2. If a Buyer has requested in this Order Form that the Supplier has a Cyber Essentials Plus certificate, the Supplier must provide the Buyer with a valid Cyber Essentials Plus certificate required for the Services before the Commencement Date. (<https://www.ncsc.gov.uk/cyberessentials/overview>).

**Attachment 5 – Schedule of Processing, Personal Data and Data Subjects**

This Attachment 5 shall be completed by the Buyer, who may take account of the view of the Supplier, however the final decision as to the content of this Attachment 5 shall be with the Buyer at its absolute discretion.

* + 1. The contact details of the Buyer’s Data Protection Officer are: [*Insert Contact details*].
    2. The contact details of the Supplier’s Data Protection Officer are: [*Insert Contact details*].
    3. The Supplier shall comply with any further written instructions with respect to processing by the Buyer.
    4. Any such further instructions shall be incorporated into this Attachment 5.

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| **Description** | **Details** |
| **Identity of the Controller and Processor:** | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor in accordance with Clause 15 (Protection of Personal Data) of the Call-Off Terms. |
| **Subject matter of the processing:** | *[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.*  *Example: The processing is needed in order to ensure that the Supplier can effectively deliver the contract to provide a service to members of the public. ]* |
| **Duration of the processing:** | *[Clearly set out the duration of the processing including dates]* |
| **Nature and purposes of the processing:** | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]* |
| **Type of Personal Data being Processed:** | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]* |
| **Categories of Data Subject:** | *[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]* |
| **Plan for return and destruction of the data once the processing is complete:**  **(UNLESS requirement under union or member state law to preserve that type of data)** | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

**Attachment 6 – Alternative Clauses**

Where the Buyer in Section B of this Order Form has requested Alternative Clause(s) to apply to the Contract, the requested Alternative Clause(s) shall apply to the Contract as follows:

1. **SCOTS LAW**

**Governing Law, Jurisdiction and Dispute Resolution** (Clauses 31.1 and 31.5 of the Call-Off Terms):

1. References to “*England and Wales*” in the original Clauses 31.1 and 31.5 of the Call-Off Terms (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “*Scotland*”.
2. Where legislation is expressly mentioned in the Contract, the adoption of sub-paragraph (a) immediately above shall have the effect of substituting the equivalent Scots legislation.
3. **NORTHERN IRELAND LAW**

**Governing Law, Jurisdiction and Dispute Resolution** (Clauses 31.1 and 31.5 of the Call-Off Terms):

1. References to “England and Wales” in the original Clauses 31.1 and 31.5 of the Call-Off Terms (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with “Northern Ireland”.
2. Where legislation is expressly mentioned in the Contract the adoption of sub-paragraph (a) immediately above shall have the effect of substituting the equivalent Northern Ireland legislation.

**Insolvency Event**

In Schedule 1 (Definitions) to the Call-Off Terms, reference to “*section 123 of the Insolvency Act 1986*" in limb f) of the definition of Insolvency Event shall be replaced with “*Article 103 of the Insolvency (NI) Order 1989*”.

1. **HMRC Terms**
2. **Definitions**
   1. In these HMRC Terms, the following words have the following meanings and they shall supplement Schedule 1 (Definitions) to the Call-Off Terms as follows:

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| **Connected Company(ies)** | 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; |
| **Government Data** | 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, including any of the Buyer’s and/or any Buyer User’s Confidential Information, and which:   1. are supplied to the Supplier by or on behalf of the Buyer and/or any Buyer User; or 2. the Supplier is required to generate, process, store or transmit pursuant to the Contract.   For the avoidance of any doubt Government Data shall include any Buyer Content; |
| **Prohibited Transaction** | means:   1. 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 otherwise payable by the Supplier or a Connected Company on or in connection with the Charges; or 2. which would be payable by any Key Sub-contractor and its Connected Companies on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Sub-contract with that Key Sub-contractor,   other than transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business; |
| **Tax Compliance Failure** | means where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Exhibit 1 (Excerpt from HMRC’s “Test for Tax Non-Compliance”) to this Attachment 6 (as amended and updated from time to time), where:   1. the “Economic Operator” means the Supplier or any agent, supplier or Sub-contractor of the Supplier requested to be replaced pursuant to paragraph 4.2 (Promoting Tax Compliance) of Part C (HMRC Terms) as set out in Attachment 6 (Alternative Clauses) to the Order Form; and 2. any “Essential Subcontractor” means any Key Sub-contractor; |

1. **Application of these clauses**
   1. Where the Buyer is Her Majesty’s Revenue and Customs (HMRC), as identified in Section B of this Order Form, and HMRC has requested these HMRC Terms to apply to the Contract, the requested Alternative Clause(s) shall apply to the Contract as follows.
2. **Warranties**
   1. The Supplier represents and warrants that:
      1. in the three years prior to the Effective Date, it has complied with all applicable Law related to Tax in the United Kingdom and in the jurisdiction in which it is established;
      2. it has notified the Buyer in writing of any Tax Compliance Failure it is involved in; and
      3. no proceedings or other steps have been taken (nor, to the best of the Supplier’s knowledge, are threatened) for:
         1. the winding up of the Supplier;
         2. the Supplier’s dissolution;
         3. the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue,

and the Supplier has notified the Buyer of any profit warnings it has issued in the three years prior to the Commencement Date.

* 1. If the Supplier becomes aware that any of the representations or warranties under paragraph 3.1 of this Attachment 6, have been breached, are untrue or misleading, it shall immediately notify the Buyer in sufficient detail to enable the Buyer to make an accurate assessment of the situation.
  2. In the event that the warranty given by the Supplier in paragraph 3.1 of this Attachment 6 is materially untrue, this shall be deemed to be a material Default which in the opinion of the Buyer is not capable of remedy and in accordance with Clause 16.2.1 of the Call-Off Terms the Buyer may at any time terminate this Contract with immediate effect by giving notice to the Buyer.

1. **Promoting Tax Compliance**
   1. The Supplier shall comply with all Law relating to tax and with the equivalent legal provisions of the country in which the Supplier is established.
   2. The Supplier shall provide to the Buyer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the corporation tax or self-assessment reference of any agent, supplier or Sub-contractor prior to that person supplying any Services under the Contract. Upon a request by the Buyer, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Sub-contractor engaged in supplying Services under the Contract.
   3. If, at any point during the Contract Period, there is a Tax Compliance Failure, the Supplier shall:
      1. notify the Buyer in writing within five (5) Working Days of its occurrence; and
      2. promptly provide to the Buyer:
         1. details of the steps which the Supplier is taking to resolve the Tax Compliance Failure and to prevent it from recurring, together with any mitigating factors that it considers relevant; and
         2. such other information in relation to the Tax Compliance Failure as the Buyer may reasonably require.
   4. The Supplier shall indemnify the Buyer against any liability for Tax (including any interest, penalties or costs incurred) of the Buyer in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under the Contract.
   5. Any amounts due under paragraph 4.4 of this Attachment 6 shall be paid not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Buyer. Any amounts due under paragraph 4.4 of this Attachment 6 shall not be subject to Clause 8.1 of the Call-Off Terms and the Supplier’s liability under paragraph 4.4 of this Attachment 6 is unlimited.
   6. Upon the Buyer’s request, the Supplier shall promptly provide information which demonstrates how the Supplier complies with its Tax obligations.
   7. If the Supplier:
      1. fails to comply with paragraphs 4.1, 4.3.1 and/or 4.6 of this Attachment 6 this may be a material Default of the Contract;
      2. fails to comply with a reasonable request by the Buyer that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by paragraph 4.2 of this Attachment 6 on the grounds that the agent, supplier or Sub-contractor is involved in a Tax Compliance Failure this shall be a material Default of the Contract; and/or
      3. fails to provide acceptable details of the steps being taken and mitigating factors pursuant to paragraph 4.3.2 of this Attachment 6 this shall be a material Default of the Contract;

and any such material Default shall be deemed to be an event to which Clause 16.2.1 of the Call-Off Terms applies and the Buyer’s payment obligations under the Contract shall cease immediately as if the Contract had been terminated under Clause 16.2 of the Call-Off Terms.

* 1. In addition to those circumstances listed in Clause 19.7 of the Call-Off Terms, the Buyer may internally share any information, including Confidential Information, which it receives under paragraphs 4.2 and 4.3 of this Attachment 6 and 4.6 of this Attachment 6.

1. **Use of Off-shore Tax Structures**
   1. The Supplier shall not, and shall ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place any Prohibited Transactions, unless the Buyer otherwise agrees to that Prohibited Transaction.
   2. The Supplier shall notify the Buyer in writing (with reasonable supporting detail) of any proposal for the Supplier, its Connected Companies, or a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall include reasonable supporting detail and make the notification within a reasonable time before the Prohibited Transaction is due to be put in place.
   3. If a Prohibited Transaction is entered into in breach of paragraph 5.1 of this Attachment 6, or circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Buyer. The Parties shall agree (at no cost to the Buyer) any necessary changes to any such arrangements by the undertakings concerned (and the Supplier shall ensure that the Key Sub-contractor shall agree, where applicable). The matter will be resolved using Clause 31 (Governing Law, Jurisdiction and Dispute Resolution) of the Call-Off Terms if necessary.
   4. Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in paragraphs 5.2 and 5.3 of this Attachment 6 shall be deemed to be an event to which Clause 16.2.1 of the Call-Off Terms applies and the Buyer’s payment obligations under the Contract shall cease immediately as if the Contract had been terminated under Clause 16.2 of the Call-Off Terms.
2. **Data Protection and off-shoring**
   1. For the purposes of Clause 15.4.4 of the Call-Off Terms a reference to a Restricted Country shall mean any country other than the United Kingdom.
3. **Commissioners for Revenue and Customs Act 2005 and related Legislation**
   1. The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Government 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 Government Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of those obligations may lead to a prosecution under Section 19 of CRCA.
   2. The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Government Data comply with the obligations set out in the Official Secrets Acts 1911 to 1989 and the obligations set out in Section 182 of the Finance Act 1989. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of those obligations may lead to prosecution under those Acts.
   3. The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Government Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Buyer) a breach of the Supplier’s obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.
   4. The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Government Data in writing of the obligations upon Supplier Personnel set out in paragraphs 7.1, 7.2 and 7.3. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
   5. The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Government Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Exhibit 2 (Confidentiality Declaration) to this Attachment 6. The Supplier shall provide a copy of each such signed declaration to the Buyer upon demand.
   6. In the event that the Supplier or the Supplier Personnel fail to comply with this paragraph 6, the Buyer reserves the right to terminate the Contract as if that failure to comply were an event to which Clause 16.2.1 of the Call-Off Terms applies.

**Exhibit 1 to Attachment 6**

**Excerpt from HMRC’s “Test for Tax Non-Compliance”**

***Condition one****: (An in-scope entity or person)*

1. There is a person or entity (“**X**”) which is either:
2. the Economic Operator or Essential Subcontractor (EOS);
3. 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]](#footnote-1)*; or
4. 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)*

1. X has been engaged in one or more of the following:
   1. fraudulent evasion[[2]](#footnote-2);
   2. conduct caught by the General Anti-Abuse Rule[[3]](#footnote-3);
   3. conduct caught by the Halifax Abuse principle[[4]](#footnote-4);
   4. entered into arrangements caught by a DOTAS or VADR scheme[[5]](#footnote-5);
   5. conduct caught by a recognised ‘anti-avoidance rule’[[6]](#footnote-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;
   6. entered into an avoidance scheme identified by HMRC’s published Spotlights list[[7]](#footnote-7); and/or
   7. 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))*

1. 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[[8]](#footnote-8); 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).
2. For the avoidance of doubt, any reference in this Exhibit 1 (Excerpt from HMRC’s “Test for Tax Non-Compliance”) 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.

**Exhibit 2 to Attachment 6**

**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 Government 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 Government Data provided to me.

|  |  |
| --- | --- |
| **SIGNED:** |  |
| **FULL NAME:** |  |
| **POSITION:** |  |
| **COMPANY:** |  |
| **DATE OF SIGNATURE:** |  |

**Attachment 7 – Acceptable Use Policy**

*[****Guidance Note****: Insert relevant Supplier’s AUP here – no hyperlinks are permitted*]

**Attachment 8 – Data Processing Agreement**

*[****Guidance Note****: Insert relevant Supplier’s DPA here – no hyperlinks are permitted]*

**Annex 1**

**Call-Off Terms**

*[****Guidance Note****: Agreed form Call-Off Terms to be inserted here]*

**Annex 2**

**Applicability Matrix**

***[placeholder for the relevant document shared within the bid pack]***

1. <https://www.iasplus.com/en/standards/ifrs/ifrs10> [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
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 [↑](#footnote-ref-3)
4. “Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others [↑](#footnote-ref-4)
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. [↑](#footnote-ref-5)
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. [↑](#footnote-ref-6)
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> [↑](#footnote-ref-7)
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. [↑](#footnote-ref-8)