# Ethical walls agreement

**ETHICAL WALLS AGREEMENT**

**Between**

**THE COMMISSIONERS FOR**

**HIS MAJESTY’S REVENUE AND CUSTOMS**

 **- and -**

**Supplier name**

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**THIS AGREEMENT** is made the day of the last signature below (the **“Agreement”**)

BETWEEN:

1. **The Commissioners for His Majesty’s Revenue and Customs** whose principal of business is at 100 Parliament Street, London, SW1A 2BQ **(“HMRC”)**; and
2. **SUPPLIER NAME** (Company Number xxxxxx) whose registered office is at xxxxxxx **(“the Supplier”)**.

RECITALS

1. HMRC is to procure a service in respect of xxxxxxxxxxx **(“the Service”)**.
2. This Agreement is made in recognition of the requirements of Section 12 of the Procurement Act 2023 (“the Act”) which places HMRC under a statutory duty to treat all suppliers the same unless a difference exists between the suppliers justifies different treatment. If a contracting authority considers that different treatment is justified in a particular case, it must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.
3. This Agreement is also made in compliance of the duty on HMRC to take appropriate measures to effectively prevent, identify and remedy conflicts of interest, actual and perceived as arising in the conduct of the Procurement Processso as to avoid any distortion of competition and to mitigate and conflict of interest under Section 82 of the Act.
4. As an Incumbent Supplier to HMRC, the Supplier may have or have had access to Relevant Information relating to the affairs of HMRC, and the Service in particular, which is commercially sensitive and of a confidential nature.
5. The Supplier acknowledges that, any Relevant Information it may have obtained in connection with its provision as an Incumbent Supplier to HMRC could give the Supplier and/or other bidders an unfair advantage.
6. Non-incumbent bidders may consider themselves disadvantaged if another Bid Team has access to Relevant Information that is not generally available. In particular they may be concerned about an Incumbent Supplier having access to knowledgeable and experienced staff from the Operational Team supporting HMRC.
7. Ethical Walls are designed to control communications between Operational Teams and Bid Teams within the Incumbent Supplier. In addition, such control is intended to ensure that all bidders are assured of an equal competitive opportunity through access to Relevant Information.
8. To assure HMRC that the Supplier will avoid this potential unfair advantage and/or conflict as an Incumbent Supplier, the Supplier has agreed to enter this Agreement.

TERMS

1. Definitions

## In this Agreement the following terms shall have the following meanings:

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| “Affiliate” | means 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. |
| “Supplier Personnel” | means all employees, agents, consultants, sub-contractors and contractors of the Incumbent Supplier (or any Affiliate of the Incumbent Supplier) and/or of any of its sub-contractors, agents or members of its consortium. |
| “Bid” | means any activity which involves the Supplier, including any involvement as a sub-contractor, in any direct or indirect participation in a Procurement Process. |
| “Bid Team” | means any team from time to time comprising of those Supplier Personnel for the purpose of responding directly or indirectly to a Procurement Process (or any part thereof). |
| “Control” | means that a person possesses, directly or indirectly, 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. |
| “Ethical Walls” | means the set of management processes, barriers and disciplines that create a zone of non-communication and physical and organisational separation between Members of the Bid Team and all other Supplier Personnel, to protect client confidentiality and ensure conflicts of interest do not arise that could otherwise give an unfair competitive advantage to an Incumbent Supplier in a Procurement Process. |
| “Incumbent Supplier” | means the Supplier as named in this Agreement providing existing services to HMRC, who may be deemed to have an actual, potential or perceived view of HMRC's current IT environment. |
| “Relevant Information” | means any written or oral information which describes the nature of the services provided to HMRC or the method by which those services are, or will be, provided during the course of the current service contract(s). This definition covers any information, which an Incumbent Supplier obtains, either directly or indirectly, during the course of its ongoing service relationship with HMRC (together with any information derived from the same). It excludes any information that is already available to all bidders either through public domain or other sources not subject to an obligation of confidence or through the procurement documentation and other supporting information provided by HMRC.  |
| “Member of the Bid Team” | means any Supplier Personnel who are or have been involved in the Bid and **“Members”** shall be interpreted accordingly. |
| “the Service” | has the meaning as set out in Recital (A) above. |
| “the Supplier” | means the party named in this Agreement at (2) above. |
| “Operational Team” | means any Supplier Personnel who are involved in the day-to-day provision of services to HMRC, or in the management of such services.  |
| “PA” | has the meaning as set out in Recital (B) above. |
| “Procurement Process” | means the process by which HMRC shall procure the provision of the Service. |

1. Ethical Walls

## In consideration of the sum of £1.00 paid by HMRC to the Supplier (receipt of which the Supplier hereby acknowledges) the Supplier shall comply with this Agreement without prejudice to any of its own internal policies and procedures which relate to conflicts of interest or ethical walls. The Supplier shall promptly inform HMRC of any conflict between this Agreement and any of its own relevant internal policies and procedures and HMRC shall consider the purported conflict and instruct the Supplier accordingly, at HMRC’s discretion.

## The undersigned on, behalf of the Supplier, shall ensure that no Supplier Personnel:

### discusses with or provides any Relevant Information gained to any Members of the Bid Team;

### discloses or makes available to any Members of the Bid Team any Relevant information that is not in the public domain; and

### becomes a member of the Bid Team, unless the Supplier has obtained HMRC’s prior written consent.

##  The Supplier shall at all times ensure separation between Supplier Personnel and Members of the Bid Team, and in particular shall:

### ensure that all Supplier Personnel are, so far as reasonably practicable:

#### located in different offices to the Members of the Bid Team, or else on different floors with restricted access of the same office to the Members of the Bid Team;

#### have separate reporting, supervision and management lines to the Members of the Bid Team; and

#### in particular remain separate to the Members of the Bid Team at organisational levels where any commercial decisions relating to either team can be made;

### ensure that where a single point of supervision for both teams exists this is notified to HMRC;

### ensure that:

#### all electronic information (including all files and databases) relating to the Bid cannot be accessed by any Supplier Personnel except to the extent necessary to comply with the Supplier’s information technology and security policies and any such access shall be strictly limited to IT security and administrative personnel; and

#### that no Supplier IT security and administrative personnel do anything with any such electronic information they access and in particular do not provide access to any Member of the Bid Team; and

### ensure that all information and documentation held in hard copy is stored securely and separately from that relating to any Procurement Process so that it cannot be accessed by any Supplier Personnel.

## Upon becoming aware of any instance of non-compliance with this Agreement, the Supplier shall, without prejudice to HMRC’s rights of enforcement under this Agreement:

### immediately report to HMRC any such non-compliance with full details of the non-compliance;

### carry out a review to ascertain the reasons for and extent of such non-compliance;

### take such steps as are necessary to eliminate the risk of such non-compliance occurring again; and

### implement procedures for the reporting of any unexpected or unusual requests for access to or copies of documents.

##  The Supplier shall maintain records to show that effective Ethical Walls have been put in place and that the Supplier has implemented measures to prevent themselves from gaining any advantage over other prospective bidders or suppliers in any Procurement Process.

## The Supplier shall monitor the effectiveness of the Ethical Walls and take all necessary steps where it is found that the Ethical Walls have not been effective.

## The Supplier shall implement or procure the implementation of disciplinary sanctions within its, its Affiliate’s or sub-contractor’s organisation where there has been a breach of the Ethical Walls.

##  HMRC may, on five (5) days’ prior written notice, audit the Supplier’s compliance with this Agreement, including (but not limited to) visiting the Supplier, its Affiliates’ and/or any sub-contractors’ sites. The Supplier shall (and shall use all reasonable endeavours to ensure that its Affiliates and sub-contractors shall) take all necessary steps to assist HMRC to carry out this audit.

1. Enforcement

## In the event of a breach of this Agreement by the Supplier, HMRC may (at its sole discretion) do one or more of the following:

### exclude the Supplier from any Procurement Process pursuant to Section 82(4)(a) and (b) PA; and

### seek injunctive or other equitable remedy to restrain disclosure or further disclosure of any information relating to the Procurement Process or the Service; and/or

### circulate to all bidders contemporaneously any information that it considers could be relevant to the Procurement Process and/or the Service and/or could provide any advantage to a bidder;

### pursue any other remedy that may be available to HMRC.

1. General

## The obligations in this Agreement shall continue until the date thirty (30) days after the execution of the contract for the Service.

## This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## This Agreement is for the benefit of and may be enforced by any public body involved or interested in the procurement of the Service under the Contracts (Rights of Third Parties) Act 1999.

## This Agreement may be amended or terminated by the agreement of the parties without notice to or consent from any third party.

## Any notice required to be given under this Agreement shall be in writing and shall be delivered at the address specified in this Agreement.

## If any provision or part provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

This Agreement has been duly executed by the Parties on the date which appears at the head of its page 2.

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| **SIGNED** for and on behalf of **[name of the Supplier]**.Signature:Name (block capitals):Position:Date: |  |
| **SIGNED** for and on behalf of [***The Commissioners for His Majesty's Revenue and Customs***]Signature:Name (block capitals):Position:Date: |  |