

**Management Consultancy Framework 2 (MCF2)**

**Call Off Order Form**

Provision of Complex and Transformation Consultancy Services

To

**HM Revenue & Customs**

From

**Moorhouse Consultancy Services Limited**

## **FRAMEWORK SCHEDULE 4**

### **CALL OFF ORDER FORM**

#### **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 Complex and transformation consultancy services (Lot 3) dated 04 September 2018.

The Supplier agrees to supply the Services specified below 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 Template Call Off Order Form and the Call Off Terms.

Order Number	To be confirmed post-contract award
From	HM Revenue & Customs Customer Compliance Group (CCG) ("CUSTOMER")
To	Moorhouse Consulting Ltd ("SUPPLIER")
Date	15 March 2021 ("DATE")

##### **SECTION B**

#### **1. CALL OFF CONTRACT PERIOD**

<b>1.1.</b>	<b>Commencement Date:</b> 15 March 2021
<b>1.2.</b>	<b>Expiry Date:</b> End date of Initial Period: 14 March 2022 (Optional) Maximum Call-Off Contract Extension Period: 6 months Latest Extension Period End Date: 13 September 2022 Minimum written notice to Supplier in respect of extension: 30 days

## 2. SERVICES

<b>2.1</b>	<p><b>Services required:</b></p> <p>The Customer requires support from the Supplier who has proven expertise in the field of Programme Management Office (PMO) and Complex and Transformational consultancy services to support the Programme Director in overseeing and driving delivery of the Protect Connect programme over the next 12 months.</p> <p>The services required are set out in the ITT (Invitation to Tender) (Appendix A) see 10.12 Call Off tender below.</p> <p>The principles associated with how the support will be provided, and the outcomes to be supported by the Supplier are set out in the Supplier Response (Appendix B) see 10.12 Call-Off tender below.</p> <p><b>Statements of Work (SOW)</b> The initial SOW will be drafted and agreed by both parties following Contract Award (within 2 weeks of the Commencement Date).</p> <p>For subsequent SOW's required under the auspices of this Call-Off Contract, the following process will be used:</p> <ul style="list-style-type: none"><li>• Using Appendix C as a template, the Customer will capture its requirements: this will include a specification of requirements detailing the work needed, the outcomes required, and the date the Supplier's SOW proposal is required by.</li><li>• The Customer will share this requirement in writing with the Supplier and request a proposal, using Section 2 'Suppliers Response' on the template.</li><li>• The Supplier will provide the SOW proposal to the Customer, which will include costs and a project plan of the milestones needed to deliver the outcomes.</li><li>• Upon receipt, the Customer will review the SOW proposal and reserves the right to request any changes to the SOW proposal as may be required to ensure the required outcomes will be delivered to the Customer's satisfaction.</li><li>• Once the final SOW proposal is agreed by both parties, the Customer will attach/include the SOW proposal as part of the Call-Off Contract documentation, using the formal Contract Change Notice Form (Schedule 12 of the <a href="#">Call Off terms</a>) to formalise the agreement where appropriate.</li></ul> <p><b>Location</b> Current working practices dictate that work will be undertaken remotely. Once measures are relaxed, the Primary location for delivery of the Services at HMRC offices will be:</p> <ul style="list-style-type: none"><li>• 100 Parliament Street, Westminster, London, SW1A 2BQ</li></ul> <p>Where appropriate the Customer will authorise working from the Supplier's premises. As part of the delivery, for example to conduct stakeholder workshops and meetings, it may be necessary for the Supplier to travel to other Customer sites upon request. Specific location requirements for each specific work package will be stated within the SOW.</p> <p><b>Staff Vetting Procedures</b> Supplier personnel involved in the delivery of these services will be cleared to BPSS level unless explicitly stated otherwise in the SOW.</p>
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### 3. PROJECT PLAN

3.1.	Within each SOW package proposal, the Supplier shall provide the Customer with a draft Project Plan. Any changes to the draft Project Plan, must be agreed within 7 days of the SOW commencement date.
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### 4. CONTRACT PERFORMANCE

4.1.	<b>Standards:</b> Applicable standards for this contract are per Section 11, Standards and Quality, detailed in the <a href="#">Call Off terms</a> RM6008.
4.2	<b>Service Levels/Service Credits:</b> Not applied
4.3	<b>Critical Service Level Failure:</b> Not applied
4.4	<b>Performance Monitoring:</b> Post Assignment Review meetings (PAR's) will be held monthly (attended by Commercial Directorate and key personnel for the Supplier and Customer) to agree outcomes/achievement of milestones and subsequent approval of any invoices.
4.5	<b>Period for providing Rectification Plan:</b> Applicable period for providing Rectification Plan can be viewed in 39.2.1(a) of the <a href="#">Call Off terms</a> for RM6008.

### 5. PERSONNEL

5.1	<p><b>Key Personnel:</b></p> <p><u>Customer</u></p> <p>[Redacted]</p> <p><u>Supplier</u></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
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<b>5.2</b>	<b>Relevant Convictions</b> Refer to Clause 28.2 <a href="#">Call Off terms</a> of the for RM6008.
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## 6. PAYMENT

<b>6.1</b>	<p><b>Call Off Contract Charges</b> (including any applicable discount(s), but excluding VAT):</p> <p>The charging principles for this Call Off Contract can be found in the Charging Model Schedule, as provided by the Supplier as part of their Tender response, as embedded at 10.12 and as provided as Appendix B.</p> <p>Charging format and frequency will be agreed within each SOW and will be based on the day rates provided in the Charging Model Schedule.</p> <p>Invoices will be agreed on a monthly basis at specified PAR meetings and against the SOW.</p> <p>No commitment is given to the extent as to which further SOW's will be commissioned from this Call Off Order Form. The charging principles, including the additional expected investment approach, should be used to determine the charges for any subsequent SOW's and will require approval via the Customer's internal governance processes and confirmation with the Supplier through the formal contract variation process.</p> <p>The maximum aggregated value for the initial contract term will be £1,500,000</p>
<b>6.2</b>	<p><b>Payment terms/profile</b></p> <p>The Supplier shall invoice the Customer monthly in arrears as set out in the mechanics of 6.1 above.</p> <p>The payment method for this Call-Off Contract is by BACS transfer through the HMRC Ariba network The Supplier will issue an electronic invoice monthly in arrears. The Customer will pay the Supplier within 30 days of receipt of a valid invoice.</p> <p>The payment terms/profile for any services commissioned as part of this Call Off Order Form will be for payments to be made upon:</p> <ul style="list-style-type: none"> <li>• the completion by the Supplier of the milestone deliverables/outcomes stated in the SOW.</li> <li>• acceptance by the Customer that the deliverables/outcomes have been completed to the Customer's satisfaction.</li> </ul>
<b>6.3</b>	<p><b>Reimbursable Expenses:</b></p> <p>Reimbursable Expenses are not permitted within the M25 Greater London area unless expressly permitted by the HMRC Work Manager.</p> <p>Reimbursable Expenses incurred for activity outside of the M25 Greater London area will be permitted with the prior agreement of the HMRC Work Manager, in accordance with the Customer's T&amp;S Policy.</p>
<b>6.4</b>	<p><b>Customer billing address</b></p> <p>Invoices will be sent to the Buyer's electronic transaction system.</p>
<b>6.5</b>	<p><b>Call Off Contract Charges fixed for</b></p> <p>Refer to Schedule 3 Call Off Contract Charges, Payment and Invoicing</p>
<b>6.6</b>	<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>

	1 <sup>st</sup> November of each Call Off Contract Year during the Call off Contract Period
<b>6.7</b>	<b>Supplier request for increase in the Call Off Contract Charges</b> (paragraph 10 of Call Off Schedule 3 (Call Off Contract Charges, Payment and Invoicing)): Via agreement in writing between the parties.

## 7. LIABILITY AND INSURANCE

<b>7.1</b>	<b>Estimated Year 1 Call Off Contract Charges:</b> As detailed in 6.1
<b>7.2</b>	<b>Supplier's limitation of Liability</b> Applicable Supplier's total aggregated liability are available in Clause 37.2.1 of the <a href="#">Call Off terms</a> for RM6008.
<b>7.3</b>	<b>Insurance</b> Applicable Insurance terms are available in Clause 38.3 of the <a href="#">Call Off terms</a> for RM6008.

## 8. TERMINATION AND EXIT

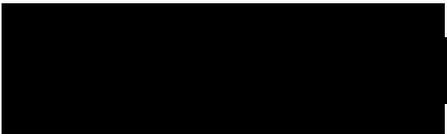
<b>8.1</b>	<b>Termination on material Default</b> In Clause 42.2.1(c) of the <a href="#">Call Off terms</a>
<b>8.2</b>	<b>Termination without cause notice period</b> In Clause 42.7 of the <a href="#">Call Off terms</a>
<b>8.3</b>	<b>Undisputed Sums Limit:</b> In Clause 43.1.1 of the <a href="#">Call Off terms</a>
<b>8.4</b>	<b>Exit Management:</b> Under the terms of the Contract, the Supplier must commit to co-operating with the customer to ensure efficient Exit Management as SOW's are completed. All documentation produced under this Contract must be returned to the Customer. 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 the content format and location for any formal knowledge transfer sessions where required.</li> </ul>

## 9. SUPPLIER INFORMATION

9.1	<b>Supplier's inspection of Sites, Customer Property and Customer Assets:</b> Not applicable
9.2	<b>Commercially Sensitive Information:</b> Any information relating to the following provided by the Supplier will be considered to be commercially sensitive/confidential and exempt from disclosure under the Freedom of Information Act 2000 ("FOIA"): <ul style="list-style-type: none"> <li>• Personal information (CV's, contact details etc.)</li> <li>• Pricing, including details of cost base or insurance arrangements</li> <li>• Proprietary information</li> </ul> The Government's Transparency Agenda may require the publication of Government contracts. In accordance with guidance issued by GPS and the Code of Practice for FOIA, the Customer will consult the Supplier regarding the redaction (as envisaged in the GPS guidance and Code of Practice) of certain parts of the contract, including those areas identified above, for this work.

## 10. OTHER CALL OFF REQUIREMENTS

10.1	<b>Recitals</b> (in preamble to the <a href="#">Call Off terms</a> ): <ul style="list-style-type: none"> <li>• Recital B: The Customer has followed the call off procedure set out in paragraph 1.3 of Framework Schedule 5 (Call Off Procedure) and has awarded this Call Off Contract to the Supplier by way of further competition.</li> <li>• Recital C: The Customer issued Statement of Requirements for the provision of the services on 26 January 2021</li> <li>• Recital D: The Supplier submitted a Call Off Tender to the Customer on 11 February 2021</li> <li>• Recital E: The Customer selected the Supplier to provide the services to the Customer in accordance with the terms of this Call Off Contract.</li> </ul>
10.2	<b>Call Off Guarantee (Clause 4 of the Call Off Terms):</b> Not required
10.3	<b>Security:</b> Short form security requirements (paragraphs 1 to 5 of Schedule 7) Security contained in the <a href="#">Call Off terms</a> for RM6008 and Draft Security Management Plan as embedded below  Within twenty (20) Working Days after the Call Off Commencement Date and in accordance with paragraph 4.4 (Amendment and Revision of the Security Management Plan), the Supplier shall prepare and deliver to the Customer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
10.4	<b>ICT Policy:</b>

	<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.</p> <p>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/security-information-zone">https://intranet.prod.dop.corp.hmrc.gov.uk/section/how-do-i/get-help-security/security-information-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>10.6</b>	<p><b>Business Continuity &amp; Disaster Recovery:</b></p> <p>Not applied</p>
<b>10.7</b>	<b>NOT USED</b>
<b>10.8</b>	<p><b>Protection of Customer Data</b></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 will apply.</p>
<b>10.9</b>	<p><b>Notices</b> (Clause 56.6 of the <a href="#">Call Off terms</a>):</p> <p>Customer's postal address and email address:  HMRC Commercial Directorate  </p> <p>Supplier's postal address and email address:  Moorhouse Consulting Ltd  </p>
<b>10.10</b>	<p><b>Transparency Reports</b></p> <p>In Call Off Schedule 13 (Transparency Reports)</p> <p>Not applied</p>
<b>10.11</b>	<p><b>Alternative and/or Additional Clauses from Call Off Schedule 14 and if required, any Customer alternative pricing mechanism:</b></p> <p>The Supplier shall comply with the Customer's mandatory terms as set out in Appendix D of this Call-Off Contract. For the avoidance of doubt and contrary to any other provision relating to precedence of terms in this Call-Off Contract, in case of any ambiguity or conflict, the Customers mandatory terms will supersede any other terms in this Call Off Contract.</p>
<b>10.12</b>	<p><b>Call Off Tender:</b></p> <p>Call Off Tender response and subsequent updates consist of the following embedded documents:</p>

	<ul style="list-style-type: none"> <li>• Customers ITT (Also provided as Appendix A at the end of this Order Form in the signed DocuSign version of this contract)</li> <li>• Suppliers Responses extracted from the Customer's e-sourcing portal</li> <li>• Suppliers Proposal (Key Staff CV's, Action Plan, SV Roadmap and Presentation)</li> <li>• Suppliers Charging Model Schedule (Also provided as Appendix B at the end of this Order Form in the signed DocuSign version of this contract)</li> </ul>
<b>10.13</b>	<b>Publicity and Branding</b> As per Clause 36.3.2 of the <a href="#">Call Off terms</a> for RM6008.
<b>10.14</b>	<b>Staff Transfer</b> Schedule 10 of the <a href="#">Call Off terms</a> for RM6008, Staff Transfer Parts A and B Not Applied.
<b>10.15</b>	<b>Processing Data</b> Call Off Schedule 17 Not applicable due to no processing of data.  If the processing of data changes in any way throughout the contract duration, the below table should be completed.
<b>Contract Reference:</b> SR551653152	
<b>Date:</b>	
<b>Description</b>	<b>Details</b>
Identity of the Controller and Processor	
Use of Personal Data	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	

## 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.**



## Appendix A – Customer’s Requirements



## Appendix B – Suppliers Response, including Pricing Arrangements and Key Staff



## Appendix C - Statement of Work (SoW)



## Appendix D - Mandatory Terms



### 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 Appendix D
- C. In case of any ambiguity or conflict, the Authority’s mandatory terms in this Appendix D will supersede any other terms in the Agreement.

#### 1. Definitions

- “Affiliate”** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
- “Authority Data”** (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:  
(i) supplied to the Supplier by or on behalf of the Authority; and/or  
(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or  
(b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;
- “Charges”** the charges for the Services as specified in the Charging Model Schedule.

<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 Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time; (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy;
<b>“GDPR”</b>	the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>“Key Subcontractor”</b>	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;
<b>“Law”</b>	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>“Personal Data”</b>	has the meaning given in the GDPR;
<b>“Purchase Order Number”</b>	the Authority’s unique number relating to the supply of the Services;
<b>“Services”</b>	the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;
<b>“Subcontract”</b>	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor)

all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

**“Subcontractor”**

any third party with whom:

- (a) the Supplier enters into a Subcontract; or
- (b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;

**“Supplier Personnel”**

all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

**“Supporting Documentation”**

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

**“Tax”**

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

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

**“Tax Non-Compliance”**

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:

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

**“VAT”**

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

**2. Payment and Recovery of Sums Due**

**2.1** The Supplier shall invoice the Authority as specified in Clause [insert correct document reference as per the Call-Off Contract] 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:

2.11 the Supplier does so at its own risk; and

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

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

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

### **3. Warranties**

**3.1** The Supplier represents and warrants that:

**3.1.1** in the three years prior to the 15 March 2021, 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 15 March 2021.

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

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

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

**4.1** All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

**4.2** To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

- 4.3** The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.
- 4.4** If, at any point during the Term, there is Tax Non-Compliance, the Supplier shall:
- 4.4.1** notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
  - 4.4.2** promptly provide to the Authority:
    - (a)** details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - (b)** such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.
- 4.5** The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 4.6** Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 4.7** If the Supplier:
- 4.7.1** fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;
  - 4.7.2** fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or
  - 4.7.3** fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;
- and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).
- 4.8** The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

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

- 5.1** Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract (“**Prohibited Transactions**”). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties’ business.
- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

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

- 6.1** The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 6.1.1** not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a)** the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (b)** the Data Subject has enforceable rights and effective legal remedies;

- (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

**6.2** Failure by the Processor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

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

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

## Annex 1

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

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

1. There is a person or entity which is either: ("X")
  - 1) The Economic Operator or Essential Subcontractor (EOS)
  - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*<sup>1</sup>;
  - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

#### Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:
  - a. Fraudulent evasion<sup>2</sup>;
  - b. Conduct caught by the General Anti-Abuse Rule<sup>3</sup>;
  - c. Conduct caught by the Halifax Abuse principle<sup>4</sup>;
  - d. Entered into arrangements caught by a DOTAS or VADR scheme<sup>5</sup>;

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

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

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

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

arrangements to avoid national insurance contributions

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

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

- e. Conduct caught by a recognised ‘anti-avoidance rule’<sup>6</sup> being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not affected for commercial purposes. ‘Targeted Anti-Avoidance Rules’ (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
- f. Entered into an avoidance scheme identified by HMRC’s published Spotlights list<sup>7</sup>;
- g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

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

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

- 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.

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

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

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

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

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