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## Digital Outcomes and Specialist Framework Agreement Call-Off Contract

This Call-Off Contract for the Digital Outcomes and Specialists Framework Agreement (RM1043iii) includes

### Part A - Order Form

### Part B - The Schedules

Schedule 1 - Requirements

Schedule 2 - Supplier's response

Schedule 3 - Statement of Work (SOW), including pricing arrangements

Schedule 4 - Contract Change Notice (CCN)

Schedule 5 - Balanced Scorecard

Schedule 6 - Optional Buyer terms and conditions

Schedule 7 - How Services will be bought (Further Competition process)

Schedule 8 - Deed of guarantee

### Part C - Terms and conditions as at [www.gov.uk](http://www.gov.uk)

1. Contract start date, length and methodology
2. Supplier Staff
3. Swap-out
4. Staff vetting procedures
5. Due diligence
6. Warranties, representations and acceptance criteria
7. Business continuity and disaster recovery
8. Payment terms and VAT
9. Recovery of sums due and right of set-off
10. Insurance
11. Confidentiality
12. Conflict of Interest
13. Intellectual Property Rights
14. Data Protection and Disclosure
15. Buyer Data
16. Document and source code management repository
17. Records and audit access
18. Freedom of Information (FOI) requests
19. Standards and quality
20. Security
21. Incorporation of terms
22. Managing disputes
23. Termination
24. Consequences of termination
25. Supplier's status
26. Notices

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- [27. Exit plan](#)
  - [28. Help at retendering and handover to replacement supplier](#)
  - [29. Changes to Services](#)
  - [30. Contract changes](#)
  - [31. Force Majeure](#)
  - [32. Entire agreement](#)
  - [33. Liability](#)
  - [34. Waiver and cumulative remedies](#)
  - [35. Fraud](#)
  - [36. Prevention of bribery and corruption](#)
  - [37. Legislative change](#)
  - [38. Publicity, branding, media and official enquiries](#)
  - [39. Non Discrimination](#)
  - [40. Premises](#)
  - [41. Equipment](#)
  - [42. Law and jurisdiction](#)
  - [43. Defined Terms](#)

The Order Form (Part A), the Schedules (Part B) and the Terms and Conditions (Part C) will become the binding contract after the Further Competition Process has been concluded. Specific details will be added after the award of the Framework Agreement. The Order Form may include:

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- Buyer and Supplier details
  - contract term
  - Deliverables
  - location
  - warranties
  - staffing needs
  - staff vetting procedure
  - notice period for termination
  - standards required (including security requirements)
  - charges, invoicing method, payment methods and payment terms
  - additional Buyer terms and conditions
  - insurances
  - business continuity and disaster recovery
  - security
  - governance
  - methodology
  - Buyer and Supplier responsibilities

A mockup Order Form (Part A) and Schedules (Part B) is set out below.

During the lifetime of the Framework Agreement, the Call-Off Contract Order Form template will be regularly updated to ensure that it continues to meet user needs.

**Part A - Order Form**

<b>Buyer</b>	Cabinet Office								
<b>Supplier</b>	Equal Experts UK Limited								
<b>Call-Off Contract/Project Ref.</b>	WP1203								
<b>Call-Off Contract title</b>	Equal Experts UK Limited								
<b>Call-Off Contract description</b>	The <b>Requirements</b> are for a PaaS DOS WebOps Specialist to provide additional development and operational input to the existing team to deliver an excellent user experience. The requirement includes providing skills transfer to public servants on the team.								
<b><u>Call-Off Contract period</u></b>									
<b>Start date</b>	05/01/2017								
<b>End date</b>	04/07/2017 (review at 3 month point)								
<b>Call-Off Contract extension option</b>	6 months								
<b><u>Call-Off Contract value</u></b>	Initial value of £94,500 [REDACTED] [REDACTED]								
<b>Charging method</b>	<table border="1"> <tr> <td>Capped time and materials (CTM)</td> <td></td> </tr> <tr> <td>Price per story</td> <td></td> </tr> <tr> <td>Time and materials (T&amp;M)</td> <td>X</td> </tr> <tr> <td>Fixed price</td> <td></td> </tr> </table>	Capped time and materials (CTM)		Price per story		Time and materials (T&M)	X	Fixed price	
Capped time and materials (CTM)									
Price per story									
Time and materials (T&M)	X								
Fixed price									

	Other pricing method or a combination of pricing methods agreed by the parties
<b>Notice period for termination for convenience</b>	20% of the working days of each Statement of Work, according to clause 23 of this Call off Agreement
<b>Purchase order No.</b>	TBC
<b>Initial SOW package</b>	[See Schedule 3.1]

This Order Form is issued in accordance with the Digital Outcomes and Specialists Framework Agreement (RM1043iii).

**Project reference:** DOS-WP1203-01.

**Buyer reference:**

**Order date:** 04/01/2016.

**Purchase order:** TBC

**From: the Buyer**  
Cabinet Office.

**To: the supplier**  
Equal Experts UK Limited

**Company number** 06191086

**Together: the "Parties"**

**Principle contact details**

For the Buyer: Name: [Redacted]  
Title: [Redacted]  
Email: [Redacted]  
Phone: [Redacted]

For the supplier: Name: [Redacted]  
Title: [Redacted]  
Email: [Redacted]  
Phone: [Redacted]

**Call Off Contract term**

**Commencement date:** This contract commences on 05/01/2017 and is valid for 6 months subject to extension

**Buyer contractual requirements**

**Digital outcomes and specialists services required:** For the provision of: an experienced WebOps expertise to provide additional development and operational input to the existing team to deliver an excellent user experience. The requirement includes providing skills transfer to public servants on the team.

**Warranty period** 90 days from the date of Buyer acceptance of release.

**Location:** [Redacted]

**Staff vetting procedures:** The level of clearance for this requirement is: Minimum Baseline Personnel Security Standard

**Standards:** Not used.

**Limit on supplier's liability:** As per Call off Contract terms

**Insurance:** As per Call off Contract terms

**Supplier's information**

**Commercially sensitive information:** No additional requirements

**Subcontractors / Partners:** No additional requirements

**Call-Off Contract Charges and payment**

**The method of payment for the Call-Off Contract Charges (GPC or BACS)** [Redacted]

**Invoice details** Monthly breakdown of charges

**Who and where to send invoices to:** [Redacted]

**Invoice information required – eg PO, project ref, etc.** WP1203 number and PO number

**Invoice frequency** Monthly in arrears or in line with completed SoW

**Call-Off Contract value:** Initial value of £94,500 [Redacted]

**Call-Off Contract Charges:** [Redacted]

*Charging Method T&M*

Role	Daily Rate excl. VAT
[Redacted]	[Redacted]

**Additional Buyer terms**

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**Warranties, representations and acceptance criteria** N/A

**Supplemental requirements in addition to the call-off terms** N/A

**Buyer specific amendments to/refinements of the Call-Off Contract terms** N/A

**Specific terms:** N/A

<b>Clause</b>	<b>Minimum number of days held within the Call-Off Contract</b>
6 Warranties, representations and acceptance criteria	Remains Ninety (90) Days from date of Buyer acceptance of release
22 Managing Disputes	Remains various shown within the Call-Off Contract terms
23 Termination	Remains Fifteen (15) consecutive Calendar Days
28 Help at retendering and handover to replacement supplier	Remains Ten (10) Working days
30 Contract Changes	Remains Five (5) Working Days
31 Force Majeure	Remains Fifteen (15) consecutive Calendar Days

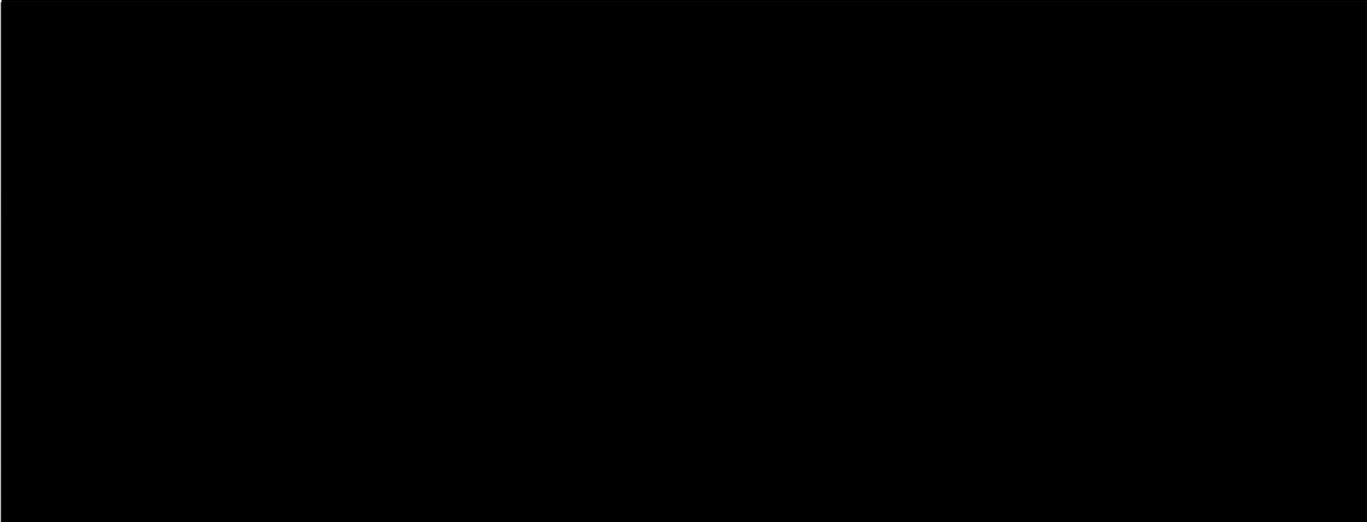
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33 Liability	Remains various shown within the Call-Off Contract terms
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### Formation of Contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.
- 1.3 In accordance with the Further Competition procedure set out in the Framework Agreement, this Call-Off Contract will be formed when the Buyer acknowledges the receipt of the signed copy of the Order Form from the Supplier (the "call-off effective date").
- 1.4 The Call-Off Contract outlines the Deliverables of the agreement. The Order Form outlines any amendment within the Call-Off Contract. The terms and conditions of the Call-Off Contract Order Form will supersede those of the Call-Off Contract standard terms and conditions.

#### 2. Background to the agreement

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- (A) The Supplier is a provider of digital outcomes and specialists services and undertook to provide such Services under the terms set out in Framework Agreement number RM1043iii (the "Framework Agreement").
  - (B) The Buyer served an Order Form for Services to the Supplier on the date stated in the Call-Off Contract.
  - (C) The parties intend that this Call-Off Contract will not itself oblige the Buyer to buy or the Supplier to supply the Services. Specific instructions and requirements will have contractual effect on the execution of an SOW.
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## **Part B - The Schedules**

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## Schedule 1 - Requirements

<https://www.digitalmarketplace.service.gov.uk/digital-outcomes-and-specialists/opportunities/1400>

## Overview

<b>Opportunity attribute name</b>	<b>Opportunity attribute value</b>
Specialist role	Web operations engineer
Summary of the work	The Government PaaS team at GDS require experienced WebOps expertise to provide additional development and operational input to the existing team to deliver an excellent user experience. The requirement includes providing skills transfer to public servants on the team.
Latest start date	4/1/2017
Expected contract length	6 months with a 3 month review point
Location	London
Organisation the work is for	GDS
Maximum day rate	£750

## About the work

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**Opportunity attribute name****Opportunity attribute value**

Early market engagement      None.

Who the specialist will work with      Multi-disciplinary team, mainly WebOps and back end developers, technical architect, user researchers, product managers, delivery managers, tech author.

What the specialist will work on      Development of the Government PaaS platform including tools. Operational input to the existing team to deliver an excellent user experience. Support of platform including out of hours support of production platform. Providing skills transfer to public servants on the team.

## **Work setup**

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**Opportunity attribute name****Opportunity attribute value**

Address where the work will take place .125 Kingsway, Aviation House, Holborn, London WC2B 6NH

Working arrangements Monday to Friday based in our office (currently Holborn we will be moving to Aldgate in the next 6 months) starting work by 9.30am, 7.5 hours per day + lunch time. There will be a requirement for team members to participate in the out of hours(OOH) support rota - on average one week in six. The OOH support will be paid separately from the day rate of the winning supplier candidates.

Security clearance BPSS cleared.

## Additional information

**Opportunity attribute name****Opportunity attribute value**

Additional terms and conditions Standard Cabinet Office terms and conditions apply.

## Skills and experience

Buyers will use the essential and nice-to-have skills and experience to help them evaluate suppliers' technical competence.

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**Opportunity attribute name****Opportunity attribute value**

Essential skills and experience

- Experience collaborating closely with colleagues in order to meet users' needs
- Experience debugging a complex, multi-server service in a high availability production environment. Please give examples.
- Experience using several languages such as Ruby, Python, Go, and Java within an existing, production codebase
- Experience of developing/operating a PaaS with Cloudfoundry and BOSH and using in a production environment. Please give examples.
- Experience of commodity cloud providers such as AWS in a production system. Please give examples.
- Using Terraform as a configuration management tool in a complex production environment.
- Experience of setting up and using a continuous delivery and deployment pipeline using Concourse, in a production environment. Please give examples.
- Experience of deploying Datadog as a monitoring solution. Please give an example.
- Please give an example of using continuous integration and version control (git, svn, bsr, mercurial) to create an application deployment workflow to a production environment,
- Evidence/examples of a rigorous approach to software development (TDD, code review, pairing)
- Experience and ability to develop tooling for automation and provisioning. Please give examples.

Nice-to-have skills and experience

- Proven interest in DevOps, and infrastructure as code.
- Experience administering common open source databases like Postgres, MongoDB, Redis etc. in a production environment. Please give examples.
- Experience supporting a production environment and supporting technical customers/users
- Experience of working in multiple agile teams, please give examples.
- Experience of using other CM tools such as Puppet, Chef, Ansible, Salt, in a production environment. Please give examples

**Schedule 2 - Supplier's response**



**Schedule 3 - Statement of Work (SOW), including pricing arrangements and Key Staff**

Sch      3.1      SOW      Details

<b>Date of SOW:</b>	<i>05/01/2017</i>
<b>SOW Reference:</b>	<i>DOS-WP1203-1</i>
<b>Buyer:</b>	<i>Cabinet Office</i>
<b>Supplier:</b>	EQUAL EXPERTS UK LIMITED

<b>Release Type(s):</b>	<i>Delivery</i>
<b>Phase(s) of Development:</b>	<i>Live</i>
<b>Release Completion Date:</b>	<i>31/03/2017</i>
<b>Duration of SOW</b>	<i>05/01/2017 - 31/03/2017 (62 Days)</i>
<b>Charging Method(s) for this Release:</b>	<i>Time and Materials</i>

3.1.1 The Parties will execute a SOW for each release. Note that any ad-hoc Service requirements are to be treated as individual Releases in their own right (in addition to the releases at the delivery stage); and the Parties should execute a separate SOW in respect of each.

3.1.2 The rights, obligations and details agreed by the Parties and set out in this SOW apply only in relation to the Services that are to be delivered under this SOW and will not apply to any other SOW's executed or to be executed under this Call-Off Contract unless otherwise agreed by the Parties.

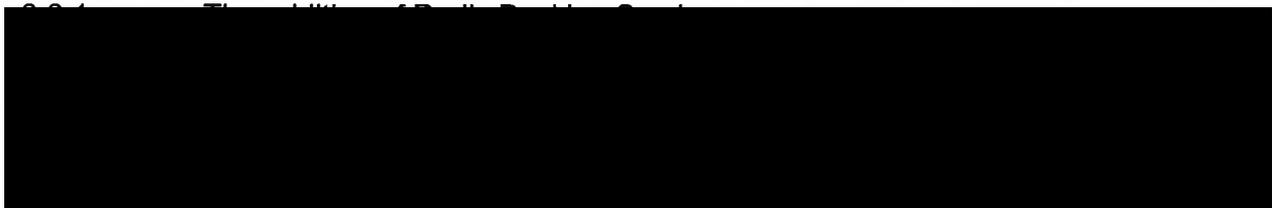
**Sch 3.2 Key Staff**

3.2.1 The Parties agree that the Key Staff in respect of this Project are detailed in the table below.

3.2.2 Table of Key Staff:

<b>Name</b>	<b>Role</b>	<b>Details</b>
	WebOps Specialist	

**Sch 3.3 Deliverables**





### **Sch 3.4 Call-Off Contract Charges**

3.4.1. For each individual Statement of Work (SOW), the applicable Call-Off Contract Charges (in accordance with the charging method in the Order Form) will be calculated using all of the following:

- the agreed relevant rates for Supplier staff or facilities, which are inclusive of any applicable expenses and exclusive of VAT and which were submitted to the Buyer during the Further Competition that resulted in the award of this Call-Off Contract.
- the number of days, or pro rata for every part of a day, that Supplier staff or facilities will be actively providing the Services during the term of the SOW.
- a contingency margin of up to 20% applied to the sum calculated on the basis of the above two points, to accommodate any changes to the SOW Deliverables during the term of the SOW (not applicable to Lot 3). The Supplier must obtain prior written approval from the Buyer before applying any contingency margin.

3.4.2 The Supplier will provide a detailed breakdown of rates based on time and materials Charges, inclusive of expenses and exclusive of VAT, with sufficient detail to enable the Buyer to verify the accuracy of the time and material Call-Off Contract Charges incurred.

The detailed breakdown for the provision of Services during the term of the SOW will include (but will not be limited to):

- a role description per Supplier Staff;
- a facilities description;
- the agreed relevant rate per day;
- any expenses charged per day, which are in line with the Buyer's expenses policy (if applicable);
- the number of days, or pro rata for every part day, they will be actively providing the Services during the term of the SOW; and
- the total cost per role / facility

The Supplier will also provide a summary which is to include:

- Total value of this SOW
- Overall Call-Off Contract Charge
- Remainder of value under overall Call-Off Contract Charge

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Where: Remainder of value under overall Call-Off Contract Charge = overall Call-Off Contract Charge - sum of total value of all SOWs invoiced

- Whether there is any risk of exceeding Overall Call-Off Contract Charge (and thereby requiring a Contract Change Note (CCN) to continue delivery of Services)

3.4.3 If a capped or fixed price has been agreed for a SOW:

- The Supplier will continue at its own cost and expense to provide the Services even where the agreed price has been exceeded; and
- The Buyer will have no obligation or liability to pay for the cost of any Services delivered relating to this order after the agreed price has been exceeded.

3.4.4 Risks or contingencies will be included in the Charges. The Parties agree that the following assumptions, representations, risks and contingencies will apply in relation to the Charges.

The Supplier will, with prior agreement with the Customer, provide a suitably qualified person should there be an issue with any of their team, or if they are ill or on holiday for more than one week.

3.4.5 Any changes to the Supplier Staff (not applicable to Lot 3 Services) should be agreed with the Buyer and covered by a separate SOW where it cannot be accommodated within an existing SOW.

3.4.6 Multiple SOWs can operate concurrently.

3.4.7 The Supplier will keep accurate records of the time spent by the Supplier staff in providing the services and will provide records to the Buyer for inspection on request (not applicable to Lot 3 Services)

### **Sch 3.5. Agreement of statement of works**

BY SIGNING this SOW, the parties agree to be bound by the terms and conditions set out herein:

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

Name and title

\_\_\_\_\_

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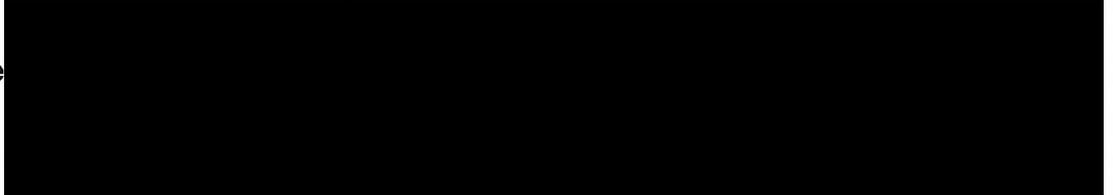
Signature and date



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

Name and title

Signature and date



Please note that this is the first SOW. If the value of the first SOW is lower than the overall Call-Off Contract value, and subsequent SOW(s) are required to ensure the Services are delivered, they must be raised and signed by the Buyer and the Supplier, with a copy sent to CCS for its records.

If you exceed the overall Call-Off Contract value and Supplier Staff are still required to deliver the services, then a contract change note (CCN) must be raised, explaining the reason(s) for the extension.

**Schedule 4 - Contract Change Notice (CCN)**

Order Form reference for the Call-Off Contract being varied:

BETWEEN:

**Buyer Full Name ("the Buyer")**

and

**Supplier Full Name ("the Supplier")**

- 
1. The Call-Off Contract is varied as follows and shall take effect on the date signed by both Parties:

**Guidance Note: Insert full details of the change including:**

**Reason for the change;**

**Full Details of the proposed change;**

**Likely impact, if any, of the change on other aspects of the Call-Off Contract;**

2. Words and expressions in this Contract Change Notice shall have the meanings given to them in the Call-Off Contract.
3. The Call-Off Contract, including any previous changes shall remain effective and unaltered except as amended by this change.

**Signed by an authorised signatory for and on behalf of the Buyer**

Signature:

X \_\_\_\_\_

Date: \_\_\_\_\_  
Click here to enter a date.

Name: \_\_\_\_\_  
Click here to enter text.

Address: \_\_\_\_\_  
Click here to enter text.

**Signed by an authorised signatory to sign for and on behalf of the Supplier**

Signature:

X \_\_\_\_\_

Date: \_\_\_\_\_  
Click here to enter a date.

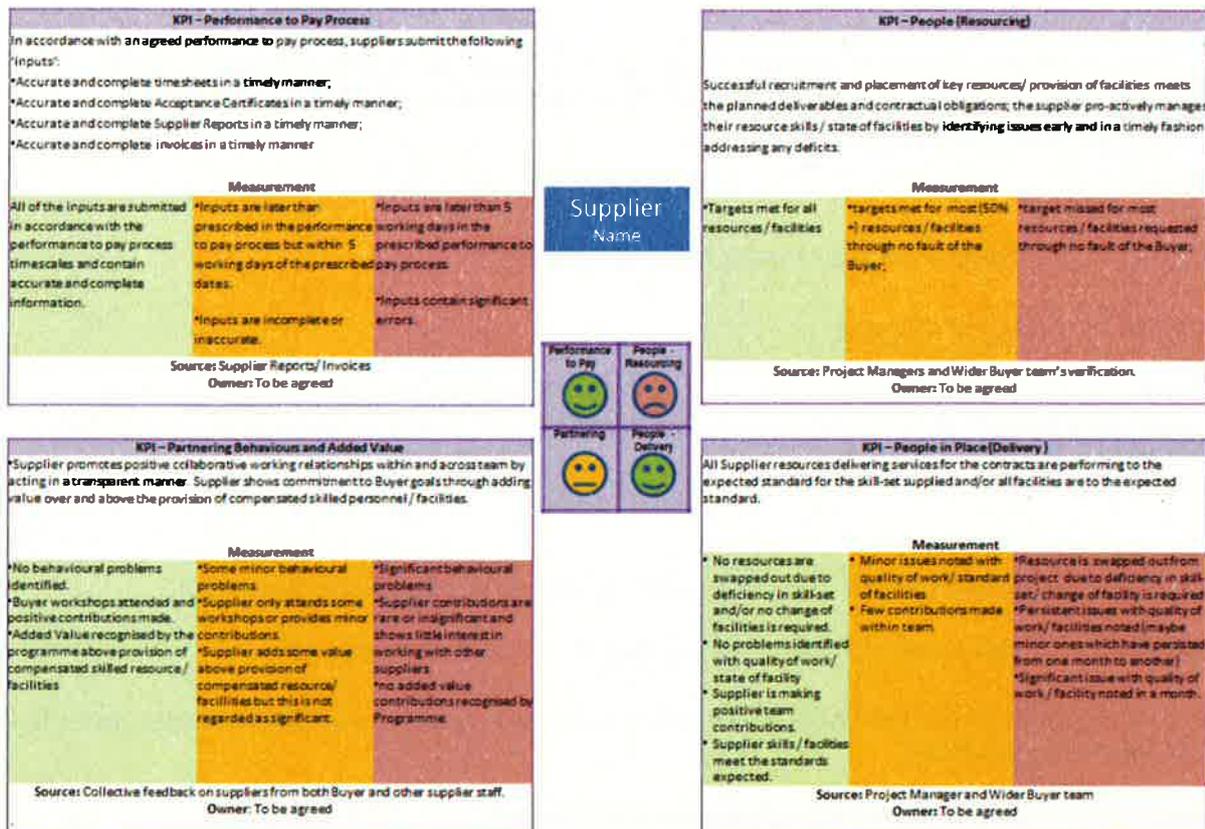
Name: \_\_\_\_\_  
Click here to enter text.

Address: \_\_\_\_\_  
Click here to enter text.

## Schedule 5 - Balanced Scorecard

In addition to the Supplier's performance management obligations set out in the Framework Agreement, the Parties may agree to the following Balanced Scorecard & KPIs for this Call-Off Contract (see Balanced Scorecard Model below):

# Balanced Scorecard



The purpose of the Balanced Scorecard is to promote contract management activity, through measurement of a Supplier's performance against Key Performance Indicators, which the Buyer and Supplier should agree at the beginning of a Call-Off Contract. The targets and measures listed in the example scorecard (above) are for guidance and should be changed to meet the agreed needs of the Buyer and Supplier.

The recommended process for using the Balanced Scorecard is as follows:

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1. The Buyer and Supplier agree a templated Balanced Scorecard together with a performance management plan, which clearly outlines the responsibilities and actions that will be taken if agreed performance levels are not achieved.
  2. On an pre-agreed schedule (e.g. monthly), both the Buyer and the Supplier provide a rating on the Supplier's performance
  3. Following the initial rating, both Parties meet to review the scores and agree an overall final score for each Key Performance Indicator
  4. Following agreement of final scores, the process is repeated as per the agreed schedule

CCS encourages Buyers to share final scores with CCS, so that performance of the Framework Agreement can be monitored. This may be done by emailing scores to: [cloud\\_digital@crownccommercial.gov.uk](mailto:cloud_digital@crownccommercial.gov.uk).

## **Schedule 6 - Optional Buyer terms and conditions**

### **Sch 6.1 — Buyer's agent**

The Buyer (as principal) has authorised [NAME OF AGENT] to act as agent on their behalf. The Buyer (as principal) remains liable for all of the Buyer obligations under this Call-Off Contract entered into on its behalf by its agent.

## **Schedule 7 – How Services will be bought (Further Competition process)**

### **Sch 7.1 — Who is responsible for awarding a Call-Off Contract**

All Buyers listed under the OJEU Contract Notice may award a Call-Off Contract under this Framework Agreement.

The Buyer may appoint an agent to act on their behalf.

CCS is not responsible for the actions of any Buyer.

### **Sch 7.2 — Activity that may take place before Further Competition**

Before starting a Further Competition, a Buyer will regularly undertake market engagement and publish a draft requirements document for Suppliers. Those Suppliers may then give feedback in order to:

- 
- help the Buyer understand the complexity of the work; and
  - help improve the quality of the brief that will be issued pursuant the Further Competition.

### **Sch 7.3 — Buyer reserves the right not to award**

A Further Competition procedure may be cancelled at any time and the Buyer is not obliged to award a Call-Off Contract.

At any stage during the Further Competition, the Buyer may go back to any stage in the further competition process and amend their requirements if they consider that the further competition is not meeting their needs.

Suppliers may ask clarification questions relating to the Buyer's requirements. The Buyer will specify how clarification questions can be asked and when the clarification period will close through the Digital Marketplace. Questions and responses will be anonymised and made available to all Suppliers.

### **Sch 7.4 — Right to change Further Competition process**

CCS may change the Further Competition process and the tools used for evaluation at any time.

### **Sch 7.5 — Lot 1: Digital outcomes Further Competition and Evaluation process**

In order to complete the following Further Competition process, the Buyer will:

- a) Write a brief detailing their requirements and the outcome they want to achieve.
- b) Indicate their evaluation method and criteria for assessing Suppliers against the brief, together with a timetable for the evaluation process. The timetable will consider the complexity of both the brief and the evaluation method being used and will allow enough time for Suppliers to respond. It will include:
  - the bid submission due date; and
  - the date range for any subsequent evaluation stages.
- c) Produce a list of all capable Suppliers that meet their requirements. This may be generated using information provided by Suppliers in their Framework Agreement Applications.
- d) Publish the brief and the evaluation process to the list of capable Suppliers

e) Request a response from interested Suppliers which must include answers to a number of yes/no questions defined by the Buyer. The Buyer will indicate against each question whether a positive response is essential or desired. A Supplier must provide a positive response to all essential questions to in order to proceed to the next stage.

f) Review the list of interested Suppliers who both submitted a response and meet all essential criteria.

g) (Optional) Create a shortlist by asking all Suppliers who meet the essential criteria further yes/no questions. This step may be repeated if necessary.

h) (Optional) Create a shortlist by asking all Suppliers who meet the essential criteria any qualitative questions relating to the brief.

i) Invite shortlisted Suppliers to a further evaluation. This may include any of the evaluation methods indicated when the brief was issued. Evaluation methods may include but are not limited to:

- providing a written proposal
- providing a case study or evidence of previous work
- a presentation
- a pitch
- an interview
- providing a reference.

j) Evaluate Suppliers using the evaluation criteria indicated when issuing the brief.

k) Run financial due diligence if required on the provisionally successful Supplier(s).

l) Award a Call-Off Contract to the successful Supplier(s).

m) Notify unsuccessful Suppliers and provide the shortlisted Suppliers with feedback.

The Buyer reserves the right to use some, but not all, of the evaluation methods indicated when issuing the brief.

The Buyer will evaluate Suppliers' responses against the following criteria:

Criteria	Weighting range (%)
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Technical merit and functional fit	10–75
Cultural fit	5–20
Price	20–85
<b>TOTAL</b>	<b>100%</b>

Weightings for technical merit and functional fit, cultural fit and price will be set by the Buyer within the above ranges. Weightings must add up to 100%.

If 2 or more Suppliers have the same score, the Buyer will use either:

- the score from the criteria with the highest weighting, then the next highest weighting until the tie is broken; or
- require the tied Suppliers to provide best and final offers.

**Sch 7.6 — Lot 2: Digital specialists Further Competition and Evaluation process**

In order to complete the following Further Competition process the Buyer will:

- a) Write a brief detailing their requirements and the Deliverables they need.
- b) Indicate their evaluation method and criteria for assessing Suppliers against the brief together with a timetable for the evaluation process. The timetable will take into account factors such as the complexity of the subject matter of the proposed Call-Off Contract and the time needed to submit bids. It will include:
  - the bid submission due date; and
  - the date range for any subsequent evaluation stages.
- c) Produce a list of capable Suppliers that meet their requirements. This may be generated using information provided by Suppliers in their Framework Agreement Applications.
- d) Send the brief and the evaluation process to the list of capable Suppliers.
- e) Request a response from interested Suppliers which must include answers to a number of yes/no questions defined by the Buyer. The Buyer will indicate against each question whether a positive response is essential or desired. A Supplier must provide a positive response to all essential questions to proceed to the next stage.

~~f) Review the list of interested Suppliers who submitted a response and meet all essential criteria.~~

~~g) (Optional) Create a shortlist of all Suppliers who meet essential criteria by asking further yes/no questions. This step may be repeated if necessary.~~

~~h) (Optional) If sufficient information is available to evaluate or the number of responses is manageable, go straight to evaluating Suppliers (point j).~~

~~i) Invite shortlisted Suppliers to further evaluation to assess whether their proposed specialist is able to meet their requirements. This may include any or all of the evaluation methods indicated when the brief was issued. Evaluation methods may include but are not limited to:~~

- ~~• providing a profile~~
- ~~• providing a written proposal~~
- ~~• providing a case study or evidence of previous work~~
- ~~• a presentation~~
- ~~• an interview~~
- ~~• a test~~
- ~~• providing a reference.~~

~~j) Evaluate Suppliers using the evaluation criteria indicated when issuing the brief.~~

~~k) Run financial due diligence if required on the provisionally successful Supplier(s).~~

~~l) Award a Call-Off Contract to the successful Supplier(s).~~

~~m) Notify unsuccessful Suppliers and provide the shortlisted Suppliers with feedback.~~

The Buyer reserves the right to use some but not all of the evaluation methods indicated when issuing the brief.

The Buyer will evaluate Suppliers' responses against the following criteria:

<b>Criteria</b>	<b>Weighting range (%)</b>
Technical merit and functional fit	10 – 75

Cultural fit	5–20
Price	20–85
<b>TOTAL</b>	<b>100%</b>

Weightings for technical merit and functional fit, cultural fit and price will be set by the Buyer within the above ranges. Weightings must add up to 100%.

If 2 or more Suppliers have the same score, the Buyer will use either:

- the score from the criteria with the highest weighting, then the next highest weighting until the tie is broken; or
- require the tied Suppliers to provide best and final offers.

**Sch 7.7 — Lot 3: User research studios Further Competition and Evaluation process**

In order to complete the following Further Competition process the Buyer will:

- a) Write a brief detailing their requirements, eg facilities needed, studio location and availability.
- b) Indicate their evaluation method and criteria for assessing Suppliers against the brief.
- c) Produce a list of capable Suppliers based on the Buyer's requirements. This may be generated using information provided by Suppliers in their Framework Agreement Applications.
- d) Contact the list of capable Suppliers to find out whether they are able to meet the requirements.
- e) Evaluate Suppliers using the evaluation criteria indicated when issuing the brief.
- f) Run financial due diligence if required on the provisionally successful Supplier(s).
- g) Award a Call-Off Contract to the successful Supplier(s).

h) Notify unsuccessful Suppliers and provide the shortlisted Suppliers with feedback.

The Buyer will evaluate Suppliers' responses against the following criteria:

Criteria	Weighting range (%)
Technical merit and functional fit	15 – 75
Price	25 – 85
<b>TOTAL</b>	<b>100%</b>

The Buyer may inspect the Supplier's studies before Call-Off Contract award or before they are used.

If 2 or more Suppliers have the same score, the Buyer will use either:

- the score from the criteria with the highest weighting, then the next highest weighting until the tie is broken; or
- require the tied Suppliers to provide best and final offers.

#### **Sch 7.8 — Lot 4: User research participants Further Competition and Evaluation process**

In order to complete the following Further Competition process the Buyer will:

- a) Write a brief detailing their requirements.
- b) Indicate their evaluation method and criteria for assessing Suppliers against the brief together with a timetable for the evaluation process. The timetable will consider the complexity of both the brief and the evaluation method being used and will allow enough time for Suppliers to respond. It will include:
  - the bid submission due date; and
  - the date range for any subsequent evaluation stages.
- c) Produce a list of capable Suppliers that meet the Buyer's requirements. This may be generated using information provided by Suppliers in their Framework Agreement Applications.

- d) Send the brief and evaluation process to the list of capable Suppliers.
- e) Request a response from interested Suppliers which must include answers to a number of yes/no questions defined by the Buyer. The Buyer will indicate against each question whether a positive response is essential or desired. A Supplier must give a positive response to all essential questions to proceed to the next stage.
- f) Review the list of interested Suppliers who submitted a response and who meet all essential criteria.
- g) (Optional) Create a shortlist of all Suppliers who meet essential criteria by asking further yes/no questions. This step may be repeated if necessary.
- h) (Optional) If sufficient information is available to evaluate or the number of responses is manageable, go straight to evaluating Suppliers (point j).
- i) Invite shortlisted Suppliers to a further evaluation stage. Only evaluation methods indicated when issuing the brief can be used. These methods may include but are not limited to:
- providing a written proposal
  - providing a case study or evidence of previous work
  - providing a reference
  - an interview
- j) Evaluate Suppliers using the evaluation criteria indicated when issuing the brief.
- k) Run financial due diligence if required on the provisionally successful Supplier(s).
- l) Award a Call-Off Contract to the successful Supplier(s).
- m) Notify unsuccessful Suppliers and provide shortlisted Suppliers with feedback.

The Buyer reserves the right to use some but not all of the evaluation methods indicated when issuing the brief.

The Buyer will evaluate Suppliers' responses against the following criteria:

Criteria	Weighting range (%)
Technical merit and functional fit	10 – 80

Availability	10 – 80
Price	20 – 80
<b>TOTAL</b>	<b>100%</b>

Weightings for technical merit and functional fit, availability and price must total 100%.

If 2 or more Suppliers have the same score, the Buyer will use either:

- the score from the criteria with the highest weighting, then the next highest weighting until the tie is broken; or
- require the tied Suppliers to provide best and final offers.

**Schedule 8 - Deed of guarantee**

~~This deed of guarantee is made on [insert date date/month/year] \_\_\_\_\_ 20[ ]~~  
**between:**

(1) ~~[Insert the name of the guarantor] a company incorporated in England and Wales with number [insert company no.] whose registered office is at [insert details of the guarantor's registered office here] [OR] [a company incorporated under the Laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ('guarantor');~~ in favour of **and**

(2) ~~THE BUYER~~ whose offices are XXXXXXXXXXXXXXXXXXXX (**'Beneficiary'**)

**Whereas:**

(A) ~~The guarantor has agreed, in consideration of the Buyer entering into the Call-Off Contract with the Supplier, to guarantee all of the Supplier's obligations under the Call-Off Contract.~~

(B) ~~It is the intention of the Parties that this document be executed and take effect as a deed.~~

~~In consideration of the Buyer entering into the Call-Off Contract, the Guarantor hereby agrees with the Buyer as follows:~~

**DEFINITIONS AND INTERPRETATION**

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In this Deed of Guarantee, unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms will have the same meaning as they have for the purposes of the Call-Off Contract.

**'Call-Off Contract'** means [the Guaranteed Agreement] made between the Buyer and the Supplier on [insert date]

**'Guaranteed Obligations'** means all obligations and liabilities of the Supplier to the Buyer under the Call-Off Contract together with all obligations owed by the Supplier to the Buyer that are supplemental to, incurred under, ancillary to or calculated by reference to the Call-Off Contract

References to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Call-Off Contract) apply now, and as amended, varied, restated, supplemented, substituted or novated in the future.

Unless the context otherwise requires, words importing the singular are to include the plural and vice versa.

References to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect.

The words 'other' and 'otherwise' are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible.

Unless the context otherwise requires, reference to a gender includes the other gender and the neuter.

Unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument also apply if amended, extended or re-enacted from time to time.

Unless the context otherwise requires, any phrase introduced by the words 'including', 'includes', 'in particular', 'for example' or similar, will be construed as illustrative and without limitation to the generality of the related general words.

References to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee.

References to liability are to include any liability whether actual, contingent, present or future.

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### **Guarantee and indemnity**

~~The Guarantor irrevocably and unconditionally guarantees that the Supplier duly performs all of the guaranteed obligations due by the Supplier to the Buyer.~~

~~If at any time the Supplier will fail to perform any of the guaranteed obligations, the Guarantor irrevocably and unconditionally undertakes to the Buyer it will, at the cost of the Guarantor:~~

- ~~• \_\_\_\_\_ fully perform or buy performance of the guaranteed obligations to the Buyer~~
- ~~• \_\_\_\_\_ as a separate and independent obligation and liability, compensate and keep the Buyer compensated against all losses and expenses which may result from a failure by the Supplier to perform the guaranteed obligations under the Call-Off Contract~~

~~As a separate and independent obligation and liability, the Guarantor irrevocably and unconditionally undertakes to compensate and keep the Buyer compensated on demand against all losses and expenses of whatever nature, whether arising under statute, contract or at common Law, if any obligation guaranteed by the guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the guarantor's liability will be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.~~

### **Obligation to enter into a new Contract**

~~If the Call-Off Contract is terminated or if it is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable, the Guarantor will, at the request of the Buyer enter into a Contract with the Buyer in the same terms as the Call-Off Contract and the obligations of the Guarantor under such substitute agreement will be the same as if the Guarantor had been original obligor under the Call-Off Contract or under an agreement entered into on the same terms and at the same time as the Call-Off Contract with the Buyer.~~

### **Demands and notices**

~~Any demand or notice served by the Buyer on the Guarantor under this Deed of Guarantee will be in writing, addressed to:~~

~~[Address of the Guarantor in England and Wales]~~

~~[Email address of the Guarantor representative]~~

For the Attention of [insert details]

or such other address in England and Wales as the Guarantor has from notified to the Buyer in writing as being an address for the receipt of such demands or notices.

Any notice or demand served on the Guarantor or the Buyer under this Deed of Guarantee will be deemed to have been served:

- \_\_\_\_\_ if delivered by hand, at the time of delivery
- \_\_\_\_\_ if posted, at 10am on the second Working Day after it was put into the post
- \_\_\_\_\_ if sent by email, at the time of despatch, if despatched before 5pm on any Working Day, and in any other case at 10am on the next Working Day

In proving Service of a notice or demand on the Guarantor or the Buyer, it will be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the fax message was properly addressed and despatched.

Any notice purported to be served on the Buyer under this Deed of Guarantee will only be valid when received in writing by the Buyer.

## **BENEFICIARY'S PROTECTIONS**

The Guarantor will not be discharged or released from this Deed of Guarantee by:

- \_\_\_\_\_ any arrangement made between the Supplier and the Buyer (whether or not such arrangement is made with the assent of the Guarantor)
- \_\_\_\_\_ any amendment to or termination of the Call-Off Contract
- \_\_\_\_\_ any forbearance or indulgence as to payment, time, performance or otherwise granted by the Buyer (whether or not such amendment, termination, forbearance or indulgence is made with the assent of the Guarantor)
- \_\_\_\_\_ the Buyer doing (or omitting to do) anything which, but for this provision, might exonerate the Guarantor

This Deed of Guarantee will be a continuing security for the Guaranteed Obligations and accordingly:

- \_\_\_\_\_ it will not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Buyer in exercising its rights under this Deed of Guarantee
- \_\_\_\_\_ it will not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Buyer, the Guarantor or any other person

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● ~~\_\_\_\_\_ if, for any reason, any of the Guaranteed Obligations is void or unenforceable against the Supplier, the Guarantor will be liable for that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor~~

● ~~\_\_\_\_\_ the rights of the Buyer against the Guarantor under this Deed of Guarantee are in addition to, will not be affected by and will not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Buyer~~

~~The Buyer will be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes. The making of a demand (whether effective, partial or defective) relating to the breach or non-performance by the Supplier of any Guaranteed Obligation will not preclude the Buyer from making a further demand relating to the same or some other Default regarding the same Guaranteed Obligation.~~

~~The Buyer will not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to:~~

● ~~\_\_\_\_\_ obtain judgment against the Supplier or the Guarantor or any third party in any court~~

● ~~\_\_\_\_\_ make or file any claim in a bankruptcy or liquidation of the Supplier or any third party~~

● ~~\_\_\_\_\_ take any action against the Supplier or the Guarantor or any third party~~

● ~~\_\_\_\_\_ resort to any other security or guarantee or other means of payment.~~

~~No action (or inaction) by the Buyer relating to any such security, guarantee or other means of payment will prejudice or affect the liability of the Guarantor.~~

~~The Buyer's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by Law. The Buyer's rights may be exercised as often as the Buyer deems expedient.~~

~~Any waiver by the Buyer of any terms of this Deed of Guarantee, or of any Guaranteed Obligations, will only be effective if given in writing and then only for the purpose and upon the terms and conditions on which it is given.~~

~~Any release, discharge or settlement between the Guarantor and the Buyer will be conditional upon no security, disposition or payment to the Buyer by the Guarantor or any other person being void, set aside or ordered to be refunded following any enactment or Law relating to liquidation, administration or insolvency or for any other reason. If such condition will not be fulfilled, the Buyer will be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Buyer will be entitled to retain this security before and after the payment, discharge or satisfaction of all monies, obligations and liabilities that are~~

or may become due owing or incurred to the Buyer from the Guarantor for such period as the Buyer may determine.

### **GUARANTOR INTENT**

Without prejudice to the generality of Clause 5 (The Buyer's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee will extend from time to time to any variation, increase, extension or addition of or to the Call-Off Contract and any associated fees, costs or expenses.

### **RIGHTS OF SUBROGATION**

The Guarantor will, at any time when there is any Default in the performance of any of the Guaranteed Obligations by the Supplier or any Default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- \_\_\_\_\_ of subrogation and indemnity
- \_\_\_\_\_ to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations
- \_\_\_\_\_ to prove in the liquidation or insolvency of the Supplier

The Guarantor will do this in accordance with the Buyer's written instructions and will hold any amount recovered as a result of the exercise of such rights on trust for the Buyer and pay the same to the Buyer on first demand.

The Guarantor acknowledges that it has not taken any security from the Supplier in connection with this Deed of Guarantee and agrees not to do so until Beneficiary receives all monies payable hereunder and will hold any security taken in breach of this Clause on trust for the Buyer.

### **DEFERRAL OF RIGHTS**

Until all amounts which may be or become payable by the Supplier under, or in connection with, the Call-Off Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Buyer, it will not:

- \_\_\_\_\_ exercise any rights it may have to be indemnified by the Supplier
- \_\_\_\_\_ claim any contribution from any other guarantor of the Supplier's obligations under the Call-Off Contract
- \_\_\_\_\_ take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Buyer under the Call-Off Contract or of any other guarantee or security taken following, or in connection with, the Call-Off Contract
- \_\_\_\_\_ demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier
- \_\_\_\_\_ claim any set-off or counterclaim against the Supplier

~~If the Guarantor receives any payment or other benefit or exercises any set-off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom will be held on trust for the Buyer and applied in or towards discharge of its obligations to the Buyer under this Deed of Guarantee.~~

## **REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Buyer that:

- ~~\_\_\_\_\_ the Guarantor is duly incorporated and is a validly existing company under the Laws of its place of incorporation~~
- ~~\_\_\_\_\_ has the capacity to sue or be sued in its own name~~
- ~~\_\_\_\_\_ the Guarantor has power to carry on its business as now being conducted and to own its Property and other assets~~
- ~~\_\_\_\_\_ the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee~~
- ~~\_\_\_\_\_ the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a Call-Off Contract following Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - ~~\_\_\_\_\_ the Guarantor's memorandum and articles of association or other equivalent constitutional documents, any existing Law, statute, rule or Regulation or any judgment, decree or permit to which the Guarantor is subject~~
  - ~~\_\_\_\_\_ the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets~~
  - ~~\_\_\_\_\_ all governmental and other authorisations, approvals, licences and consents, required or desirable~~~~

~~This Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.~~

## **PAYMENTS AND SET-OFF**

~~All sums payable by the Guarantor under this Deed of Guarantee will be paid without any set-off, lien or counterclaim, deduction or withholding, except for those required by Law. If any deduction or withholding must be made by Law, the Guarantor will pay that additional amount to ensure that the Buyer receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.~~

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The Guarantor will pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

The Guarantor will reimburse the Buyer for all legal and other costs (including VAT) incurred by the Buyer in connection with the enforcement of this Deed of Guarantee.

#### **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Buyer that it has not entered into this Deed of Guarantee in reliance upon the Buyer nor been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by, or on behalf of the Buyer, (whether express or implied and whether following statute or otherwise) which is not in this Deed of Guarantee

#### **ASSIGNMENT**

The Buyer will be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer will not release the Guarantor from its liability under this Guarantee.

The Guarantor may not assign or transfer any of its rights or obligations under this Deed of Guarantee.

#### **SEVERANCE**

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions will continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **THIRD-PARTY RIGHTS**

A person who is not a Party to this Deed of Guarantee will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than following that Act.

#### **GOVERNING LAW**

This Deed of Guarantee, and any non-Contractual obligations arising out of or in connection with it, will be governed by and construed in accordance with English Law.

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The Guarantor irrevocably agrees for the benefit of the Buyer that the courts of England will have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

Nothing contained in this Clause will limit the rights of the Buyer to take proceedings against the Guarantor in any other court of competent jurisdiction, nor will the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable Law).

The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on fax number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, Service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Buyer in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the Service of notices and demands, Service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by \_\_\_\_\_

**[Insert name of the Guarantor] acting by [Insert/print names]**

Director

Director/Secretary

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## **Part C – Terms and conditions**

### **1. Call-Off Contract start date, length and methodology**

- 1.1 The Supplier will start providing the Services in accordance with the dates specified in any Statement of Work (SOW).
- 1.2 Completion dates for Deliverables will be set out in any SOW.
- 1.3 The term of this Call-Off Contract will end on the Call-Off Contract period end date listed in the Order Form, or the latest completion date for a Deliverable specified in the final SOW (unless terminated earlier), whichever is the soonest.
- 1.4 The Supplier will plan on using an agile process, starting with user needs. The methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional circumstances, and where it can be shown to best meet user needs. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths.

### **2. Supplier Staff**

- 2.1 The Supplier Staff will:
- fulfil all reasonable requests of the Buyer
  - apply all due skill, care and diligence to the provisions of the Services
  - be appropriately experienced, qualified and trained to supply the Services
  - respond to any enquiries about the Services as soon as reasonably possible
  - complete any necessary vetting procedures specified by the Buyer
- 2.2 The Supplier will ensure that Key Staff are assigned to provide the Services for their Working Days (agreed between Supplier and Buyer) and are not removed from the Services during the dates specified in the relevant SOW.
- 2.3 The Supplier will promptly replace any Key Staff that the Buyer considers unsatisfactory at no extra charge. The Supplier will promptly replace anyone who resigns

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with someone who is acceptable to the Buyer. If the Supplier cannot provide an acceptable replacement, the Buyer may terminate this Call-Off Contract subject to clause 23.

2.4 Supplier Staff will comply with Buyer requirements for the conduct of staff when on Buyer's premises.

2.5 The Supplier will comply with the Buyer's staff vetting procedures for all or part of the Supplier Staff.

2.6 The Supplier will, on request, provide a copy of the contract of employment or engagement (between the Supplier and the Supplier Staff) for every member of Supplier Staff made available to the Buyer.

### **3. Swap-out**

3.1 Supplier Staff providing the Services may only be swapped out with the prior approval of the Buyer (such approval process to be agreed between the Parties).

### **4. Staff vetting procedures**

4.1 All Supplier Staff will need to be cleared to the level determined by the Buyer prior to the commencement of work.

4.2 The Buyer may stipulate differing clearance levels for different roles during this Call-Off Contract period.

4.3 The Supplier will ensure that it complies with any additional staff vetting procedures as requested by the Buyer.

### **5. Due diligence**

5.1 Both parties acknowledge that information will be needed to provide the Services throughout the term of this Call Off Contract and not just at Further Competition. Both parties agree to share such information freely.

5.2 Further to 5.1, both Parties agree that when entering into a Call-Off Contract, they:

5.2.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party

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5.2.2 are confident that they can fulfil their obligations according to the terms of the Call-Off Contract

5.2.3 have raised all due diligence questions before the Call-Off Contract

5.2.4 have entered into the Call-Off Contract relying on its own due diligence

## **6. Warranties, representations and acceptance criteria**

6.1 The Supplier will use the best applicable and available techniques and standards and will perform this Call-Off Contract with all reasonable care, skill and diligence, and according to Good Industry Practice.

6.2 The Supplier warrants that all Supplier Staff assigned to the performance of the Services will have the necessary qualifications, skills and experience for the proper performance of the Services.

6.3 The Supplier represents and undertakes to the Buyer that each Deliverable will meet the Buyer's acceptance criteria, as defined in the Call-Off Contract Order Form.

6.4 The Supplier undertakes to maintain any interface and interoperability between third-party software or Services and software or Services developed by the Supplier.

6.5 The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions to perform this Call-Off Contract.

## **7. Business continuity and disaster recovery**

7.1 If required by the Buyer, the Supplier will ensure a disaster recovery approach is captured in a clear disaster recovery plan. All Supplier Staff must also adhere to the Buyer's business continuity and disaster recovery procedure as required in the delivery of the Services for this project.

## **8. Payment terms and VAT**

8.1 The Buyer will pay the Supplier within 30 days of receipt of a valid invoice submitted in accordance with this Call-Off Contract.

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8.2 The Supplier will ensure that each invoice contains the information specified by the Buyer in the Order Form.

8.3 The Call-Off Contract Charges are deemed to include all Charges for payment processing. All Invoices submitted to the Buyer for the Services shall be exclusive of any Management Charge.

8.4 All payments under this Call-Off Contract are inclusive of VAT.

## **9. Recovery of sums due and right of set-off**

9.1 If a Supplier owes money to the Buyer or any Crown body, the Buyer may deduct that sum from the total due.

## **10. Insurance**

The Supplier will maintain the insurances required by the Buyer including those set out in this clause.

### **10.1 Subcontractors**

10.1.1 The Supplier will ensure that, during this Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £5,000,000.

### **10.2 Agents and professional consultants**

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to this Call-Off Contract to which the insurance relates.

### **10.3 Additional or extended insurance**

10.3.1 If requested by the Buyer, the Supplier will obtain additional insurance policies, or extend existing insurance policies procured under the Framework Agreement.

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10.3.2 The Supplier will provide CCS and the Buyer, the following evidence that they have complied with clause 10.3.1 above:

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other evidence of payment of the latest premiums due.

#### 10.4 Supplier liabilities

10.4.1 Insurance will not relieve the Supplier of any liabilities under the Framework Agreement or this Call-Off Contract.

10.4.2 Without limiting the other provisions of the Call-Off Contract, the Supplier will:

- take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers;
- promptly notify the insurers in writing of any relevant material fact under any insurances of which the Supplier is, or becomes, aware; and
- hold all insurance policies and require any broker arranging the insurance to hold any insurance slips and other evidence of placing cover representing any of the insurance to which it is a Party.

10.4.3 The Supplier will not do or omit to do anything, which would entitle any insurer to refuse to pay any claim under any of the insurances.

#### 10.5 Indemnity to principals

10.5.1 Where specifically outlined in this Call-Off Contract, the Supplier will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Buyer will be compensated for both of the following claims against the Buyer:

- death or bodily injury; and
- third-party Property damage arising from connection with the Services and for which the Supplier is legally liable.

#### 10.6 Cancelled, suspended, terminated or unrenewed policies

10.6.1 The Supplier will notify CCS and any Buyers as soon as possible if the Supplier becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

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## 10.7 Premium, excess and deductible payments

10.7.1 Where any insurance requires payment of a premium, the Supplier will:

- be liable for the premium; and
- pay such premium promptly.

10.7.2 Where any insurance is subject to an excess or deductible below the Supplier will be liable for it. The Supplier will not be entitled to recover any sum paid for insurance excess or any deductible from CCS or the Buyer.

## 11. Confidentiality

11.1 Except where disclosure is clearly permitted by this Call-Off Contract, neither Party will disclose the other Party's Confidential Information without the relevant Party's prior written consent.

11.2 Disclosure of Confidential Information is permitted where information:

- must be disclosed to comply with legal obligations placed on the Party making the disclosure
- belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner
- was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party
- is, or becomes, public knowledge, other than by breach of this clause or Call-Off Contract
- is independently developed without access to the other Party's Confidential Information
- is disclosed to obtain confidential legal professional advice.

11.3 The Buyer may disclose the Supplier's Confidential Information:

- to any central government body on the basis that the information may only be further disclosed to central government bodies;
- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
- if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
- on a confidential basis to exercise its rights or comply with its obligations under this Call-Off Contract; or

- 
- to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer.

11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this clause.

11.5 The Supplier may only disclose the Buyer's Confidential Information to Supplier Staff who are directly involved in the provision of the Services and who need to know the information to provide the Services. The Supplier will ensure that its Supplier Staff will comply with these obligations.

11.6 Either Party may use techniques, ideas or knowledge gained during this Call-Off Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Framework Agreement, or is an infringement of Intellectual Property Rights.

11.7 Information about orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) may be published by CCS and may be shared with other Buyers. Where Confidential Information is shared with other Buyers, CCS will notify the recipient of the information that its contents are confidential.

## **12. Conflict of Interest**

12.1 The Supplier will take all appropriate steps to ensure that Supplier Staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Supplier Staff and another Supplier where both are providing the Services to the Buyer under any Call-Off Contract in accordance with the Framework Agreement.

12.2 Any breach of this clause will be deemed to be a Material Breach.

12.3 A conflict of interest may arise in situations including where a member of the Supplier Staff:

- is related to someone in another Supplier team who both form part of the same team performing the Services under the Framework Agreement;
  - has a business interest in another Supplier who is part of the same team performing the Services under the Framework Agreement;
  - is providing, or has provided, Services to the Buyer for the discovery phase;
- or

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- has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in a Further Competition procedure.

12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under this Call-Off Contract, unless otherwise agreed with the Buyer ) inform the Buyer of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at its sole discretion, notify the Supplier if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.

### **13. Intellectual Property Rights**

13.1 Unless otherwise specified in this Call-Off Contract:

- the Buyer will not have any right to the Intellectual Property Rights (IPRs) of the Supplier or its licensors, including the Supplier Background IPRs and any IPRs in the Supplier Software.
- the Crown may publish any Deliverable that is software as open source.
- the Supplier will not, without prior written approval from the Buyer, include any Supplier Background IPR or third party IPR in any Deliverable in such a way to prevent its publication;
  - and failure to seek prior approval gives the Buyer right and freedom to use all Deliverables.
- the Supplier will not have any right to the Intellectual Property Rights of the Buyer or its licensors, including:
  - the Buyer Background IPRs;
  - the Project-Specific IPRs;
  - IPRs in the Buyer Data.

13.2 Where either Party acquires, by operation of Law, right to IPRs that is inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever the request is made).

13.3 Except where necessary for the performance of this Call-Off Contract (and only where the Buyer has given its prior approval), the Supplier will not use or disclose any of the Buyer Background IPRs, Buyer Data or the Project-Specific IPRs to or for the benefit of any third party.

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13.4 The Supplier will not include any Supplier Background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the Buyer under this Call-Off Contract, without approval from the Buyer.

13.5 The Supplier will grant the Buyer (and any replacement Supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use the Supplier Background IPRs for any purpose connected with the receipt of the Services that is additional to the rights granted to the Buyer under this Call-Off Contract and to enable the Buyer:

- to receive the Services;
- to make use of the Services provided by the replacement Supplier; and
- to use any Deliverables.

13.6 The Buyer grants the Supplier a non-exclusive, non-assignable, royalty-free licence to use the Buyer Background IPRs, the Buyer Data and the Project-Specific IPRs during the term of this Call-Off Contract for the sole purpose of enabling the Supplier to provide the Services.

13.7 The Buyer gives no warranty as to the suitability of any IPRs licensed to the Supplier hereunder. Any such licence:

- may include the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part thereof) provided that any such Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as in clause 11 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
- is granted solely to the extent necessary for the provision of the Services in accordance with this Call-Off Contract. The Supplier will ensure that the Subcontractors do not use the licensed materials for any other purpose.

13.8 At the end of the term of this Call-Off Contract, the Buyer grants to the Supplier a licence to use the Project-Specific IPRs (excluding any information which is the Buyer's Confidential Information or which is subject to the Data Protection Act (DPA)) on the terms of the Open Government Licence v3.0.

13.9 Subject to the above paragraph, the Supplier will ensure that no unlicensed software or open source software (other than the open source software specified by the Buyer) is interfaced with or embedded within any Buyer Software or Deliverable.

13.10 Before using any third-party IPRs related to the supply of the Services, the Supplier will submit to the Buyer for approval, all details of any third-party IPRs the Buyer requests.

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13.11 Where the Supplier is granted permission to use third-party IPRs in a request for approval, the Supplier will ensure that the owner of such third-party IPRs grants to the Buyer a licence on the terms informed to the Buyer in the request for approval.

13.12 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, and the Buyer rejects the Request for Approval, then this Call-Off Contract will need to be varied in accordance with clause 29 'Changes to Services'.

13.13 The Supplier will, on written demand, fully indemnify the Buyer and the Crown for all losses which it may incur at any time as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Buyer in accordance with this Call-Off Contract or the performance by the Supplier of the provision of the Services or the possession or use by the Buyer of the Services or Deliverables delivered by the Supplier, including the publication of any Deliverable that is software as open source, infringes or allegedly infringes a third party's Intellectual Property Rights (an 'IPR Claim').

13.14 Clause 13.13 will not apply if the IPR Claim arises from:

- designs supplied by the Buyer;
- the use of data supplied by the Buyer which is not required to be verified by the Supplier under any provision of this Call-Off Contract; or
- other material provided by the Buyer necessary for the provision of the Services.

13.15 The indemnity given in Clause 13.13 will be uncapped.

13.16 The Buyer will notify the Supplier in writing of the IPR Claim made against the Buyer and the Buyer will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:

- consults the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
- takes due and proper account of the interests of the Buyer;
- considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and

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- does not settle or compromise the IPR Claim without the prior approval of the Buyer (such decision not to be unreasonably withheld or delayed).

13.17 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) in connection with this Call-Off Contract, the Supplier will, at the Supplier's own expense and subject to prompt approval of the Buyer, use its best endeavours to:

- modify the relevant part of the Services or Deliverables without reducing their functionality or performance, or substitute Services or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement, provided that there is no additional cost or burden to the Buyer;
- buy a licence to use and supply the Services or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Buyer; and
- promptly perform any responsibilities and obligations to do with this Call-Off Contract.

13.18 If an IPR Claim is made (or in the reasonable opinion of the Supplier is likely to be made) against the Supplier, the Supplier will immediately notify the Buyer in writing.

13.19 If the Supplier does not comply with provisions of this clause within 20 Working Days of receipt of notification by the Supplier from the Buyer under clause 13.16 or receipt of the notification by the Buyer from the Supplier under clause 13.18 (as appropriate), the Buyer may terminate this Call-Off Contract for Material Breach (Call-Off Contract) and the Supplier will, on demand, refund the Buyer with all monies paid for the Service or Deliverable that is subject to the IPR Claim.

13.20 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.

13.21 The Supplier will, as an enduring obligation throughout the term of this Call-Off Contract where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the CCS or Buyer systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between CCS or the Buyer, and the Supplier).

13.22 If Malicious Software is found, the Supplier will co-operate with the Buyer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will use all reasonable endeavours to help the Buyer to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.

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13.23 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, will be dealt with by the Buyer and the Supplier as follows:

- by the Supplier, where the Malicious Software originates from the Supplier Software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.
- by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer.

13.24 All Deliverables that are software shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software, unless otherwise agreed by the Buyer.

13.25 Where Deliverables that are software are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority unless the Authority agrees in advance in writing that the converted format is not required.

#### **14. Data Protection and Disclosure**

14.1 The Supplier shall comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with this Framework Agreement or under any Call-Off Contract.

14.2 Where the Supplier is processing Buyer Data or Other Contracting Bodies' Personal Data, the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Authority and Other Contracting Bodies' Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Buyer Data and the Other Contracting Bodies' Personal Data).

14.3 The Supplier shall provide the Buyer and/or Other Contracting Body with such information as the Buyer and/or Other Contracting Body may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA including;

- to promptly notify the Buyer and/or Other Contracting Body of any breach of the security measures to be put in place pursuant to this Clause; and

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- to ensure that it does not knowingly or negligently do or omit to do anything which places the Buyer and/or Other Contracting Body in breach of its obligations under the DPA and
  - not to cause or permit to be processed, stored, accessed or otherwise transferred outside the European Economic Area any Buyer Data or Other Contracting Body Personal Data supplied to it by the Buyer or Other Contracting Body without approval.

## **15. Buyer Data**

15.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.

15.2 The Supplier will not store or use Buyer Data except where necessary to fulfill its obligations.

15.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.

15.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.

15.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.

15.6 The Supplier will ensure that any system on which the Supplier holds any protectively marked Buyer Data will be accredited as specific to the Buyer and will comply with:

- the government security policy framework and information assurance policy;
- guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
- the relevant government information assurance standard(s).

15.7 Where the duration of this Call-Off Contract exceeds one year, the Supplier will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred then the Supplier will re-submit such system for accreditation.

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15.8 If at any time the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will at its own cost comply with any remedial action proposed by the Buyer.

15.9 The Supplier will provide at the request of CCS or the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Act. The Supplier will also ensure that it does not knowingly or negligently fail to do something that places CCS or any Buyer in breach of its obligations of the Data Protection Act. This is an absolute obligation and is not qualified by any other provision of this Call-Off Contract.

15.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.

## **16. Document and source code management repository**

16.1 The Supplier will comply with any reasonable instructions given by the Buyer as to where it will store documents and source code, both finished and in progress, during the term of this Call-Off Contract.

16.2 The Supplier will ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.

## **17. Records and audit access**

17.1 The Supplier will allow CCS (and CCS's external auditor) to access its information and conduct audits of the Services provided under this Call-Off Contract and the provision of Management Information.

## **18. Freedom of Information (FOI) requests**

18.1 The Supplier will transfer any Request for Information to the Buyer within 2 Working Days of receipt.

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18.2 The Supplier will provide all necessary help reasonably requested by the Buyer to enable the Buyer to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.

18.3 To the extent it is permissible and reasonably practical for it to do so, CCS will make reasonable efforts to notify the Supplier when it receives a relevant FOIA or EIR request so that the Supplier may make appropriate representations.

## **19. Standards and quality**

19.1 The Supplier will comply with any standards in this Call-Off Contract and Section 4 (How Services will be delivered) of the Framework Agreement, and with Good Industry Practice.

## **20. Security**

20.1 If requested to do so by the Buyer, the Supplier will, within 5 Working Days of the date of this Call-Off Contract, develop, obtain Buyer's approval of, maintain and observe a Security Management Plan and an Information Security Management System (ISMS) which, after Buyer approval, will apply during the term of this Call-Off Contract. Both the ISMS and the Security Management Plan will comply with the security policy of the Buyer and protect all aspects of the Services and all processes associated with the delivery of the Services.

20.2 The Supplier will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.

20.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.

20.4 The Supplier will immediately notify CCS of any breach of security in relation to CCS's Confidential Information (and the Buyer in relation to any breach regarding Buyer Confidential Information). The Supplier will recover such CCS and Buyer Confidential Information however it may be recorded.

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20.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, available at:

<https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary>

20.6 The Buyer will specify any security requirements for this project in the Order Form.

## **21. Incorporation of terms**

21.1 Upon the execution of a Statement of Work (SOW), the terms and conditions agreed in the SOW will be incorporated into this Call-Off Contract.

## **22. Managing disputes**

22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.

22.2 Nothing in this procedure will prevent a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.

22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:

- the Buyer considers that the dispute is not suitable for resolution by mediation;
- the Supplier does not agree to mediation.

22.4 The procedure for mediation is as follows:

- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 Working Days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 Working Days from the date of the proposal to appoint a mediator, or within 3 Working Days of notice from the mediator to either Party that they are unable or unwilling to act.
- The Parties will meet with the mediator within 10 Working Days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any

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stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.

- Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- If the Parties reach agreement on the resolution of the dispute, the agreement will be reduced to writing and will be binding on the Parties once it is signed by their duly authorised representatives.
- Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
- If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

22.5 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:

- any technical aspect of the delivery of the digital services;
- the underlying technology; or
- otherwise is of a financial or technical nature.

22.6 An expert will be appointed by written agreement between the Parties, but if there's a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).

22.7 The expert will act on the following basis:

- they will act as an expert and not as an arbitrator and will act fairly and impartially;
- the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;