



## **LEGAL SUPPORT FOR MARKET OVERSIGHT SCHEME**

### **LOT 1 – GENERAL LEGAL ADVICE AND SERVICES UNDER LEGAL SERVICES PANEL RM6179**

**This Contract is made on this 7<sup>th</sup> day of March 2024**

**PARTIES:**

- 1) **THE CARE QUALITY COMMISSION** of City Gate, Gallowgate, Newcastle upon Tyne NE1 4PA ("the **Buyer**"); and
- 2) **DLA PIPER UK LLP** registered under company number **OC305357** and whose registered address is **160 Aldersgate Street, London, EC1A 4HT** ("the **Supplier**").

**WHEREAS**

- A. The Buyer conducted a further competition under the Crown Commercial Service Legal Services Panel RM6179 for the provision of legal advice and services on 22<sup>nd</sup> September 2023
- B. On the basis of the Supplier's tender the Buyer selected the Supplier to enter into this Contract to provide the Services to the Buyer.
- C. This Contract sets out the terms and conditions on which the Buyer may order the Services from the Supplier and on which the Supplier will supply those Services.

# Framework Schedule 6 (Order Form Template and Call-Off Schedules)

## Order Form

CALL-OFF REFERENCE: **CQC ASC 004**

THE BUYER: **Care Quality Commission**

BUYER ADDRESS **Citygate, Gallowgate, Newcastle upon Tyne,  
NE1 4PA**

THE SUPPLIER: **DLA Piper UK LLP**

SUPPLIER ADDRESS: **160 Aldersgate Street, London, EC1A 4HT**

REGISTRATION NUMBER: **OC305357**

DUNS NUMBER: **N/A**

SID4GOV ID: **N/A**

### APPLICABLE FRAMEWORK CONTRACT

This Order Form is for the provision of the Call-Off Deliverables (Provision of Legal Services for the Market Oversight Scheme) and dated 7<sup>th</sup> March 2024.

It's issued under the Framework Contract with the reference number Legal Services Panel RM6179 for the provision of legal advice and services.

CALL-OFF LOT(S):  
**Lot 1 – General Legal Advice and Services;**

## **CALL-OFF INCORPORATED TERMS**

The following documents are incorporated into this Call-Off Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Order Form including the Call-Off Special Terms and Call-Off Special Schedules.
2. Joint Schedule 1(Definitions and Interpretation) RM6179
3. Framework Special Terms
4. The following Schedules in equal order of precedence:
  - Joint Schedules for RM6179
    - Joint Schedule 1 (Definitions)
    - Joint Schedule 2 (Variation Form)
    - Joint Schedule 3 (Insurance Requirements)
    - Joint Schedule 4 (Commercially Sensitive Information)
    - Joint Schedule 5 (Corporate Social Responsibility)
    - Joint Schedule 6 (Key Subcontractors)
    - Joint Schedule 7 (Financial Difficulties)
    - Joint Schedule 8 (Guarantee) - NOT USED
    - Joint Schedule 10 (Rectification Plan)
    - Joint Schedule 11 (Processing Data)
    - Joint Schedule 12 (Supply Chain Visibility)
  - Call-Off Schedules for RM6179
    - Call-Off Schedule 1 (Transparency Reports)
    - Call-Off Schedule 2 (Staff Transfer)
    - Call-Off Schedule 3 (Continuous Improvement)
    - Call-Off Schedule 4 (Call-Off Tender) as long as any parts of the Call-Off Tender that offer a better commercial position for the Buyer (as decided by the Buyer) take precedence over the documents above.
    - Call-Off Schedule 5 (Pricing Details)
    - Call-Off Schedule 6 (ICT Services)
    - Call-Off Schedule 7 (Key Supplier Staff)
    - Call-Off Schedule 8 (Business Continuity and Disaster Recovery)
    - Call-Off Schedule 9 (Security)
    - Call-Off Schedule 10 (Exit Management)
    - Call-Off Schedule 11 (Installation Works) NOT USED
    - Call-Off Schedule 12 (Clustering) NOT USED
    - Call-Off Schedule 13 (Implementation Plan and Testing) - NOT USED
    - Call-Off Schedule 14 (Service Levels)

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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- Call-Off Schedule 15 (Call-Off Contract Management)
  - Call-Off Schedule 16 (Benchmarking) NOT USED
  - Call-Off Schedule 17 (MOD Terms) NOT USED
  - Call-Off Schedule 18 (Background Checks)
  - Call-Off Schedule 19 (Scottish Law) NOT USED
  - Call-Off Schedule 20 (Call-Off Specification)
  - Call-off Schedule 21 (Northern Ireland Law) NOT USED
  - Call-Off Schedule 23 (HMRC Terms) NOT USED
  - Call-Off Schedule 24 (Special Schedule)
  - Call-Off Schedule 25 (Secondment Agreement Template)]
5. CCS Core Terms (version 3.0.11)

No other Supplier terms are part of the Call-Off Contract. That includes any terms written on the back of, added to this Order Form, or presented at the time of delivery.

### CALL-OFF SPECIAL TERMS

The following Special Terms are incorporated into this Call-Off Contract:

Call-Off Special Terms Schedule A - Service Delivery and Charges

Call-Off Special Terms Schedule B – Process for ordering Deliverables

New Call-Off Schedule 26 Buyer's Information Security Standards

### CALL OFF TERM

CALL-OFF START DATE: 11 March 2024

CALL-OFF EXPIRY DATE: 10 March 2027

CALL-OFF INITIAL PERIOD: 3 Years

### CALL-OFF OPTIONAL EXTENSION PERIODS

There may be a further extension of 12 months from 1 December 2026 to 30 November 2027, subject to the Crown Commercial Service exercising its rights to extend Framework Agreement RM6179 under which this Call-Off Contract is entered into.

## **Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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The Crown Commercial Service has exercised its right and extended the framework to now end on 30 November 2025, we therefore have the option to extend up to 30 November 2027. Extension option is now from 11 March 2027 to 30 November 2027

### **WORKING DAY**

Monday to Friday

### **CALL-OFF DELIVERABLES**

The Buyer is entitled to 2 hours of free initial consultation and legal advice with each Order in accordance with Paragraph 5.2 of Framework Schedule 1 (Specification).

Option B: See details in Call-Off Schedule 20 (Call-Off Specification)

### **MANAGEMENT OF CONFLICT OF INTEREST**

Clause 32 of the Core Terms shall apply

### **CONFIDENTIALITY**

Clause 15 of the Core Terms and the Confidentiality provision in the Letter of Engagement shall apply

### **IPR**

Clause 9 Shall apply

### **MAXIMUM LIABILITY**

The limitation of liability for this Call-Off Contract is stated in Clause 11.2 of the Core Terms, and as amended by the Framework Special Terms.

The Estimated Year 1 Charges used to calculate liability in the first Contract Year is £250,000

### **CALL-OFF CHARGES**

Option B: See details in Call-Off Schedule 5 (Pricing Details)

### **VOLUME DISCOUNTS**

Where the Supplier provides Volume Discounts, the applicable percentage discount (set out in Table 2 of Annex 1 of Framework Schedule 3 (Framework Prices)) shall automatically be applied by the Supplier to all Charges it invoices regarding the Deliverables on and from the date and time when the applicable Volume Discount threshold is met and in accordance with Paragraphs 8, 9 and 10 of Framework Schedule 3.

### **REIMBURSABLE EXPENSES**

## **Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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Recoverable as stated in the Framework Contract

### **DISBURSEMENTS**

Disbursements shall only be payable where the Buyer has authorised that the Disbursements may be incurred in advance.

### **ADDITIONAL TRAINING CHARGE**

Not applicable

### **SECONDMENT CHARGE**

Secondment rate card will apply.

### **PAYMENT METHOD**

BACS

The Supplier must facilitate payment by the Buyer of the Charges under the Call-Off Contract under any method agreed in this Order Form.

The Supplier must facilitate a change of payment method during the term of the Call-Off Contract.

The Supplier shall not charge the Buyer any fees for the use of any payment method or for a change of payment method during the term of the Call-Off Contract.

### **BUYER'S INVOICING ADDRESS:**

Care Quality Commission  
T70 Payables F175  
PO BOX 312  
Leeds  
LS11 1HP

Alternatively, please email invoices to: [sbs.apinvoicing@nhs.net](mailto:sbs.apinvoicing@nhs.net) quoting a valid PO

**BUYER'S AUTHORISED REPRESENTATIVE**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**BUYER'S ENVIRONMENTAL POLICY**

Not applicable

**BUYER'S SECURITY POLICY**

The Buyer's security policy the CQC Information Security Standards (V1.0) is set out as a new Call-Off Schedule 26

**BUYER'S ICT POLICY**

Not applicable

**SUPPLIER'S AUTHORISED REPRESENTATIVE**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**SUPPLIER'S CONTRACT MANAGER**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**PROGRESS REPORT**

Not applicable

**PROGRESS REPORT FREQUENCY**

Not applicable

**PROGRESS MEETINGS AND PROGRESS MEETING FREQUENCY**

Not applicable



## KEY STAFF

For the Supplier:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## KEY SUBCONTRACTOR(S)

Not Applicable

## COMMERCIALLY SENSITIVE INFORMATION

Refer to Joint Schedule 4 (Commercially Sensitive Information)

## SERVICE CREDITS

Not applicable

## ADDITIONAL INSURANCES

Not applicable

## GUARANTEE

Not applicable

## SOCIAL VALUE COMMITMENT

The Supplier agrees, in providing the Deliverables and performing its obligations under the Call-Off Contract, that it will comply with the social value commitments in Call-Off Schedule 4 (Call-Off Tender)]

**Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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IN WITNESS of which this Contract has been duly executed by the parties.  
SIGNED for and on behalf of Buyer (CARE QUALITY COMMISSION)  
Authorised Signatory:

SIGNED for and on behalf of Supplier (DLA PIPER UK LLP)  
Authorised Signatory 1:

Authorised Signatory 2:

## Joint Schedule 1 (Definitions)

In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Joint Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.

1.1 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.2 In each Contract, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 reference to a gender includes the other gender and the neuter;
- 1.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 1.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- 1.2.5 the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "**without limitation**";
- 1.2.6 references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.7 references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under the Contract;
- 1.2.8 references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
- 1.2.9 references to "**Paragraphs**" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;
- 1.2.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;

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- 1.2.11 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract;
- 1.2.12 where the Buyer is a Central Government Body it shall be treated as contracting with the Crown as a whole;
- 1.2.13 where a standard, policy or document is referred to by reference of a hyperlink, if that hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Relevant Authority and the Parties shall update the reference to a replacement hyperlink;
- 1.2.14 any reference in a Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred; and
- 1.2.15 unless otherwise provided, references to "**Buyer**" shall be construed as including Exempt Buyers; and
- 1.2.16 unless otherwise provided, references to "**Call-Off Contract**" and "**Contract**" shall be construed as including Exempt Call-off Contracts.

In each Contract, unless the context otherwise requires, the following words shall have the following meanings:

" <b>Achieve</b> "	in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and " <b>Achieved</b> ", " <b>Achieving</b> " and " <b>Achievement</b> " shall be construed accordingly;
" <b>Additional Insurances</b> "	insurance requirements relating to a Call-Off Contract specified in the Order Form additional to those outlined in Joint Schedule 3 (Insurance Requirements);
" <b>Additional Training Charge</b> "	the Charge for any additional training agreed to be provided by the Supplier to the Buyer in excess of the Value Added Services set out in Framework Schedule 1 (Specification), which shall not exceed the Supplier's Hourly Rates;

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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<b>"Admin Fee"</b>	means the costs incurred by CCS in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the CCS on: <a href="http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees">http://CCS.cabinetoffice.gov.uk/i-am-supplier/management-information/admin-fees</a> ;
<b>"Affected Party"</b>	the Party seeking to claim relief in respect of a Force Majeure Event;
<b>"Affiliates"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
<b>"Annex"</b>	extra information which supports a Schedule;
<b>"Approval"</b>	the prior written consent of the Buyer and <b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audit"</b>	<p>the Relevant Authority's right to:</p> <ul style="list-style-type: none"> <li>a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call-Off Contract (including proposed or actual variations to them in accordance with the Contract);</li> <li>b) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;</li> <li>c) verify the Open Book Data;</li> <li>d) verify the Supplier's and each Subcontractor's compliance with the Contract and applicable Law;</li> <li>e) identify or investigate actual or suspected breach of Clauses 27 to 33 and/or Joint Schedule 5 (Corporate Social Responsibility), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;</li> <li>f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;</li> <li>g) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;</li> <li>h) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract;</li> <li>i) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts;</li> </ul>

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	<p>j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources;</p> <p>k) verify the accuracy and completeness of any Management Information delivered or required by the Framework Contract;</p> <p>l) receive from the Supplier on request summaries of all central Government public sector expenditure placed with the Supplier including through routes outside the Framework Contract in order to verify that the Supplier's practice is consistent with the Government's transparency on common goods and services; or</p> <p>m) inspect the Buyer's Assets, including IPR, equipment and facilities, for the purposes of ensuring that the Buyer's Assets are secure and that any register of assets is up-to-date;</p>
<b>"Auditor"</b>	<p>a) the Relevant Authority's internal and external auditors;</p> <p>b) the Relevant Authority's statutory or regulatory auditors;</p> <p>c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>d) HM Treasury or the Cabinet Office;</p> <p>e) any party formally appointed by the Relevant Authority to carry out audit or similar review functions; and</p> <p>f) successors or assigns of any of the above;</p>
<b>"Authority"</b>	CCS and each Buyer;
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Relevant Authority is liable to the Supplier;
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom;
<b>"Beneficiary"</b>	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
<b>"Buyer"</b>	the relevant public sector purchaser identified as such in the Order Form;
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the Contract;

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<b>"Buyer Authorised Representative"</b>	the representative appointed by the Buyer from time to time in relation to the Call-Off Contract initially identified in the Order Form;
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<b>"Call-Off Contract"</b>	the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form;
<b>"Call-Off Contract Period"</b>	the Contract Period in respect of the Call-Off Contract;
<b>"Call-Off Expiry Date"</b>	the:  (a) scheduled date of the end of a Call-Off Contract as stated in the Order Form; or  (b) 2 years after the End Date of the Framework Contract;  whichever is earlier;
<b>"Call-Off Incorporated Terms"</b>	the contractual terms applicable to the Call-Off Contract specified under the relevant heading in the Order Form;
<b>"Call-Off Initial Period"</b>	the Initial Period of a Call-Off Contract specified in the Order Form;
<b>"Call-Off Optional Extension Period"</b>	such period or periods beyond which the Call-Off Initial Period may be extended as specified in the Order Form;
<b>"Call-Off Procedure"</b>	the process for awarding a Call-Off Contract pursuant to Clause 2 (How the contract works) and Framework Schedule 7 (Call-Off Award Procedure);
<b>"Call-Off Special Schedules"</b>	Any additional schedules specified in the Order Form incorporated into the applicable Call-Off Contract;
<b>"Call-Off Special Terms"</b>	any additional terms and conditions specified in the Order Form incorporated into the applicable Call-Off Contract;
<b>"Call-Off Start Date"</b>	the date of start of a Call-Off Contract as stated in the Order Form;
<b>"Call-Off Tender"</b>	the tender submitted by the Supplier in response to the Buyer's Statement of Requirements following a Further Competition Procedure and set out at Call-Off Schedule 4 (Call-Off Tender) or their proposal following a direct award in accordance Framework Schedule 7 (Call-Off Award Procedure);
<b>"Capped Price"</b>	a Pricing Mechanism where the Supplier agrees that the Charges to be paid by the Buyer will not exceed a maximum amount (i.e. a 'cap') for the supply of the Deliverables or, one or more specific elements of the Deliverables, which can be calculated either:  (i) by reference to a single capped price, with Hourly Rates charged up to the maximum of the cap; or

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	(ii) multiple capped prices, each referenced to a different element or milestone of the Deliverables, with Hourly Rates charged up to the cap;
<b>"CCS"</b>	the Minister for the Cabinet Office as represented by Crown Commercial Service, which is an executive agency and operates as a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"CCS Authorised Representative"</b>	the representative appointed by CCS from time to time in relation to the Framework Contract initially identified in the Framework Award Form;
<b>"Central Government Body"</b>	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> <li>a) Government Department;</li> <li>b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</li> <li>c) Non-Ministerial Department; or</li> <li>d) Executive Agency;</li> </ul>
<b>"Change in Law"</b>	any change in Law which impacts on the supply of the Deliverables and performance of the Contract which comes into force after the Start Date;
<b>"Change of Control"</b>	is: <ul style="list-style-type: none"> <li>(a) a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; or</li> <li>(b) any instance where the Supplier demerges into 2 or more firms, merges with another firm, incorporated or otherwise changes its legal form;</li> </ul>
<b>"Charges"</b>	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Call-Off Contract less any Deductions;
<b>"Claim"</b>	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
<b>"Commercially Sensitive Information"</b>	the Confidential Information listed in the Framework Award Form or Order Form (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
<b>"Comparable Deliverables"</b>	the supply of any goods and/or services under an existing arrangement between the Supplier and Buyer referred to in Clause 2.11 and 2.13 as set out under the Framework Special Terms.



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<b>"Comparable Supply"</b>	the supply of Deliverables to another buyer of the Supplier that are the same or similar to the Deliverables;
<b>"Complaint"</b>	as any formal written complaint made by any Other Contracting Authority in relation to the performance of a Contract in accordance with Clause 34.7 to 34.9 (Complaints Handling);
<b>"Compliance Officer"</b>	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
<b>"Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of CCS, the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as <b>"confidential"</b> ) or which ought reasonably to be considered to be confidential;
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to CCS or any Buyer under a Contract, in the reasonable opinion of the Buyer or CCS, and includes the meaning set out in the SRA Standards and Regulations (issued 29 October 2019: <a href="https://www.sra.org.uk/solicitors/guidance/ethics-guidance/conflicts-interest/">https://www.sra.org.uk/solicitors/guidance/ethics-guidance/conflicts-interest/</a> ) or equivalent Regulatory Compliance requirements in Jurisdictions other than England and Wales, as amended from time to time;
<b>"Contract"</b>	either the Framework Contract or the Call-Off Contract, as the context requires;
<b>"Contract Period"</b>	the term of either a Framework Contract or Call-Off Contract on and from the earlier of the:  a) applicable Start Date; or  b) the Effective Date  up to and including the applicable End Date;
<b>"Contract Value"</b>	the higher of the actual or expected total Charges paid or payable under a Contract where all obligations are met by the Supplier;
<b>"Contract Year"</b>	a consecutive period of twelve (12) Months commencing on the Start Date or each anniversary thereof;
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and <b>"Controlled"</b> shall be construed accordingly;
<b>"Controller"</b>	has the meaning given to it in the UK GDPR;
<b>"Core Terms"</b>	CCS' terms and conditions for common goods and services which govern how Suppliers must interact with CCS and Buyers under Framework Contracts and Call-Off Contracts;
<b>"Costs"</b>	the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:

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	<p>a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:</p> <ul style="list-style-type: none"><li>i) base salary paid to the Supplier Staff;</li><li>ii) employer's National Insurance contributions;</li><li>iii) pension contributions;</li><li>iv) car allowances;</li><li>v) any other contractual employment benefits;</li><li>vi) staff training;</li><li>vii) work place accommodation;</li><li>viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and</li><li>ix) reasonable recruitment costs, as agreed with the Buyer;</li></ul> <p>b) costs incurred in respect of Supplier Assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;</p> <p>c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and</p> <p>d) Reimbursable Expenses to the extent these have been specified as allowable in the Order Form and are incurred in delivering any Deliverables;</p> <p>but excluding:</p> <ul style="list-style-type: none"><li>(i) Overhead;</li><li>(ii) financing or similar costs;</li><li>(iii) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Call-Off Contract Period whether in relation to Supplier Assets or otherwise;</li><li>(iv) taxation;</li><li>(v) fines and penalties;</li><li>(vi) amounts payable under Call-Off Schedule 16 (Benchmarking) where such Schedule is used; and</li></ul>
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	(vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the UK GDPR as amended from time to time; (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all applicable Law about the Processing of Personal Data and privacy;
"Data Protection Liability Cap"	the amount specified in the Framework Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR;
"Data Subject"	has the meaning given to it in the UK GDPR;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under a Call-Off Contract;
"Default"	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority;
"Default Management Charge"	has the meaning given to it in Paragraph 8.1.1 of Framework Schedule 5 (Management Charges and Information);
"Delay Payments"	the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;
"Deliverables"	Goods and/or Services that may be ordered under the Contract including the Documentation;
"Delivery"	delivery of the relevant Deliverable or Milestone in accordance with the terms of a Call-Off Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Call-Off Schedule 13 (Implementation Plan and Testing) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;
"Disbursements"	any costs or expenses paid or to be paid to a third party on behalf of the Buyer (including any VAT), save for office expenses such as postage and courier fees;

**Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 15 (What you must keep confidential);
<b>"Dispute"</b>	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 34 (Resolving disputes);
<b>"Documentation"</b>	<p>descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under a Contract as:</p> <ul style="list-style-type: none"><li>a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables</li><li>b) is required by the Supplier in order to provide the Deliverables; and/or</li><li>c) has been or shall be generated for the purpose of providing the Deliverables;</li></ul>
<b>"DOTAS"</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of Tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
<b>"DPA 2018"</b>	the Data Protection Act 2018;
<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Start Date;
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract;
<b>"EIR"</b>	the Environmental Information Regulations 2004;
<b>"Electronic Invoice"</b>	an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing and which complies with (a) the European standard and (b) any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870;
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;

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<b>"End Date"</b>	<p>the earlier of:</p> <ul style="list-style-type: none"> <li>a) the Expiry Date (as extended by any Extension Period exercised by the Relevant Authority under Clause 10.1.2); or</li> <li>b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract;</li> </ul>
<b>"Environmental Policy"</b>	<p>to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;</p>
<b>"Equality and Human Rights Commission"</b>	<p>the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;</p>
<b>"Estimated Year 1 Charges"</b>	<p>the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Order Form;</p>
<b>"Estimated Yearly Charges"</b>	<p>means for the purposes of calculating each Party's annual liability under clause 11.2:</p> <ul style="list-style-type: none"> <li>i) in the first Contract Year, the Estimated Year 1 Charges; or</li> <li>ii) in the any subsequent Contract Years, the Charges paid or payable in the previous Call-off Contract Year; or</li> <li>iii) after the end of the Call-off Contract, the Charges paid or payable in the last Contract Year during the Call-off Contract Period;</li> </ul>
<b>"Exempt Buyer"</b>	<p>a public sector purchaser that is:</p> <ul style="list-style-type: none"> <li>a) eligible to use the Framework Contract; and</li> <li>b) is entering into an Exempt Call-off Contract that is not subject to (as applicable) any of: <ul style="list-style-type: none"> <li>i) the Regulations;</li> <li>ii) the Concession Contracts Regulations 2016 (SI 2016/273);</li> <li>iii) the Utilities Contracts Regulations 2016 (SI 2016/274);</li> <li>iv) the Defence and Security Public Contracts Regulations 2011 (SI 2011/1848);</li> <li>v) the Remedies Directive (2007/66/EC);</li> </ul> </li> </ul>

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	<p>vi) Directive 2014/23/EU of the European Parliament and Council;</p> <p>vii) Directive 2014/24/EU of the European Parliament and Council;</p> <p>viii) Directive 2014/25/EU of the European Parliament and Council; or</p> <p>ix) Directive 2009/81/EC of the European Parliament and Council;</p>
<b>"Exempt Call-off Contract"</b>	the contract between the Exempt Buyer and the Supplier for Deliverables which consists of the terms set out and referred to in the Order Form incorporating and, where necessary, amending, refining or adding to the terms of the Framework Contract;
<b>"Exempt Procurement Amendments"</b>	any amendments, refinements or additions to any of the terms of the Framework Contract made through the Exempt Call-off Contract to reflect the specific needs of an Exempt Buyer to the extent permitted by and in accordance with any legal requirements applicable to that Exempt Buyer;
1. <b>"Existing IPR"</b>	2. <b>any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise);</b>
3. <b>"Exit Day"</b>	4. <b>shall have the meaning in the European Union (Withdrawal) Act 2018;</b>
5. <b>"Expiry Date"</b>	6. <b>the Framework Expiry Date or the Call-Off Expiry Date (as the context dictates);</b>
7. <b>"Expression of Interest"</b>	8. <b>an invitation to capable Suppliers to express an interest in bidding for the work as part of a Further Competition Procedure or to decline the opportunity prior to the Further Competition Procedure commencing. Suppliers who decline an Expression of Interest invitation will not be invited to take part in the corresponding Further Competition Procedure unless the scope or timings of this have substantially changed from the point the Expression of Interest was issued;</b>
9. <b>"Extension Period"</b>	10. <b>the Framework Optional Extension Period or the Call-Off Optional Extension Period as the context dictates;</b>
11. <b>"Fixed Price"</b>	12. <b>a Pricing Mechanism where Charges are agreed at a set amount in relation to a Contract, Deliverable(s) (or one or more element of the Deliverable(s)) or Milestones and the amount to be paid by the Buyer will not exceed the agreed fixed price;</b>
13. <b>"FOIA"</b>	14. <b>the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any</b>

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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	guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
15. "Force Majeure Event"	<p>16. any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including:</p> <ul style="list-style-type: none"> <li>a) riots, civil commotion, war or armed conflict;</li> <li>b) acts of terrorism;</li> <li>c) acts of government, local government or regulatory bodies;</li> <li>d) fire, flood, storm or earthquake or other natural disaster,</li> </ul> <p>17. but excluding any industrial dispute relating to the Supplier, the Supplier Staff or any other failure in the Supplier or the Subcontractor's supply chain;</p>
18. "Force Majeure Notice"	19. a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
20. "Framework Award Form"	21. the document outlining the Framework Incorporated Terms and crucial information required for the Framework Contract, to be executed by the Supplier and CCS;
22. "Framework Contract"	23. the agreement established between CCS and the Supplier under the Framework Award Form for the provision of the Deliverables to Buyers by the Supplier pursuant to the notice published on the Find a Tender Service;
24. "Framework Contract Period"	25. the period from the Framework Start Date until the End Date of the Framework Contract;
26. "Framework Expiry Date"	27. the scheduled date of the end of the Framework Contract as stated in the Framework Award Form;
28. "Framework Incorporated Terms"	29. the contractual terms applicable to the Framework Contract specified in the Framework Award Form;
30. "Framework Optional Extension Period"	31. such period or periods beyond which the Framework Contract Period may be extended as specified in the Framework Award Form;

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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32. "Framework Price(s)"	33. the price(s) applicable to the provision of the Deliverables set out in Framework Schedule 3 (Framework Prices);
34. "Framework Special Terms"	35. any additional terms and conditions specified in the Framework Award Form incorporated into the Framework Contract;
36. "Framework Start Date"	37. the date of start of the Framework Contract as stated in the Framework Award Form;
38. "Framework Tender Response"	39. the tender submitted by the Supplier to CCS and annexed to or referred to in Framework Schedule 2 (Framework Tender);
40. "Further Competition Procedure"	41. the further competition procedure described in Framework Schedule 7 (Call-Off Award Procedure);
42. "UK GDPR"	43. the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679);
44. "General Anti-Abuse Rule"	a) the legislation in Part 5 of the Finance Act 2013; and b) any future legislation introduced into parliament to counteract Tax advantages arising from abusive arrangements to avoid National Insurance contributions;
45. "General Change in Law"	46. a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
47. "Goods"	48. goods made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form;
49. "Good Industry Practice"	50. standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
51. "Government"	52. the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
53. "Government Data"	54. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority's Confidential Information, and which:  i) are supplied to the Supplier by or on behalf of the Authority; or



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		<b>ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract;</b>
<b>55. "Government Legal Department " or "GLD"</b>	<b>56.</b>	<b>Is a non-ministerial Government department which the Treasury Solicitor is in charge of;</b>
<b>57. "Group of Economic Operators"</b>	<b>58.</b>	<b>a group of economic operators acting jointly and severally to provide the Deliverables, which shall include a consortium;</b>
<b>59. "Guarantor"</b>	<b>60.</b>	<b>the person (if any) who has entered into a guarantee in the form set out in Joint Schedule 8 (Guarantee) in relation to this Contract;</b>
<b>61. "Halifax Abuse Principle"</b>	<b>62.</b>	<b>the principle explained in the CJEU Case C-255/02 Halifax and others;</b>
<b>63. "HMRC"</b>	<b>64.</b>	<b>Her Majesty's Revenue and Customs;</b>
<b>65. "Hourly Rate"</b>	<b>66.</b>	<b>the Pricing Mechanism where the Supplier will invoice the Buyer for Supplier Staff providing Deliverables (or one or more of the elements of the Deliverables) based on each Work Hour performed by the Supplier Staff's based on the applicable grade(s) of hourly rate as set out in Annex 1 Table 1 of Framework Schedule 3 (Framework Prices);</b>
<b>67. "ICT Policy"</b>	<b>68.</b>	<b>the Buyer's policy in respect of information and communications technology, referred to in the Order Form, which is in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;</b>
<b>69. "Impact Assessment"</b>	<b>70.</b>	<b>an assessment of the impact of a Variation request by the Relevant Authority completed in good faith, including:</b> <ul style="list-style-type: none"> <li><b>a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the Contract;</b></li> <li><b>b) details of the cost of implementing the proposed Variation;</b></li> <li><b>c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Framework Prices/Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;</b></li> <li><b>d) a timetable for the implementation, together with any proposals for the testing of the Variation; and</b></li> <li><b>e) such other information as the Relevant Authority may reasonably request in (or in response to) the Variation request;</b></li> </ul>

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71. "Implementation Plan"	72. the plan for provision of the Deliverables set out in Call-Off Schedule 13 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
73. "Indemnifier"	74. a Party from whom an indemnity is sought under this Contract;
75. "Independent Control"	76. where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of Processing but does so separately from the Controller providing it with Personal Data and "Independent Controller" shall be construed accordingly;
77. "Indexation"	78. the adjustment of an amount or sum in accordance with Framework Schedule 3 (Framework Prices) and the relevant Order Form;
79. "Information"	80. has the meaning given under section 84 of the Freedom of Information Act 2000;
81. "Information Commissioner"	82. the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
83. "Initial Period"	84. the initial term of a Contract specified in the Framework Award Form or the Order Form, as the context requires;
85. "Insolvency Event"	<p>86. with respect to any person, means:</p> <p>87. (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p>88. (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p>89. (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>90. (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p>

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	<p>91. (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>92. (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within 14 days;</p> <p>93. (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>94. (f) where that person is a company, a LLP or a partnership:</p> <p>95. (i) a petition is presented (which is not dismissed within 14 days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>96. (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>97. (iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>98. (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>99. (g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
100. "Installation Works"	101. all works which the Supplier is to carry out at the beginning of the Call-Off Contract Period to install the Goods in accordance with the Call-Off Contract;
102. "Intellectual Property Rights" or "IPR"	<p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p>

# Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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	c) all other rights having equivalent or similar effect in any country or jurisdiction;
103. "Invoicing Address"	104. the address to which the Supplier shall invoice the Buyer as specified in the Order Form;
105. "Inward Exchange"	106. an exchange of Buyer Personnel from the Buyer to the Supplier in accordance with the Secondment Agreement;
107. "IPR Claim"	108. any action, suit, claim, demand, Loss or other liability which the Relevant Authority or Central Government Body may suffer or incur as a result of any claim that the performance of the Deliverables infringes or allegedly infringes (including the defence of such infringement or alleged infringement) of any third party IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract;
109. "IR35"	110. the off-payroll rules requiring individuals who work through their company pay the same income tax and National Insurance contributions as an employee which can be found online at: <a href="https://www.gov.uk/guidance/ir35-find-out-if-it-applies">https://www.gov.uk/guidance/ir35-find-out-if-it-applies</a> ;
111. "Joint Controller Agreement"	112. the agreement (if any) entered into between the Relevant Authority and the Supplier substantially in the form set out in Annex 2 of Joint Schedule 11 ( <i>Processing Data</i> );
113. "Joint Controllers"	114. where two or more Controllers jointly determine the purposes and means of Processing;
115. "Jurisdiction"	116. the power, right or authority to interpret and apply the law where a matter falls within the court's jurisdiction or the authority of a sovereign power to govern and legislate or the limits or territory within which authority may be exercised;
117. "Key Staff"	118. the individuals (if any) identified as such in the Order Form;
119. "Key Sub-Contract"	120. each Sub-Contract with a Key Subcontractor;
121. "Key Subcontractor"	122. any Subcontractor: <ul style="list-style-type: none"> <li>a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or</li> <li>b) which, in the opinion of CCS or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or</li> <li>c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call-Off Contract,</li> </ul>

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	123. and the Supplier shall list all such Key Subcontractors in section 19 of the Framework Award Form and in the Key Subcontractor Section in Order Form;
124. "Know-How"	125. all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the applicable Start Date;
126. "Law"	127. any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the relevant Party is bound to comply;
128. "Losses"	129. all losses, liabilities, damages, costs, expenses (including legal and professional fees), disbursements, costs of investigation, litigation, settlement, judgment, interest, fines and penalties (including regulatory penalties, fines and expenses) whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
130. "Lots"	131. the number of lots specified in Framework Schedule 1 (Specification), if applicable;
132. "Management Charge"	133. the sum specified in the Framework Award Form payable by the Supplier to CCS in accordance with Framework Schedule 5 (Management Charges and Information);
134. "Management Information" or "MI"	135. the management information specified in Framework Schedule 5 (Management Charges and Information);
136. "MI Default"	137. means when two (2) MI Reports are not provided in any rolling six (6) month period
138. "MI Failure"	139. means when an MI report: <ul style="list-style-type: none"> <li>a) contains any material errors or material omissions or a missing mandatory field; or</li> <li>b) is submitted using an incorrect MI reporting Template; or</li> <li>c) is not submitted by the reporting date (including where a declaration of no business should have been filed);</li> </ul>
140. "MI Report"	141. means a report containing Management Information submitted to the Authority in accordance with Framework Schedule 5 (Management Charges and Information);

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142. "MI Reporting Template"	143. means the form of report set out in the Annex to Framework Schedule 5 (Management Charges and Information) setting out the information the Supplier is required to supply to the Authority;
144. "Milestone"	145. an event or task described in the Implementation Plan;
146. "Milestone Date"	147. the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
148. "Month"	149. a calendar month and "Monthly" shall be interpreted accordingly;
150. "National Insurance"	151. contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
152. "New IPR"	<p>a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same;</p> <p>153. but shall not include the Supplier's Existing IPR;</p>
154. "Occasion of Tax Non-Compliance"	<p>155. where:</p> <p>a) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or</p> <p>b) any Tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for Tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;</p>
156. "Open Book Data "	157. complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Call-Off Contract, including details and all assumptions relating to:

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	<p>a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;</p> <p>b) operating expenditure relating to the provision of the Deliverables including an analysis showing:</p> <ul style="list-style-type: none"> <li>i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;</li> <li>ii) staff costs broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each grade;</li> <li>iii) a list of Costs underpinning those rates for each grade, being the agreed rate less the Supplier Profit Margin; and</li> <li>iv) Reimbursable Expenses, if allowed under the Order Form;</li> </ul> <p>c) Overheads;</p> <p>d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;</p> <p>e) the Supplier Profit achieved over the Framework Contract Period and on an annual basis;</p> <p>f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;</p> <p>g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and</p> <p>h) the actual Costs profile for each Service Period;</p>
158. "Order"	159. means an order for the provision of the Deliverables placed by a Buyer with the Supplier under a Contract and "Ordered" shall be construed accordingly;
160. "Order Form"	161. a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call-Off Contract;
162. "Order Form Template"	163. the template in Framework Schedule 6 (Order Form Template and Call-Off Schedules);
164. "Other Contracting Authority"	165. any actual or potential Buyer under the Framework Contract;

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166. "Outward Exchange"	167. an exchange of Supplier Staff from the Supplier to the Buyer in accordance with the Secondment Agreement;
168. "Overhead"	169. those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
170. "Parliament"	171. takes its natural meaning as interpreted by Law;
172. "Party"	173. in the context of the Framework Contract, CCS or the Supplier, and in the context of a Call-Off Contract the Buyer or the Supplier. "Parties" shall mean both of them where the context permits;
174. "Performance Indicators" or "PIs"	175. the performance measurements and targets in respect of the Supplier's performance of the Framework Contract set out in Framework Schedule 4 (Framework Management);
176. "Personal Data"	177. has the meaning given to it in the UK GDPR;
178. "Personal Data Breach"	179. has the meaning given to it in the UK GDPR;
180. "Personnel"	181. all directors, officers, employees, agents, consultants and suppliers of CCS or the Buyer and/or their subcontractor and/or a Subprocessor (as detailed in Joint Schedule 11 (Processing Data)) engaged in the performance of its obligations under a Contract;
182. "Place of Performance"	183. the place or location at which the Deliverables, in whole or part, shall be performed;
184. "Prescribed Person"	185. a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', 24 November 2016, available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a> ;
186. "Pricing Mechanism"	187. the pricing mechanisms are (a) Hourly Rates, (b) Capped Prices, (c) Fixed Prices, and (d) a combination of one or more of these, as set out in this Schedule and as may be refined in the Further Competition Procedure;
188. "Processing"	189. has the meaning given to it in the UK GDPR;
190. "Processor"	191. has the meaning given to it in the UK GDPR;



## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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192. "Progress Meeting"	193. a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
194. "Progress Meeting Frequency"	195. the frequency at which the Supplier shall conduct a Progress Meeting in accordance with Clause 6.1 as specified in the Order Form;
196. "Progress Report"	197. a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;
198. "Progress Report Frequency"	199. the frequency at which the Supplier shall deliver Progress Reports in accordance with Clause 6.1 as specified in the Order Form;
200. "Prohibited Acts"	<p>a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>i) induce that person to perform improperly a relevant function or activity; or</li> <li>ii) reward that person for improper performance of a relevant function or activity;</li> </ul> <p>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract; or</p> <p>c) committing any offence:</p> <ul style="list-style-type: none"> <li>i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or</li> <li>ii) under legislation or common law concerning fraudulent acts; or</li> <li>iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body; or</li> </ul> <p>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
201. "Protective Measures"	202. appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Framework Schedule 9 (Cyber Essentials Scheme), if applicable, in the case of the

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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	Framework Contract or Call-Off Schedule 9 (Security), if applicable, in the case of a Call-Off Contract.
203. "Recall"	204. a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the right IPR rights) that might endanger health or hinder performance;
205. "Recipient Party"	206. the Party which receives or obtains directly or indirectly Confidential Information;
207. "Rectification Plan"	208. the Supplier's plan (or revised plan) to rectify it's breach using the template in Joint Schedule 10 (Rectification Plan) which shall include: <ul style="list-style-type: none"> <li>a) full details of the Default that has occurred, including a root cause analysis;</li> <li>b) the actual or anticipated effect of the Default; and</li> <li>c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable);</li> </ul>
209. "Rectification Plan Process"	210. the process set out in Clause 10.3.1 to 10.3.4 (Rectification Plan Process);
211. "Regulations"	212. the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
213. "Regulatory Compliance"	214. the Deliverables shall at all times be supplied in accordance with, amongst other things: <ul style="list-style-type: none"> <li>215. a) the legal and professional practice rules, codes, principles and proper interpretation of the law and court decisions in existence in the applicable jurisdiction at the date on which the Deliverable (or element of the Deliverables) is supplied to the Buyer; and</li> <li>216. b) the standards of professionalism expected by the professional body that registers and authorises individuals (for example, solicitors, registered European lawyers and registered foreign lawyers) and firms of solicitors (or equivalents) to practice and provide legal services in the applicable jurisdiction;</li> </ul>
217. "Reimbursable Expenses"	218. the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including: <ul style="list-style-type: none"> <li>a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which</li> </ul>

# Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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	<p>the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and</p> <p>b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;</p>
219. "Relevant Authority"	220. the Authority which is party to the Contract to which a right or obligation is owed, as the context requires;
221. "Relevant Authority's Confidential Information"	<p>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR);</p> <p>b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract; and</p> <p>222. information derived from any of the above;</p>
223. "Relevant Requirements"	224. all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
225. "Relevant Tax Authority"	226. HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
227. "Reminder Notice"	228. a notice sent in accordance with Clause 10.5 given by the Supplier to the Buyer providing notification that payment has not been received on time;
229. "Replacement Deliverables"	230. any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables following the Call-Off Contract End Date, whether those goods are provided by the Buyer internally and/or by any third party;
231. "Replacement Subcontractor"	232. a Subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Subcontractor of any such Subcontractor);
233. "Replacement Supplier"	234. any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
235. "Request For Information"	236. a request for information or an apparent request relating to a Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;

**Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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237. "Required Insurances"	238. the insurances required by Joint Schedule 3 (Insurance Requirements) or any additional insurances specified in the Order Form;
239. "Retained EU Law"	240. the category of UK Law created under Sections 2 to 4 of the European Union (Withdrawal) Act 2018 at the end of the transition period following the repeal of the savings to the European Communities Act 1972;
241. "SRA"	242. the Solicitors Regulatory Authority which regulates solicitors, law firms, non-lawyers who can be managers or employees of firms and other types of lawyer (e.g. registered foreign lawyers (RFLS) and registered European lawyers (RELs), in England and Wales (or equivalent organisation in other Jurisdictions);
243. "Satisfaction Certificate"	244. the certificate (materially in the form of the document contained in of Part B of Call-Off Schedule 13 (Implementation Plan and Testing) or as agreed by the Parties where Call-Off Schedule 13 is not used in this Contract) granted by the Buyer when the Supplier has met all of the requirements of an Order, Achieved a Milestone or a Test;
245. "Secondment"	246. the temporary transfer of one or more Supplier Staff from the Supplier to the Buyer to another position or employment, in accordance with the Secondment Agreement for the Secondment Charge; and "Secondee" is a person on a Secondment;
247. "Secondment Agreement"	248. the agreement entered into between the Supplier and Buyer regarding an Inward Exchange or an Outward Exchange or a Secondment which shall be in the form and format of Call-Off Schedule 25 (Secondment Agreement Template);
249. "Secondment Charge"	(a) the Charge for Supplier Staff on an Secondment which shall be no more than the base salary and any relevant pension contributions ordinarily payable by the Supplier in respect of a Secondee (exclusive of VAT);
250. "Securities"	251. are financial instruments, including equities and debt;
252. "Security Management Plan"	253. the Supplier's security management plan prepared pursuant to Call-Off Schedule 9 (Security) (if applicable);
254. "Security Policy"	255. the Buyer's security policy, referred to in the Order Form, in force as at the Call-Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
256. "Self Audit Certificate"	257. means the certificate in the form as set out in Framework Schedule 8 (Self Audit Certificate);
258. "Serious Fraud Office"	259. the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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260. "Service Levels"	261. any service levels applicable to the provision of the Deliverables under the Call Off Contract (which, where Call Off Schedule 14 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
262. "Service Period"	263. has the meaning given to it in the Order Form;
264. "Services"	265. services made available by the Supplier as specified in Framework Schedule 1 (Specification) and in relation to a Call-Off Contract as specified in the Order Form;
266. "Service Transfer"	267. any transfer of the Deliverables (or any part of the Deliverables), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
268. "Service Transfer Date"	269. the date of a Service Transfer;
270. "Sites"	271. any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:  a) the Deliverables are (or are to be) provided; or  b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;
272. "SME"	273. an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
274. "Special Terms"	275. any additional Clauses set out in the Framework Award Form or Order Form which shall form part of the respective Contract;
276. "Specific Change in Law"	277. a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start Date;
278. "Specification"	279. the specification set out in Framework Schedule 1 (Specification), as may, in relation to a Call-Off Contract, be supplemented by the Order Form;
280. "Standards"	281. any:  a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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	<ul style="list-style-type: none"> <li>b) standards detailed in the specification in Schedule 1 (Specification);</li> <li>c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time;</li> <li>d) relevant Government codes of practice and guidance applicable from time to time;</li> </ul>
282. "Start Date"	283. in the case of the Framework Contract, the date specified on the Framework Award Form, and in the case of a Call-Off Contract, the date specified in the Order Form;
284. "Statement of Requirements"	285. a statement issued by the Buyer detailing its requirements in respect of Deliverables issued in accordance with the Call-Off Procedure;
286. "Storage Media"	287. the part of any device that is capable of storing and retrieving data;
288. "Sub-Contract"	<p>289. any contract or agreement (or proposed contract or agreement), other than a Call-Off Contract or the Framework Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"> <li>a) provides the Deliverables (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</li> </ul>
290. "Subcontractor"	291. any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
292. "Subprocessor"	293. any third Party appointed to process Personal Data on behalf of that Processor related to a Contract;
294. "Supplier"	295. the person, firm or company identified in the Framework Award Form;
296. "Supplier Assets"	297. all assets and rights used by the Supplier to provide the Deliverables in accordance with the Call-Off Contract but excluding the Buyer Assets;
298. "Supplier Authorised Representative"	299. the representative appointed by the Supplier named in the Framework Award Form, or later defined in a Call-Off Contract;
300. "Supplier's Confidential Information"	a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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	<p>b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract;</p> <p>c) Information derived from any of (a) and (b) above;</p>
301. "Supplier's Contract Manager"	302. the person identified in the Order Form appointed by the Supplier to oversee the operation of the Call-Off Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
303. "Supplier Equipment"	304. the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Call-Off Contract;
305. "Supplier Marketing Contact"	306. shall be the person identified in the Framework Award Form;
307. "Supplier Non-Performance"	<p>308. where the Supplier has failed to:</p> <p>a) Achieve a Milestone by its Milestone Date;</p> <p>b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</p> <p>c) comply with an obligation under a Contract;</p>
309. "Supplier Profit"	310. in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of a Call-Off Contract for the relevant period;
311. "Supplier Profit Margin"	312. in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
313. "Supplier Relationship Manager"	<p>314. the individual appointed by GLD whose role encompasses:</p> <p>315. a) the management of the relationship between the Buyers and suppliers appointed to the framework (including the Supplier) in order to deliver maximum value: and</p> <p>316. b) working collaboratively with the Supplier and Other Contracting Authorities to establish and maintain objectives to ensure strategic alignment in the provision of the Deliverables.</p>

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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317. "Supplier Staff"	318. all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
319. "Supporting Documentation"	320. sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the Call-Off Contract detailed in the information are properly payable;
321. "Tax"	<p>a) all forms of taxation whether direct or indirect;</p> <p>b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;</p> <p>c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and</p> <p>d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</p> <p>322. in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;</p>
323. "Termination Notice"	324. a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination;
325. "Test Issue"	326. any variance or non-conformity of the Deliverables from their requirements as set out in a Call-Off Contract;
327. "Test Plan"	<p>328. a plan:</p> <p>a) for the Testing of the Deliverables; and</p> <p>b) setting out other agreed criteria related to the achievement of Milestones;</p>
329. "Tests"	330. any tests required to be carried out pursuant to a Call-Off Contract as set out in the Test Plan or elsewhere in a Call-Off Contract and "Tested" and "Testing" shall be construed accordingly;
331. "Third Party IPR"	332. Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
333. "Transferring Supplier Employees"	334. those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Service Transfer Date;



## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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335. "Transparency Information"	336. the Transparency Reports and the content of a Contract, including any changes to this Contract agreed from time to time, except for –  337. (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Relevant Authority; and  338. (ii) Commercially Sensitive Information;
339. "Transparency Reports"	340. the information relating to the Deliverables and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Call-Off Schedule 1 (Transparency Reports);
341. "Variation"	342. any change to a Contract;
343. "Variation Form"	344. the form set out in Joint Schedule 2 (Variation Form);
345. "Variation Procedure"	346. the procedure set out in Clause 24 (Changing the contract);
347. "VAT"	348. value added tax in accordance with the provisions of the Value Added Tax Act 1994;
349. "VCSE"	350. a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
351. "Worker"	352. any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
353. "Working Day"	354. any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Order Form;
355. "Work Day"	356. 8 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day; and
357. "Work Hours"	358. the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks.

## Joint Schedule 2 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 24 (Changing the Contract)

<b>1. Contract Details</b>		
2. This variation is between:	3. <b>[delete as applicable: CCS / Buyer]</b> ("CCS" "the Buyer")	
	4. And	
	5. <b>[insert name of Supplier]</b> ("the Supplier")	
6. Contract name:	7. <b>[insert name of contract to be changed]</b> ("the Contract")	
8. Contract reference number:	9. <b>[insert contract reference number]</b>	
<b>10. Details of Proposed Variation</b>		
11. Variation initiated by:	12. <b>[delete as applicable: CCS/Buyer/Supplier]</b>	
13. Variation number:	14. <b>[insert variation number]</b>	
15. Date variation is raised:	16. <b>[insert date]</b>	
17. Proposed variation	18.	
19. Reason for the variation:	20. <b>[insert reason]</b>	
21. An Impact Assessment shall be provided within:	22. <b>[insert number]</b> days	
<b>23. Impact of Variation</b>		
24. Likely impact of the proposed variation:	25. <b>[Supplier to insert assessment of impact]</b>	
<b>26. Outcome of Variation</b>		
27. Contract variation:	28. This Contract detailed above is varied as follows: <ul style="list-style-type: none"> <li><b>[CCS/Buyer to insert original Clauses or Paragraphs to be varied and the changed clause]</b></li> </ul>	
29. Financial variation:	30. Original Contract Value:	31. £ <b>[insert amount]</b>
	32. Additional cost due to variation:	33. £ <b>[insert amount]</b>
	34. New Contract value:	35. £ <b>[insert amount]</b>

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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1. This Variation must be agreed and signed by both Parties to the Contract and shall only be effective from the date it is signed by **[delete]** as applicable: CCS / Buyer]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation. Signed by an authorised signatory for and on behalf of the **[delete]** as applicable: CCS / Buyer]

Signature

Date

Name (in Capitals)

Address

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

Signature

Date

Name (in Capitals)

Address

## Joint Schedule 3 (Insurance Requirements)

### 1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain, or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule, any additional insurances required under a Call-Off Contract (specified in the applicable Order Form) ("**Additional Insurances**") and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than:
  - 1.1.1 the Framework Start Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
  - 1.1.2 the Call-Off Contract Effective Date in respect of the Additional Insurances.
- 1.2 The Insurances shall be:
  - 1.2.1 maintained in accordance with Good Industry Practice;
  - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
  - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
  - 1.2.4 maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Relevant Authority shall be indemnified in respect of claims made against the Relevant Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.
- 1.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Contract.

### 2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
  - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
  - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
  - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other

evidence of placing cover representing any of the Insurances to which it is a party.

### **3. What happens if you aren't insured**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Relevant Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4. Evidence of insurance you must provide**

- 4.1 The Supplier shall upon the Start Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Relevant Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

### **5. Making sure you are insured to the required amount**

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained at all times for the minimum limit of indemnity specified in this Contract and if any claims are made which do not relate to this Contract then the Supplier shall notify the Relevant Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity.

### **6. Cancelled Insurance**

- 6.1 The Supplier shall notify the Relevant Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Relevant Authority (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

### **7. Insurance claims**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or each Contract for which it may be entitled to claim under any of the Insurances. In the event that the Relevant Authority receives a claim relating to or arising out of a Contract or the Deliverables,

### **Joint Schedule 3 (Insurance Requirements)**

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the Supplier shall co-operate with the Relevant Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 7.2 Except where the Relevant Authority is the claimant party, the Supplier shall give the Relevant Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Relevant Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Relevant Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

**ANNEX: REQUIRED INSURANCES**

1. The Supplier shall hold the following standard insurance cover from the Framework Start Date in accordance with this Schedule:
  - 1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than
    - (a) Lot 1: ten million pounds (£10,000,000);
    - (b) Lot 2: one hundred million pounds sterling (£100,000,000);
  - 1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000); and
  - 1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than ten million pounds (£10,000,000).

## Joint Schedule 4 (Commercially Sensitive Information)

### 1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below and in the Order Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Relevant Authority's obligation to disclose Information in accordance with FOIA or Clause 16 (When you can share information), the Relevant Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
	N/A	N/A	N/A



## Joint Schedule 5 (Corporate Social Responsibility)

### 1. What we expect from our Suppliers

- 1.1 In September 2017, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government.  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/646497/2017-09-13\\_Official\\_Sensitive\\_Supplier\\_Code\\_of\\_Conduct\\_September\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf))
- 1.2 CCS expects its suppliers and subcontractors to meet the standards set out in that Code. In addition, CCS expects its suppliers and subcontractors to comply with the standards set out in this Schedule.
- 1.3 The Supplier acknowledges that the Buyer may have additional requirements in relation to corporate social responsibility. The Buyer expects that the Supplier and its Subcontractors will comply with such corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time.

### 2. Equality and Accessibility

- 2.1 In addition to legal obligations, the Supplier shall support CCS and the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under each Contract in a way that seeks to:
  - 2.1.1 eliminate discrimination, harassment or victimisation of any kind; and
  - 2.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

### 3. Modern Slavery, Child Labour and Inhumane Treatment

**"Modern Slavery Helpline"** means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 3.1 The Supplier:
  - 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
  - 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identify papers with the Employer and shall be free to leave their employer after reasonable notice;

- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world.
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world.
- 3.1.6 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;
- 3.1.8 shall prepare and deliver to CCS, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with Paragraph 3;
- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its Subcontractors to CCS, the Buyer and Modern Slavery Helpline.

#### **4. Income Security**

##### **4.1 The Supplier shall:**

- 4.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;
- 4.1.2 ensure that all Supplier Staff are provided with written and understandable Information about their employment conditions in respect of wages before they enter;
- 4.1.3 All workers shall be provided with written and understandable Information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;

- 4.1.4 not make deductions from wages:
  - (a) as a disciplinary measure
  - (b) except where permitted by law; or
  - (c) without expressed permission of the worker concerned;
- 4.1.5 record all disciplinary measures taken against Supplier Staff; and
- 4.1.6 ensure that Supplier Staff are engaged under a recognised employment relationship established through national law and practice.

## **5. Working Hours**

### **5.1 The Supplier shall:**

- 5.1.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;
- 5.1.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;
- 5.1.3 ensure that use of overtime used responsibly, taking into account:
  - (a) the extent;
  - (b) frequency; and
  - (c) hours worked;

by individuals and by the Supplier Staff as a whole;

- 1.2 The total hours worked in any seven day period shall not exceed 60 hours, except where covered by Paragraph 5.3 below.
- 1.3 Working hours may exceed 60 hours in any seven day period only in exceptional circumstances where all of the following are met:
  - 1.3.1 this is allowed by national law;
  - 1.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce;  
appropriate safeguards are taken to protect the workers' health and safety; and
  - 1.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.
- 1.4 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

## **2. Sustainability**

- 2.1 The supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

## **Joint Schedule 6 (Key Subcontractors)**

### **1. Restrictions on certain subcontractors**

- 1.1 The Supplier is entitled to sub-contract its obligations under the Framework Contract to the Key Subcontractors set out in the Framework Award Form.
- 1.2 The Supplier is entitled to sub-contract its obligations under a Call-Off Contract to Key Subcontractors listed in the Framework Award Form who are specifically nominated in the Order Form.
- 1.3 Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of CCS and the Buyer and the Supplier shall, at the time of requesting such consent, provide CCS and the Buyer with the information detailed in Paragraph 1.4. The decision of CCS and the Buyer to consent or not will not be unreasonably withheld or delayed. Where CCS consents to the appointment of a new Key Subcontractor then they will be added to section 18 of the Framework Award Form. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Order Form. CCS and the Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
  - 1.3.1 the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 1.3.2 the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 1.3.3 the proposed Key Subcontractor employs unfit persons.
- 1.4 The Supplier shall provide CCS and the Buyer with the following information in respect of the proposed Key Subcontractor:
  - 1.4.1 the proposed Key Subcontractor's name, registered office and company registration number;
  - 1.4.2 the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
  - 1.4.3 where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the CCS and the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
  - 1.4.4 for CCS, the Key Sub-Contract price expressed as a percentage of the total projected Framework Price over the Framework Contract Period;
  - 1.4.5 for the Buyer, the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Call Off Contract Period; and

## Joint Schedule 6 (Key Subcontractors)

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- 1.4.6 (where applicable) Credit Rating Threshold (as defined in Joint Schedule 7 (Financial Distress)) of the Key Subcontractor.
- 1.5 If requested by CCS and/or the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.4, the Supplier shall also provide:
  - 1.5.1 a copy of the proposed Key Sub-Contract; and
  - 1.5.2 any further information reasonably requested by CCS and/or the Buyer.
- 1.6 The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
  - 1.6.1 provisions which will enable the Supplier to discharge its obligations under the Contracts;
  - 1.6.2 a right under CRTPA for CCS and the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon CCS and the Buyer respectively;
  - 1.6.3 a provision enabling CCS and the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
  - 1.6.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to CCS and/or the Buyer;
  - 1.6.5 obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under the Framework Contract in respect of:
    - (a) the data protection requirements set out in Clause 14 (Data protection);
    - (b) the FOIA and other access request requirements set out in Clause 16 (When you can share information);
    - (c) the obligation not to embarrass CCS or the Buyer or otherwise bring CCS or the Buyer into disrepute;
    - (d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
    - (e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
  - 1.6.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on CCS and the Buyer under Clauses 10.4 (When CCS or the Buyer can end this contract) and 10.5 (What happens if the contract ends) of this Contract; and
  - 1.6.7 a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of CCS and the Buyer.

## Joint Schedule 7 (Financial Difficulties)

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Credit Rating Threshold"</b>	1 the minimum credit rating level for the Monitored Company as set out in Annex 2 and
<b>"Financial Distress Event"</b>	2 the occurrence or one or more of the following events: <ul style="list-style-type: none"><li>a) the credit rating of the Monitored Company dropping below the applicable Credit Rating Threshold;</li><li>b) the Monitored Company issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;</li><li>c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Monitored Party;</li><li>d) Monitored Company committing a material breach of covenant to its lenders;</li><li>e) a Key Subcontractor (where applicable) notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute; or</li><li>f) any of the following:<ul style="list-style-type: none"><li>i) commencement of any litigation against the Monitored Company with respect to financial indebtedness or obligations under a contract;</li><li>ii) non-payment by the Monitored Company of any financial indebtedness;</li><li>iii) any financial indebtedness of the Monitored Company becoming due as a result of an event of default; or</li></ul></li></ul>

	iv) the cancellation or suspension of any financial indebtedness in respect of the Monitored Company
	3 in each case which CCS reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of any Contract and delivery of the Deliverables in accordance with any Call-Off Contract;
<b>"Financial Distress Service Continuity Plan"</b>	4 a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with [each Call-Off] Contract in the event that a Financial Distress Event occurs;
<b>"Monitored Company"</b>	5 Supplier [the Guarantor] or any Key Subcontractor]
<b>"Rating Agencies"</b>	6 the rating agencies listed in Annex 1.

## **2. When this Schedule applies**

2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the Monitored Companies and the consequences of a change to that financial standing.

2.2 The terms of this Schedule shall survive:

- 2.2.1 under the Framework Contract until the later of (a) the termination or expiry of the Framework Contract or (b) the latest date of termination or expiry of any call-off contract entered into under the Framework Contract (which might be after the date of termination or expiry of the Framework Contract); and
- 2.2.2 under the Call-Off Contract until the termination or expiry of the Call-Off Contract.

## **3. What happens when your credit rating changes**

3.1 The Supplier warrants and represents to CCS that as at the Start Date the long term credit ratings issued for the Monitored Companies by each of the Rating Agencies are as set out in Annex 2.

3.2 The Supplier shall promptly (and in any event within five (5) Working Days) notify CCS in writing if there is any downgrade in the credit rating issued by any Rating Agency for a Monitored Company.

3.3 If there is any downgrade credit rating issued by any Rating Agency for the Monitored Company the Supplier shall ensure that the Monitored Company's auditors thereafter provide CCS within 10 Working Days of the end of each Contract Year and within 10 Working Days of written request by CCS (such requests not to exceed 4 in any Contract Year) with written calculations of the quick ratio for the Monitored Company as at the end of each Contract Year or



such other date as may be requested by CCS. For these purposes the "quick ratio" on any date means:

$$\frac{A + B + C}{D}$$

where:

- |   |  |
|---|--|
| A | is the value at the relevant date of all cash in hand and at the bank of the Monitored Company];   |
| B | is the value of all marketable securities held by the Supplier the Monitored Company determined using closing prices on the Working Day preceding the relevant date; |
| C | is the value at the relevant date of all account receivables of the Monitored]; and  |
| D | is the value at the relevant date of the current liabilities of the Monitored Company].  |

**3.4 The Supplier shall:**

- 3.4.1 regularly monitor the credit ratings of each Monitored Company with the Rating Agencies; and
- 3.4.2 promptly notify (or shall procure that its auditors promptly notify) CCS in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

3.5 For the purposes of determining whether a Financial Distress Event has occurred the credit rating of the Monitored Company shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the Monitored Company at or below the applicable Credit Rating Threshold.

**4. What happens if there is a financial distress event**

4.1 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if CCS becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and CCS shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 In the event that a Financial Distress Event arises due to a Key Subcontractor notifying CCS that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, CCS shall not

exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier ten (10) Working Days to:

- 4.2.1 rectify such late or non-payment; or
- 4.2.2 demonstrate to CCS's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Supplier shall and shall procure that the other Monitored Companies shall:

4.3.1 at the request of CCS meet CCS as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of each Contract and delivery of the Deliverables in accordance each Call-Off Contract; and

4.3.2 where CCS reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1) that the Financial Distress Event could impact on the continued performance of each Contract and delivery of the Deliverables in accordance with each Call-Off Contract:

- (a) submit to CCS for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event); and
- (b) provide such financial information relating to the Monitored Company as CCS may reasonably require.

4.4 If CCS does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to CCS within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is Approved by CCS or referred to the Dispute Resolution Procedure.

4.5 If CCS considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the Dispute Resolution Procedure.

4.6 Following Approval of the Financial Distress Service Continuity Plan by CCS, the Supplier shall:

- 4.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure

the continued performance each Contract and delivery of the Deliverables in accordance with each Call-Off Contract;

4.6.2 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 4.6.1, submit an updated Financial Distress Service Continuity Plan to CCS for its Approval, and the provisions of Paragraphs 4.5 and 4.6 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and

4.6.3 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify CCS and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 4.6.4.6.

4.8 CCS shall be able to share any information it receives from the Buyer in accordance with this Paragraph with any Buyer who has entered into a Call-Off Contract with the Supplier.

## **5. When CCS or the Buyer can terminate for financial distress**

5.1 CCS shall be entitled to terminate this Contract and Buyers shall be entitled to terminate their Call-Off Contracts for material Default if:

5.1.1 the Supplier fails to notify CCS of a Financial Distress Event in accordance with Paragraph 3.4;

5.1.2 CCS and the Supplier fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

5.1.3 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 4.6.3.

5.2 If the Contract is terminated in accordance with Paragraph 5.1, Clauses 10.6.1 and 10.6.2 of the Core Terms shall apply as if the Contract had been terminated under Clause 10.4.1.

## **6. What happens If your credit rating is still good**

6.1 Without prejudice to the Supplier's obligations and CCS' and the Buyer's rights and remedies under Paragraph 5, if, following the occurrence of a Financial Distress Event, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

6.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and

6.1.2 CCS shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

## **ANNEX 1: RATING AGENCIES**

Dun & Bradstreet

## ANNEX 2: CREDIT RATINGS & CREDIT RATING THRESHOLDS

### Part 1: Current Rating

Entity	Credit rating (long term)
Supplier	Lot 1 - 45 Lot 2 - 50
[Guarantor]	
[Key Subcontractor]	

## **Joint Schedule 8 (Guarantee) – NOT USED**

## Joint Schedule 10 (Rectification Plan)

Request for [Revised] Rectification Plan			
Details of the Default:	[Guidance: Explain the Default, with clear schedule and clause references as appropriate]		
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]		
Signed by [CCS/Buyer] :		Date:	
Supplier [Revised] Rectification Plan			
Cause of the Default	[add cause]		
Anticipated impact assessment:	[add impact]		
Actual effect of Default:	[add effect]		
Steps to be taken to rectification:	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	
Timescale for complete Rectification of Default	[X] Working Days		
Steps taken to prevent recurrence of Default	<b>Steps</b>	<b>Timescale</b>	
	1.	[date]	
	2.	[date]	
	3.	[date]	
	4.	[date]	
	[...]	[date]	



**Joint Schedule 10 (Rectification Plan)**

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Signed by the Supplier:		Date:	
<b>Review of Rectification Plan [CCS/Buyer]</b>			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for Rejection (if applicable)	[add reasons]		
Signed by [CCS/Buyer]		Date:	

## Joint Schedule 11 (Processing Data)

### Definitions

1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**“Processor  
Personnel”** all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under a Contract;

### Status of the Controller

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- (a) “Controller” in respect of the other Party who is “Processor”;
- (b) “Processor” in respect of the other Party who is “Controller”;
- (c) “Joint Controller” with the other Party;
- (d) “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

### Where one Party is Controller and the other Party its Processor

3. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.
4. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
5. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

## Call-Off Schedule 1 (Transparency Reports)

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- (a) a systematic description of the envisaged Processing and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:
- (a) Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall notify the Controller before Processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 14.3 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Personal Data Breach;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that :
    - (i) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this Joint Schedule 11, Clauses 14 (*Data protection*), 15 (*What you must keep confidential*) and 16 (*When you can share information*) of the Core Terms;
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by the Contract; and

## Call-Off Schedule 1 (Transparency Reports)

Call-Off Ref:

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- (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
  - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
7. Subject to paragraph 8 of this Joint Schedule 11, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Personal Data Breach.
8. The Processor's obligation to notify under paragraph 7 of this Joint Schedule 11 shall include the provision of further information to the Controller, as details become available.

## **Call-Off Schedule 1 (Transparency Reports)**

Call-Off Ref:

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9. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 7 of this Joint Schedule 11 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
  - (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Personal Data Breach; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
10. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 11. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - (a) the Controller determines that the Processing is not occasional;
  - (b) the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (c) the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
11. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
12. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
13. Before allowing any Subprocessor to Process any Personal Data related to the Contract, the Processor must:
  - (a) notify the Controller in writing of the intended Subprocessor and Processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Subprocessor which give effect to the terms set out in this Joint Schedule 11 such that they apply to the Subprocessor; and

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- (d) provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 14. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 15. The Relevant Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 11 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

**Where the Parties are Joint Controllers of Personal Data**

- 17. In the event that the Parties are Joint Controllers in respect of Personal Data under the Contract, the Parties shall implement paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 to this Joint Schedule 11.

**Independent Controllers of Personal Data**

- 18. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 19. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 20. Where a Party has provided Personal Data to the other Party in accordance with paragraph 18 of this Joint Schedule 11 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 21. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.
- 22. The Parties shall only provide Personal Data to each other:
  - (a) to the extent necessary to perform their respective obligations under the Contract;

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- (b) in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - (c) where it has recorded it in Annex 1 (*Processing Personal Data*).
- 23. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 24. A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.
- 25. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract (**“Request Recipient”**):
  - (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - (b) where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - (ii) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 26. Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:

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- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
27. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).
28. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).
29. Notwithstanding the general application of paragraphs 2 to 16 of this Joint Schedule 11 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 18 to 28 of this Joint Schedule 11.



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### Annex 1 - Processing Personal Data

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1 The contact details of the Relevant Authority's Data Protection Officer are:  
[REDACTED]
- 1.2 The contact details of the Supplier's Data Protection Officer are:  
[REDACTED]
- 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<b>The Relevant Authority is Controller and the Supplier is Processor</b>  The Parties acknowledge that in accordance with paragraph 3 to paragraph 16 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Supplier is the Processor of the following Personal Data
Duration of the Processing	January 2024 to 30 <sup>th</sup> November 2027
Nature and purposes of the Processing	Provision of legal services under this Legal Services Contract.  The purpose of the processing is as follows: <ul style="list-style-type: none"><li>• The legislative framework for market oversight enables CQC to commission an expert review of the provider's business if it considers that there is a significant financial risk. CQC may require a comprehensive review or may require a narrower review which focuses on particular aspects of legal, financial or commercial risk which require legal input. This may require very specialist advice, such as detailed commercial, contract, restructuring, insolvency legal expertise.</li></ul>

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	<p>There will be areas where the in-house team will need some external legal expertise to supplement the expertise of in-house CQC Legal Team to ensure that they arrive at appropriate and proportionate judgements on legal risk, financial risk and restructuring options as well as consequences.</p>
Type of Personal Data	<p>Staff of either Party: Full name, Workplace address, Workplace Phone Number, Workplace email address, Date of Birth, Photocopy of ID documents.</p> <p>CQC and Burges Salmon LLP: Name, email and telephone number of CQC and third party</p> <p>Service providers: Provider contact information &amp; Landlord name.</p>
Categories of Data Subject	<p>Staff of either party:</p> <p>Full name, Workplace address, Workplace Phone Number, Workplace email address, Contact details for lenders and stakeholders</p> <p>CQC and DLA Piper LLP: Name, email and telephone number of CQC and third party</p> <p>Service providers: Provider contact information &amp; Landlord name</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Union or Member State law to preserve that type of data</p>	<p>The Data Receiver shall not retain or process Shared Personal Data for longer than is necessary to carry out the purposes of of the service.</p> <p>Notwithstanding the above, the parties shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable to their respective industries.</p> <p>The Data Receiver shall ensure that any Shared Personal Data are returned to the Data Discloser or destroyed in accordance with the agreed deletion procedure</p>

## **Annex 2 - Joint Controller Agreement**

### **1. Joint Controller Status and Allocation of Responsibilities**

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 3-16 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 18-28 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Supplier/Relevant Authority]:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Deliverables where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Supplier's/Relevant Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

### **2. Undertakings of both Parties**

2.1 The Supplier and the Relevant Authority each undertake that they shall:

- (a) report to the other Party every [x] months on:

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- (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

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- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (i) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
  - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
  - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Personal Data Breach;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
- (j) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

## **3. Data Protection Breach**

3.1 Without prejudice to clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming

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aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and
- (b) all reasonable assistance, including:
  - (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
  - (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  - (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
  - (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (e) measures taken or proposed to be taken to address the Personal Data Breach; and

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- (f) describe the likely consequences of the Personal Data Breach.

### **4. Audit**

#### **4.1 The Supplier shall permit:**

- (a) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, to conduct, at the Relevant Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Deliverables.

#### **4.2 The Relevant Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.**

### **5. Impact Assessments**

#### **5.1 The Parties shall:**

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

### **6. ICO Guidance**

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

## **7. Liabilities for Data Protection Breach**

7.1 If financial penalties are imposed by the Information Commissioner on either the Relevant Authority or the Supplier for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) if in the view of the Information Commissioner, the Relevant Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Relevant Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Relevant Authority, then the Relevant Authority shall be responsible for the payment of such Financial Penalties. In this case, the Relevant Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Relevant Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
- (b) if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Relevant Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Relevant Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Relevant Authority and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (Resolving disputes).

7.2 If either the Relevant Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

- (a) if the Relevant Authority is responsible for the relevant Personal Data Breach, then the Relevant Authority shall be responsible for the Claim Losses;



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- (b) if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Relevant Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Relevant Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Relevant Authority.

## **8. Termination**

If the Supplier is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Relevant Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Supplier in accordance with Clause 10 of the Core Terms (*Ending the contract*).

## **9. Sub-Processing**

9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## **10. Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

## Joint Schedule 12 (Supply Chain Visibility)

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities;
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
"Supply Chain Information Report Template"	the document at Annex 1 of this Schedule 12; and
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

### 2. Visibility of Sub-Contract Opportunities in the Supply Chain

2.1 The Supplier shall:

- 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
- 2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
- 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;

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- 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Relevant Authority in the format and frequency as reasonably specified by the Relevant Authority; and
  - 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 12 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligation on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Effective Date.
- 2.4 Notwithstanding Paragraph 2.1, the Authority may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

### **3. Visibility of Supply Chain Spend**

- 3.1 In addition to any other management information requirements set out in the Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Relevant Authority which incorporates the data described in the Supply Chain Information Report Template which is:
- (a) the total contract revenue received directly on the Contract;
  - (b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and
  - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Relevant Authority from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1(a) –(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Relevant Authority issuing a replacement version. The Relevant

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Authority agrees to give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Authority.

## **Annex 1**

### **Supply Chain Information Report template**



Supply Chain Information  
Report templat

## **Call-Off Schedule 1 (Transparency Reports)**

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in the Framework Contract, within three (3) Months of the Start Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

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**Annex A: List of Transparency Reports**

<b>Title</b>	<b>Content</b>	<b>Format</b>	<b>Frequency</b>
[Performance and forward plan]	[ ]	[ ]	[ ]
[Call-Off Contract Charges and budget management]	[ ]	[ ]	[ ]
[Key Subcontractors]	[ ]	[ ]	[ ]
[Technical]	[ ]	[ ]	[ ]
[Performance management]	[ ]	[ ]	[ ]

### **Call-Off Schedule 3 (Continuous Improvement)**

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## **Call-Off Schedule 2 (Staff Transfer)**

Buyers will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Order Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.

If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract.

Part E (dealing with staff transfer on exit) shall apply to every Contract.

For further guidance on this Schedule contact Government Legal Department's Employment Law Group]

## Call-Off Schedule 3 (Continuous Improvement)

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### Definitions

In this Schedule, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**"Acquired Rights Directive"** the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;

**"Employee Liability"** all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding employment debts and unlawful deduction of wages including any PAYE and National Insurance Contributions;



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	<ul style="list-style-type: none"><li>f) employment claims whether in tort, contract or statute or otherwise;</li><li>g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li></ul>
<b>"Former Supplier"</b>	a supplier supplying services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Subcontractor of such supplier (or any Subcontractor of any such Subcontractor);
<b>"New Fair Deal"</b>	<p>the revised Fair Deal position set out in the HM Treasury guidance: "<i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i>" issued in October 2013 including:</p> <ul style="list-style-type: none"><li>(i) any amendments to that document immediately prior to the Relevant Transfer Date; and</li><li>(ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;</li></ul>
<b>"Old Fair Deal"</b>	HM Treasury Guidance " <i>Staff Transfers from Central Government: A Fair Deal for Staff Pensions</i> " issued in June 1999 including the supplementary guidance " <i>Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues</i> " issued in June 2004;
<b>"Partial Termination"</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 10.4 (When CCS or the Buyer can end this contract) or 10.6 (When the Supplier can end the contract);
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;

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#### **"Relevant Transfer Date"**

in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D: Pensions and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

#### **"Staffing Information"**

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

### Call-Off Schedule 3 (Continuous Improvement)

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- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Supplier's Final Supplier Personnel List"** a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;

**"Supplier's Provisional Supplier Personnel List"** a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**"Term"** the period commencing on the Start Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of the relevant Contract;

**"Transferring Buyer Employees"** those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Supplier Employees"** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

### INTERPRETATION

Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to CCS, the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier

### Call-Off Schedule 3 (Continuous Improvement)

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will be liable for satisfying any such claim as if it had provided the indemnity itself.

The provisions of Paragraphs 2.1 and 2.6 of Part A, Paragraph 3.1 of Part B, Paragraphs 1.5, 1.7 and 1.9 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of this Schedule (together “Third Party Provisions”) confer benefits on third parties (each such person a “Third Party Beneficiary”) and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.

Subject to Paragraph 2.2 above, a person who is not a Party to this Call-Off Contract has no right under the CRTPA to enforce any term of this Call-Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.

Any amendments or modifications to this Call-Off Contract may be made, and any rights created under Paragraph 2.2 above may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

#### Which parts of this Schedule apply

Only the following parts of this Schedule shall apply to this Call Off Contract:

**[Delete]** if not applicable to the Call Off Contract]

- [Part A (Staff Transfer at the Start Date – Outsourcing from the Buyer)]
- [Part B (Staff Transfer at the Start Date – Transfer from a Former Supplier)]
- [Part C (No Staff Transfer on the Start Date)]
- [Part D (Pensions) ]
  - [ - Annex D1 (CSPS) ]
  - [ - Annex D2 (NHSPS) ]
  - [ - Annex D3 (LGPS) ]
  - [ - Annex D4 (Other Schemes) ]
- Part E (Staff Transfer on Exit)

**Call-Off Schedule 3 (Continuous Improvement)**

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**Part A: - NOT USED Part B: - NOT USED**

## **Part C: No Staff Transfer on the Start Date**

### **1. What happens if there is a staff transfer**

The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.

If any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, notify the Former Supplier in writing; and

- the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification from the Supplier or the Subcontractor (as appropriate) or take such other reasonable steps as the Buyer or Former Supplier (as the case may be) it considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Buyer and/or the Former Supplier),, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from his/her employment or alleged employment.

If by the end of the 15 Working Day period referred to in Paragraph 0:

- no such offer of employment has been made;

- such offer has been made but not accepted; or

- the situation has not otherwise been resolved;

- the Supplier may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

Subject to the Supplier and/or the relevant Subcontractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.8 the Buyer shall:

- indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 0 made pursuant to the provisions of Paragraph 1.4

### Call-Off Schedule 3 (Continuous Improvement)

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provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and

procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 0 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, comply with such obligations as may be imposed upon it under Law.

Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.6, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

The indemnities in Paragraph 1.5:

shall not apply to:

any claim for:

- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or Subcontractor; or

any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and

### **Call-Off Schedule 3 (Continuous Improvement)**

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shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Subcontractor to the Buyer and, if applicable, Former Supplier within 6 months of the Start Date.

If the Supplier and/or the Subcontractor does not comply with Paragraph 0, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

### **Limits on the Former Supplier's obligations**

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.



## **Part D: Pensions – NOT USED**

## Call-Off Schedule 3 (Continuous Improvement)

### 1. Buyer's Rights

- 1.1 The Buyer and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), the Buyer may give CCS the right to enforce the Buyer's rights under this Schedule.

### 2. Supplier's Obligations

- 2.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 2.2 The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 2.3 In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
- 2.3.1 identifying the emergence of relevant new and evolving technologies;
  - 2.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
  - 2.3.3 new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
  - 2.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 2.4 The initial Continuous Improvement Plan for the first (1<sup>st</sup>) Contract Year shall be submitted by the Supplier to the Buyer for Approval within one hundred (100)

### **Call-Off Schedule 3 (Continuous Improvement)**

Call-Off Ref:

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Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.

- 2.5 The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
- 2.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 2.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
- 2.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
- 2.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
  - 2.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 2.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1<sup>st</sup>) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
- 2.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 2.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 2.12 At any time during the Contract Period of the Call-Off Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

## Call-Off Schedule 4 (Call Off Tender)



# ITT Appendix C – Quality Response Document

**THIS DOCUMENT IS TO BE COMPLETED BY THE TENDERER**

**NAME OF TENDERER: DLA Piper UK LLP**

This document should be completed and uploaded to the e-Sourcing Portal as outlined in the ITT Document.

This document is to allow Tenderers to respond to the Quality evaluation criteria as set out below. Please ensure you have read and fully understand the quality requirements.

Please do not PDF this document as we will use it to capture scores and comments.

### Evaluation Criteria 1: Experience and Understanding

Please provide details of when you have provided advice (in the form of Independent Business Reviews as detailed in the Statement of Requirements) to similar organisations within the last three years. The details should include evidence of understanding the challenges and constraints, specifically within the Adult Social Care sector. Please indicate the volume, nature and size of the businesses you have reviewed.

**Scoring mechanism: 0 – 4 as per ITT Table 5**

**Weighting/Max Score: 15%**

**Max Word Count: Maximum 5 sides of A4 (Font Arial Font Size 11)**

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## Evaluation Criteria 2: Customer Service

Please provide details of your firm's approach to customer service. The response should detail your approach to:

- The two main services that are required;
- The additional services that may be required as detailed in the Statement of Requirements.

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:** 5%

**Max Word Count:** Maximum 3.5 sides of A4 (Font Arial Font Size 11)

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### Evaluation Criteria 3: Quality Assurance

Please provide details of your firm's approach to quality assurance.

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:** 5%

**Max Word Count:** Maximum 3.5 sides of A4 (Font Arial Font Size 11)

[Redacted content]

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**Score:**

#### Evaluation Criteria 4: Social Value – Well Being

- What actions do you take to invest in the mental and physical wellbeing of your workforce.
- How do you engage with your workforce to identify the most important areas to address regards wellbeing?

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:** 10%

**Max Word Count:** Maximum 3.5 sides of A4 (Font Arial Font Size 11)

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### Evaluation Criteria 5: Resources

Please provide details on the quality and experience of the resources that you would deploy.

How you would typically go about resourcing any project and how you would propose to cover both English and potential international legal issues.

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:**15%

**Max Word Count:** Maximum 3.5 sides of A4 (Font Arial Font Size 11)

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## Evaluation Criteria 6: Specialist Advice

Please provide details of how you would provide specialist advice such as:

- Insolvency & restructuring, including reviews of lending IBRs or restructuring proposals
- Leasehold and landlord issues, particularly as they apply to the Health and Adult Social Care sector
- Lending structures and securities, and refinancing proposals, particularly as they apply to the Health and Adult Social Care sector
- Complex commercial and contract issues

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:** 10%

**Max Word Count:** Maximum 5 sides of A4 (Font Arial Font Size 11)

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## Evaluation Criteria 7: Reporting

Please provide samples/examples of business reviews and recommendations that you have provided in the past (can be redacted if necessary).

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:** 5%

**Max Word Count:** Maximum 3.5 sides of A4 (Font Arial Font Size 11)

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## Evaluation Criteria 8: Conflict of Interest

- Please provide details on how you currently manage actual or perceived conflicts of interests with any of the blocks of activities.
- Please provide details of any additional steps that the firm proposes on how to manage actual or perceived conflicts of interests.

**Scoring mechanism:** 0 – 4 as per ITT Table 5

**Weighting/Max Score:** 5%

**Max Word Count:** Maximum 3.5 sides of A4 (Font Arial Font Size 11)

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## Call-Off Schedule 5 (Pricing Details)



# ITT Appendix D - Price Response Document

**THIS DOCUMENT IS TO BE COMPLETED BY THE TENDERER**

**NAME OF TENDERER:** DLA Piper UK LLP

**CQC ASC 004 – Price Response Document (Overall Total Weighting = 30%):**

This document should be completed and uploaded to the e-Sourcing Portal as outlined in 20220128 CQC ASC 004 Attachment 1 - Invitation to Tender Framework Further Comp (ITT).v2.0

**The price evaluation for this section will be undertaken as outlined in the above ITT document and based upon the sum total of the day rates provided**

The standard terms and conditions of the Care Quality Commission (“CQC”) will apply as a consequence of this process. For the avoidance of doubt, CQC's standard payment terms are thirty (30) days from receipt of valid and undisputed invoice:

All submissions must be based upon these terms:

- All prices shall be fixed and firm for the duration of the contract;
- Include all other charges and overheads associated with the element being priced including travel and subsistence costs;
- All costs must be provided inclusive of VAT as outlined in the table below;
- All costs must be stated in Pounds Sterling.
- Maximum Day Rates based on a Working Day of eight (8) hours (excluding breaks) and are inclusive of travel & related expenses to the Base Location.
- The Supplier shall not charge for any more than eight (8) working hours in one day.

**Instructions to Tenderers:** Please complete and submit Table A - Price Table and Table B - Seconded Table below:

**Notes for Price Evaluation of Table A - Price Table**

The price evaluation seeks to establish that the Tenderer has provided appropriate rates in line with the nature of the service requirement. The maximum marks available for this part of the overall price evaluation will be 30 (i.e. 30% allocated to the overall price evaluation).

Tenderers will need to provide a daily rate cost for each employee grade listed in the price table. All rates provided must be fixed and this should be inclusive of all materials and associated costs. Rates must only be provided against the employee grades in the table and must not be changed to reflect any difference in grade names that the tenderer uses.

The highest mark allocation will be awarded to the Tenderer submitting the lowest total of the daily rate costs. The remaining Tenderers will receive a pro-rata mark based on the total of their daily rate costs compared to the lowest total of the daily rate costs. Price evaluation will be based on the sum total of the daily rate quoted in the Table A against the other daily rate sum total submitted using the following formula:

$$\text{Weighting Score} = \frac{\text{Lowest Total Daily Rate Cost}}{\text{Sum of all daily rate costs}} \times \text{Max Score (i.e. 30)}$$

## Tenderer's Total Daily Rate Costs

### **Table A Price table – Price Schedule**

#### **Table 1: Time and Materials**

The Supplier (and its Sub-Contractor) shall not be entitled to include any uplift for risks or contingencies within its day rates

The rates below shall not be subject to variation by way of Indexation

Staff Grade	Day Rate (£) Including VAT	Hourly Rate (£) Including VAT
Partner		

**NOTE: Cells in the day rate and the hourly rate column to be completed with the required data. Please also complete the sum total of the day rate cell.**

\*The sum total day rate above (Including VAT) will be the pricing information used to evaluate the submission proposed by the Tenderer for the term of the contract. The lowest price tender will be allocated maximum points under this criterion, and all other submissions scored as a direct ratio as stated at “Notes for price evaluation of Pricing Table” guidance.

### **Notes for Table B – Seconded Table**



This table will not form part of the price evaluation. However, the rates will be applied should CQC decide to implement the option of seconding an employee from the Tenderer.

**Table B – Seconded Table (No Weighting)**

**Tenderers are required to submit annual costs for the provision of secondees to CQC. As part of your submission, costs should be proposed on an inclusive and whole life basis, and should be competitive and sustainable for the full contract term.**

Tenderers will need to provide an annual cost for each employee grade listed in the price table. All costs provided must be fixed costs and this should be inclusive of all materials and associated costs. Costs must only be provided against the employee grades in the table and must not be changed to reflect any difference in grade names that the tenderer uses.

Staff Grade	Annual costs (£) Including VAT

**NOTE: Cells in the annual costs column to be completed with the required data**

\*The costs provided in the table above will not form part of the price evaluation but will be applied should CQC decide to implement the option of seconding an employee from the Tenderer.

## Call-Off Schedule 6 (ICT Services)

### 1. Definitions

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Buyer Property"</b>	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
<b>"Commercial off the shelf Software" or "COTS Software"</b>	Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms
<b>"Defect"</b>	any of the following: <ul style="list-style-type: none"><li>a) any error, damage or defect in the manufacturing of a Deliverable; or</li><li>b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</li><li>c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant</li></ul>

Deliverable from passing any Test required under this Call Off Contract; or

- d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;

**"Emergency Maintenance"**

ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;

**"ICT Environment"**

the Buyer System and the Supplier System;

**"Licensed Software"**

all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Call Off Contract, including any COTS Software;

**"Maintenance Schedule"**

has the meaning given to it in paragraph 8 of this Schedule;

**"Malicious Software"**

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**"New Release"**

an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

<b>"Open Source Software"</b>	computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
<b>"Operating Environment"</b>	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:  a) the Deliverables are (or are to be) provided; or b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or c) where any part of the Supplier System is situated;
<b>"Permitted Maintenance"</b>	has the meaning given to it in paragraph 8.2 of this Schedule;
<b>"Quality Plans"</b>	has the meaning given to it in paragraph 6.1 of this Schedule;
<b>"Sites"</b>	has the meaning given to it in Joint Schedule 1 (Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
<b>"Software"</b>	Specially Written Software COTS Software and non-COTS Supplier and third party Software;
<b>"Software Supporting Materials"</b>	has the meaning given to it in paragraph 9.1 of this Schedule;
<b>"Source Code"</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

**"Specially Written Software"**

any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;

**"Supplier System"**

the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

**2. When this Schedule should be used**

- 2.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

**3. Buyer due diligence requirements**

- 3.1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
- 3.1.1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
  - 3.1.2. operating processes and procedures and the working methods of the Buyer;
  - 3.1.3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
  - 3.1.4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
- 3.2. The Supplier confirms that it has advised the Buyer in writing of:

- 3.2.1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
- 3.2.2. the actions needed to remedy each such unsuitable aspect; and
- 3.2.3. a timetable for and the costs of those actions.

#### **4. Licensed software warranty**

- 4.1. The Supplier represents and warrants that:
  - 4.1.1. it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;
  - 4.1.2. all components of the Specially Written Software shall:
    - 4.1.2.1. be free from material design and programming errors;
    - 4.1.2.2. perform in all material respects in accordance with the relevant specifications contained in Call Off Schedule 14 (Service Levels) and Documentation; and
    - 4.1.2.3. not infringe any IPR.

#### **5. Provision of ICT Services**

- 5.1. The Supplier shall:
  - 5.1.1. ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or Upgrade;
  - 5.1.2. ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
  - 5.1.3. ensure that the Supplier System will be free of all encumbrances;
  - 5.1.4. ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;
  - 5.1.5. minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables;

#### **6. Standards and Quality Requirements**

- 6.1. The Supplier shall develop, in the timescales specified in the Order Form, quality plans that ensure that all aspects of the Deliverables are the subject

of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

- 6.2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
- 6.3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
- 6.4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
  - 6.4.1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
  - 6.4.2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
  - 6.4.3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

## 7. ICT Audit

- 7.1. The Supplier shall allow any auditor access to the Supplier premises to:
  - 7.1.1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
  - 7.1.2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 7.1.3. review the Supplier's quality management systems including all relevant Quality Plans.

## 8. Maintenance of the ICT Environment

- 8.1. If specified by the Buyer in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
- 8.2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 8.3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

- 8.4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

## 9. Intellectual Property Rights in ICT

### 9.1. Assignments granted by the Supplier: Specially Written Software

- 9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:

- 9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
- 9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").

- 9.1.2. The Supplier shall:

- 9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
- 9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
- 9.1.2.3. without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to



use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.

9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.

**9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer**

9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:

- a) of its own Existing IPR that is not COTS Software;
- b) third party software that is not COTS Software

9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grants to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.

9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:

9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and

9.2.3.2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.

9.2.4. Where the Supplier is unable to provide a license to the Supplier's Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.

9.2.5. The Supplier may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days' notice in writing if there is an Authority Cause which constitutes a material Default which, if capable

of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

**9.3. Licenses for COTS Software by the Supplier and third parties to the Buyer**

9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:

9.3.4.1. will no longer be maintained or supported by the developer;  
or

9.3.4.2. will no longer be made commercially available

**9.4. Buyer's right to assign/novate licences**

9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:

9.4.1.1. a Central Government Body; or

9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2.

**9.5. Licence granted by the Buyer**

9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors

provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).

#### 9.6. Open Source Publication

9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:

9.6.1.1. suitable for publication by the Buyer as Open Source; and

9.6.1.2. based on Open Standards (where applicable),

and the Buyer may, at its sole discretion, publish the same as Open Source.

9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:

9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;

9.6.2.2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;

9.6.2.3. do not contain any material which would bring the Buyer into disrepute;

9.6.2.4. can be published as Open Source without breaching the rights of any third party;

9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and

9.6.2.6. do not contain any Malicious Software.

9.6.3. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:

- 9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
- 9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.

## **9.7. Malicious Software**

- 9.7.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
- 9.7.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
- 9.7.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:
  - 9.7.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government 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; and
  - 9.7.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

## **10. [Supplier-Furnished Terms**

### **10.1. Software Licence Terms**

- 10.1.1.1. Terms for licensing of non-COTS third party software in accordance with Paragraph 9.2.3 are detailed in [insert reference to relevant Schedule].
- 10.1.1.2. Terms for licensing of COTS software in accordance with Paragraph 9.3 are detailed in [insert reference to relevant Schedule].

### **10.2. Software as a Service Terms**

10.2.1.1. Additional terms for provision of a Software as a Service solution are detailed in [insert reference to relevant Schedule].

### **10.3. Software Support & Maintenance Terms**

10.3.1.1. Additional terms for provision of Software Support & Maintenance Services are detailed in [insert reference to relevant Schedule]]

## Call-Off Schedule 7 (Key Supplier Staff)

- 1.1 The Order Form lists the key roles ("**Key Roles**") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date.
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
  - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 1.4.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
  - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
  - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and

- 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced.
- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

## Call-Off Schedule 8 (Business Continuity and Disaster Recovery)

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"BCDR Plan"	1 has the meaning given to it in Paragraph 2.2 of this Schedule;
"Business Continuity Plan"	2 has the meaning given to it in Paragraph 2.3.2 of this Schedule;
"Disaster"	3 the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
"Disaster Recovery Deliverables"	4 the Deliverables embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
"Disaster Recovery Plan"	5 has the meaning given to it in Paragraph 2.3.3 of this Schedule;
"Disaster Recovery System"	6 the system embodied in the processes and procedures for restoring the provision of Deliverables following the occurrence of a Disaster;
"Related Supplier"	7 any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	8 has the meaning given to it in Paragraph 6.3 of this Schedule; and
"Supplier's Proposals"	9 has the meaning given to it in Paragraph 6.3 of this Schedule;

### 2. BCDR Plan

2.1 The Buyer and the Supplier recognise that, where specified in Schedule 4 (Framework Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.



- 2.2 At least ninety (90) Working Days prior to the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a "**BCDR Plan**"), which shall detail the processes and arrangements that the Supplier shall follow to:
  - 2.2.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
  - 2.2.2 the recovery of the Deliverables in the event of a Disaster
- 2.3 The BCDR Plan shall be divided into three sections:
  - 2.3.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
  - 2.3.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
  - 2.3.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.4 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **3. General Principles of the BCDR Plan (Section 1)**

- 3.1 Section 1 of the BCDR Plan shall:
  - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
  - 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
  - 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;

- 3.1.6 contain a risk analysis, including:
  - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
  - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
  - (c) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
  - (d) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
  - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators (PI's) or Service levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. Business Continuity (Section 2)**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
  - 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
  - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
  - 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
  - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;
  - 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
  - 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

#### **5. Disaster Recovery (Section 3)**

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
  - 5.2.1 loss of access to the Buyer Premises;
  - 5.2.2 loss of utilities to the Buyer Premises;
  - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
  - 5.2.4 loss of a Subcontractor;
  - 5.2.5 emergency notification and escalation process;
  - 5.2.6 contact lists;

- 5.2.7 staff training and awareness;
- 5.2.8 BCDR Plan testing;
- 5.2.9 post implementation review process;
- 5.2.10 any applicable Performance Indicators (PI's) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI's) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
- 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.2.13 testing and management arrangements.

## **6. Review and changing the BCDR Plan**

- 6.1 The Supplier shall review the BCDR Plan:
  - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
  - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
  - 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for

addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.

- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

## **7. Testing the BCDR Plan**

- 7.1 The Supplier shall test the BCDR Plan:
  - 7.1.1 regularly and in any event not less than once in every Contract Year;
  - 7.1.2 in the event of any major reconfiguration of the Deliverables
  - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
  - 7.5.1 the outcome of the test;
  - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.5.3 the Supplier's proposals for remedying any such failures.

- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

## **8. Invoking the BCDR Plan**

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

## **9. Circumstances beyond your control**

The Supplier shall not be entitled to relief under Clause 20 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this

## Call-Off Schedule 9 (Security)

### Part A: Short Form Security Requirements

#### 1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Breach of Security"</b>	<p><b>1 the occurrence of:</b></p> <p>a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or</p> <p>b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,</p> <p><b>2 in either case as more particularly set out in the Security Policy where the Buyer has required compliance therewith in accordance with paragraph 2.2;</b></p>
<b>"Security Management Plan"</b>	<p><b>3 the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.</b></p>

## **2. Complying with security requirements and updates to them**

- 2.1 The Buyer and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.
- 2.2 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 2.3 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.4 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
- 2.5 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

## **3. Security Standards**

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
  - 3.2.1 is in accordance with the Law and this Contract;
  - 3.2.2 as a minimum demonstrates Good Industry Practice;
  - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; and
  - 3.2.4 where specified by the Buyer in accordance with paragraph 2.2 complies with the Security Policy and the ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the



Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

## **4. Security Management Plan**

### **4.1 Introduction**

- 4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

### **4.2 Content of the Security Management Plan**

- 4.2.1 The Security Management Plan shall:

- a) comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
- b) identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
- c) detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- d) be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- f) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and

- g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

#### **4.3 Development of the Security Management Plan**

- 4.3.1 Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within five (5) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than ten (10) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

#### **4.4 Amendment of the Security Management Plan**

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
  - a) emerging changes in Good Industry Practice;
  - b) any change or proposed change to the Deliverables and/or associated processes;
  - c) where necessary in accordance with paragraph 2.2, any change to the Security Policy;

- d) any new perceived or changed security threats; and
  - e) any reasonable change in requirements requested by the Buyer.
- 4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:
- a) suggested improvements to the effectiveness of the Security Management Plan;
  - b) updates to the risk assessments; and
  - c) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.
- 4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

## **5. Security breach**

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
- 5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:
    - a) minimise the extent of actual or potential harm caused by any Breach of Security;
    - b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;

- c) prevent an equivalent breach in the future exploiting the same cause failure; and
- d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

## Part B: Long Form Security Requirements

### 1. Definitions

1.1 In this Schedule the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Breach of Security"</b>	<p><b>4 means the occurrence of:</b></p> <ul style="list-style-type: none"><li>a) any unauthorised access to or use of the Goods and/or Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or</li><li>b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,</li></ul> <p><b>5 in either case as more particularly set out in the security requirements in the Security Policy where the Buyer has required compliance therewith in accordance with paragraph 3.4.3 d;</b></p>
<b>"ISMS"</b>	<p><b>6 the information security management system and process developed by the Supplier in accordance with Paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule; and</b></p>
<b>"Security Tests"</b>	<p><b>7 tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.</b></p>

## **2. Security Requirements**

2.1 The Buyer and the Supplier recognise that, where specified in Framework Schedule 4 (Framework Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.

2.2 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.

2.3 The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:

2.3.1 [insert security representative of the Buyer]

2.3.2 [insert security representative of the Supplier]

2.4 The Buyer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

2.5 Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.

2.6 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Government Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Government Data remains under the effective control of the Supplier at all times.

2.7 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Buyer.

2.8 The Buyer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Buyer's security provisions represents an unacceptable risk to the Buyer requiring immediate communication and co-operation between the Parties.

## **3. Information Security Management System (ISMS)**

3.1 The Supplier shall develop and submit to the Buyer, within twenty (20) Working Days after the Start Date, an information security management system for the purposes of this Contract and shall comply with the requirements of Paragraphs 3.4 to 3.6.

3.2 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.

3.3 The Buyer acknowledges that;

3.3.1 If the Buyer has not stipulated during a Further Competition that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and

3.3.2 Where the Buyer has stipulated that it requires a bespoke ISMS then the Supplier shall be required to present the ISMS for the Buyer's Approval.

3.4 The ISMS shall:

3.4.1 if the Buyer has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract;

3.4.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7;

3.4.3 at all times provide a level of security which:

- a) is in accordance with the Law and this Contract;
- b) complies with the Baseline Security Requirements;
- c) as a minimum demonstrates Good Industry Practice;
- d) where specified by a Buyer that has undertaken a Further Competition - complies with the Security Policy and the ICT Policy;
- e) complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) (<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>);
- f) takes account of guidance issued by the Centre for Protection of National Infrastructure (<https://www.cpni.gov.uk>);
- g) complies with HMG Information Assurance Maturity Model and Assurance Framework (<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm>);
- h) meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;

- i) addresses issues of incompatibility with the Supplier's own organisational security policies; and
    - j) complies with ISO/IEC27001 and ISO/IEC27002 in accordance with Paragraph 7;
  - 3.4.4 document the security incident management processes and incident response plans;
  - 3.4.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Deliverables of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Buyer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
  - 3.4.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Security Management Plan).
- 3.5 Subject to Paragraph 2 the references to Standards, guidance and policies contained or set out in Paragraph 3.4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.6 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.7 If the bespoke ISMS submitted to the Buyer pursuant to Paragraph 3.3.1 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Buyer. If the Buyer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.4 to 3.6 shall be deemed to be reasonable.



3.8 Approval by the Buyer of the ISMS pursuant to Paragraph 3.7 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

#### **4. Security Management Plan**

4.1 Within twenty (20) Working Days after the Start Date, the Supplier shall prepare and submit to the Buyer for Approval in accordance with Paragraph 4 fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.

4.2 The Security Management Plan shall:

- 4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);
- 4.2.2 comply with the Baseline Security Requirements and, where specified by the Buyer in accordance with paragraph 3.4.3 d, the Security Policy;
- 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
- 4.2.4 detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
- 4.2.5 unless otherwise specified by the Buyer in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, Information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
- 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);

- 4.2.7 demonstrate that the Supplier's approach to delivery of the Deliverables has minimised the Buyer and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offering from the G-Cloud catalogue);
  - 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Start Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
  - 4.2.9 set out the scope of the Buyer System that is under the control of the Supplier;
  - 4.2.10 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
  - 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
- 4.3 If the Security Management Plan submitted to the Buyer pursuant to Paragraph 4.1 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Buyer of the Security Management Plan. If the Buyer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

## **5. Amendment of the ISMS and Security Management Plan**

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:
- 5.1.1 emerging changes in Good Industry Practice;

- 5.1.2 any change or proposed change to the Supplier System, the Deliverables and/or associated processes;
  - 5.1.3 any new perceived or changed security threats;
  - 5.1.4 where required in accordance with paragraph 3.4.3 d, any changes to the Security Policy;
  - 5.1.5 any new perceived or changed security threats; and
  - 5.1.6 any reasonable change in requirement requested by the Buyer.
- 5.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:
- 5.2.1 suggested improvements to the effectiveness of the ISMS;
  - 5.2.2 updates to the risk assessments;
  - 5.2.3 proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
  - 5.2.4 suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, a Buyer request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Buyer.
- 5.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

## **6. Security Testing**

- 6.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Buyer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

- 6.2 The Buyer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer's test adversely affects the Supplier's ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer's test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Buyer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Buyer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Buyer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Baseline Security Requirements) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Buyer.
- 6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

## **7. Complying with the ISMS**

- 7.1 The Buyer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy where such compliance is required in accordance with paragraph 3.4.3 d.
- 7.2 If, on the basis of evidence provided by such security audits, it is the Buyer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy are not being achieved by the Supplier, then the Buyer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then

the Buyer shall have the right to obtain an independent audit against these standards in whole or in part.

- 7.3 If, as a result of any such independent audit as described in Paragraph the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Buyer in obtaining such audit.

## **8. Security Breach**

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.

- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:

- 8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:

- a) minimise the extent of actual or potential harm caused by any Breach of Security;
- b) remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Buyer Property and/or Buyer Assets and/or ISMS to the extent that this is within the Supplier's control;
- c) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Deliverables so as to meet the relevant Service Level Performance Indicators, the Supplier shall be granted relief against any resultant under-performance for such period as the Buyer, acting reasonably, may specify by written notice to the Supplier;
- d) prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
- e) supply any requested data to the Buyer (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Buyer's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and

- f) as soon as reasonably practicable provide to the Buyer full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.

8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Buyer.

## **9. Vulnerabilities and fixing them**

9.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Buyer's information.

9.2 The severity of threat vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:

- 9.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and

- 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:

- 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;

- 9.3.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or

9.3.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

9.4 The Specification and Mobilisation Plan (if applicable) shall include provisions for major version upgrades of all COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:

9.4.1 where upgrading such COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or

9.4.2 is agreed with the Buyer in writing.

9.5 The Supplier shall:

9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

9.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Contract Period;

9.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3.5;

9.5.5 from the date specified in the Security Management Plan provide a report to the Buyer within five (5) Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

9.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;

9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and

9.5.8 inform the Buyer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the ICT Environment and provide initial indications of possible mitigations.

9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph 9, the Supplier shall immediately notify the Buyer.

9.7 A failure to comply with Paragraph 9.3 shall constitute a Default, and the Supplier shall comply with the Rectification Plan Process.



## **Part B – Annex 1:**

### **Baseline security requirements**

#### **1. Handling Classified information**

- 1.1 The Supplier shall not handle Buyer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Buyer.

#### **2. End user devices**

- 2.1 When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the National Cyber Security Centre ("NCSC") to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme ("CPA").
- 2.2 Devices used to access or manage Government Data and services must be under the management authority of Buyer or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Buyer. Unless otherwise agreed with the Buyer in writing, all Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Buyer and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Buyer.

#### **3. Data Processing, Storage, Management and Destruction**

- 3.1 The Supplier and Buyer recognise the need for the Buyer's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Buyer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Buyer in accordance with Clause 14 (Data protection).
- 3.3 The Supplier shall:
- 3.3.1 provide the Buyer with all Government Data on demand in an agreed open format;

- 3.3.2 have documented processes to guarantee availability of Government Data in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Government Data held by the Supplier when requested to do so by the Buyer.

#### **4. Ensuring secure communications**

- 4.1 The Buyer requires that any Government Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA.
- 4.2 The Buyer requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

#### **5. Security by design**

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Government Data.
- 5.2 When designing and configuring the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification>) for all bespoke or complex components of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier).

#### **6. Security of Supplier Staff**

- 6.1 Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Government Data.
- 6.3 The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Government Data except where agreed with the Buyer in writing.
- 6.4 All Supplier Staff that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information

management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually.

- 6.5 Where the Supplier or Subcontractors grants increased ICT privileges or access rights to Supplier Staff, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

## **7. Restricting and monitoring access**

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

## **8. Audit**

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:

- 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
- 8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

- 8.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.

- 8.3 The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least 6 Months.

## **Part B – Annex 2 - Security Management Plan**

[ ]

## Call-Off Schedule 10 (Exit Management)

### 1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Exclusive Assets"</b>	1 Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables;
<b>"Exit Information"</b>	2 has the meaning given to it in Paragraph 3.1 of this Schedule;
<b>"Exit Manager"</b>	3 the person appointed by each Party to manage their respective obligations under this Schedule;
<b>"Exit Plan"</b>	4 the plan produced and updated by the Supplier during the Initial Period in accordance with Paragraph 4 of this Schedule;
<b>"Net Book Value"</b>	5 the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Framework Tender or Call-Off Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
<b>"Non-Exclusive Assets"</b>	6 those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes;
<b>"Registers"</b>	7 the register and configuration database referred to in Paragraph 2.2 of this Schedule;
<b>"Replacement Goods"</b>	8 any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Replacement Services"</b>	9 any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any

	of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
<b>"Termination Assistance"</b>	10 the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<b>"Termination Assistance Notice"</b>	11 has the meaning given to it in Paragraph 5.1 of this Schedule;
<b>"Termination Assistance Period"</b>	12 the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
<b>"Transferable Assets"</b>	13 Exclusive Assets which are capable of legal transfer to the Buyer;
<b>"Transferable Contracts"</b>	14 Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
<b>"Transferring Assets"</b>	15 has the meaning given to it in Paragraph 8.2.1 of this Schedule;
<b>"Transferring Contracts"</b>	16 has the meaning given to it in Paragraph 8.2.3 of this Schedule.

## 2. Supplier must always be prepared for contract exit

2.1 The Supplier shall within 30 days from the Start Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.

2.2 During the Contract Period, the Supplier shall promptly:

- 2.2.1 create and maintain a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and

2.2.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Deliverables

("Registers").

2.3 The Supplier shall:

2.3.1 ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and

2.3.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

2.4 Each Party shall appoint an Exit Manager within three (3) Months of the Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

### 3. Assisting re-competition for Deliverables

3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").

3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.

3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).

3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

#### **4. Exit Plan**

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer an Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- 4.3.1 a detailed description of both the transfer and cessation processes, including a timetable;
  - 4.3.2 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
  - 4.3.3 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
  - 4.3.4 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
  - 4.3.5 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
  - 4.3.6 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
  - 4.3.7 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
  - 4.3.8 proposals for the disposal of any redundant Deliverables and materials;
  - 4.3.9 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
  - 4.3.10 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 The Supplier shall:
- 4.4.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:
    - (a) every [six (6) months] throughout the Contract Period;and



- (b) no later than [twenty (20) Working Days] after a request from the Buyer for an up-to-date copy of the Exit Plan;
- (c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [ten (10) Working Days] after the date of the Termination Assistance Notice;
- (d) as soon as reasonably possible following, and in any event no later than [twenty (20) Working Days] following, any material change to the Deliverables (including all changes under the Variation Procedure); and

4.4.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

4.5 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

## 5. Termination Assistance

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

5.2.1 no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and

5.2.2 the Buyer shall notify the Supplier of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.

5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.

5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

## **6. Termination Assistance Period**

6.1 Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
- 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
- 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
- 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI's) or Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
- 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
- 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.

6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.

6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

## **7. Obligations when the contract is terminated**

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:

- 7.2.1 vacate any Buyer Premises;
- 7.2.2 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
- 7.2.3 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
  - (a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
  - (b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

## 8. Assets, Sub-contracts and Software

8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
- 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:
  - 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");

8.2.2 which, if any, of:

(a) the Exclusive Assets that are not Transferable Assets;  
and

(b) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services.

8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.

8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which

8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.

8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.

8.7 The Buyer shall:

8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising

under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.

8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

## **9. No charges**

9.1 Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

## **10. Dividing the bills**

10.1 All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;

10.1.2 the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## **Call-Off Schedule 11 (Installation Works) NOT USED**

### **1. When this Schedule should be used**

- 1.1. This Schedule is designed to provide additional provisions necessary to facilitate the provision Deliverables requiring installation by the Supplier.

### **2. How things must be installed**

- 2.1. Where the Supplier reasonably believes, it has completed the Installation Works it shall notify the Buyer in writing. Following receipt of such notice, the Buyer shall inspect the Installation Works and shall, by giving written notice to the Supplier:
  - 2.1.1. accept the Installation Works, or
  - 2.1.2. reject the Installation Works and provide reasons to the Supplier if, in the Buyer's reasonable opinion, the Installation Works do not meet the requirements set out in the Call-Off Order Form (or elsewhere in this Contract).
- 2.2. If the Buyer rejects the Installation Works in accordance with Paragraph 2.1.2, the Supplier shall immediately rectify or remedy any defects and if, in the Buyer's reasonable opinion, the Installation Works do not, within five (5) Working Days of such rectification or remedy, meet the requirements set out in the Call-Off Order Form (or elsewhere in this Contract), the Buyer may terminate this Contract for material Default.
- 2.3. The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Buyer in accordance with Paragraph 2.2.1 Notwithstanding the acceptance of any Installation Works in accordance with Paragraph 2.2), the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the specification in the Call-Off Order Form (or elsewhere in this Contract). No rights of estoppel or waiver shall arise as a result of the acceptance by the Buyer of the Installation Works.
- 2.4. Throughout the Contract Period, the Supplier shall have at all times all licences, approvals and consents necessary to enable the Supplier and the Supplier Staff to carry out the Installation Works.

## **Call-Off Schedule 12 (Clustering) NOT USED**

### **1. When you should use this Schedule**

- 1.1 This Schedule is required where various Other Contracting Authorities want to join with the Buyer to efficiently contract collectively under a single Call Off Contract rather than as separate individual Buyers under separate Call Off Contracts.

### **2. Definitions**

- 2.1 **"Cluster Members"** means a person named as such in the Annex A to this Schedule which shall be incorporated into the Order Form.

#### **Cluster Members benefits under the Contract**

- 2.2 The Buyer has entered into this Call-Off Contract both for its own benefit and for the benefit the Cluster Members.
- 2.3 The Cluster Members who are to benefit under the Call-Off Contract are identified Annex 1 to this Schedule which shall be included into Order Form.
- 2.4 Cluster Members shall have all of the rights granted to the Buyer under a Call-Off Contract. Accordingly, where the context requires in order to assure the Cluster Members rights and benefits under a Call-Off Contract, and unless the Buyer otherwise specifies, references to the Buyer in a Call-Off Contract (including those references to a Party which are intended to relate to the Buyer) shall be deemed to include a reference to the Cluster Members.
- 2.5 Each of the Cluster Members will be a third party beneficiary for the purposes of the CRTPA and may enforce the relevant provisions of a Call-Off Contract pursuant to CRTPA.
- 2.6 The Parties to a Call-Off Contract may in accordance with its provisions vary, terminate or rescind that Call-Off Contract or any part of it, without the consent of any Cluster Member.
- 2.7 The enforcement rights granted to Cluster Members under Paragraph 2.5 are subject to the following provisions:
- the Buyer may enforce any provision of a Call-Off Contract on behalf of a Cluster Member;
  - any claim from a Cluster Member under the CRTPA to enforce a Call-Off Contract shall be brought by the Buyer if reasonably practicable for the Buyer and Cluster Member to do so; and
  - the Supplier's limits and exclusions of liability in the Call-Off Contract shall apply to any claim to enforce a Call-Off Contract made by the Buyer on behalf of a Cluster Member and to any claim to enforce a Call-Off Contract made by a Cluster Member acting on its own behalf.

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2.8 Notwithstanding that Cluster Members shall each receive the same Services from the Supplier the following adjustments will apply in relation to how the Call-Off Contract will operate in relation to the Buyer and Cluster Members:

Services will be provided by the Supplier to each Cluster Member and Buyer separately;

the Supplier's obligation in regards to reporting will be owed to each Cluster Member and Buyer separately;

the Buyer and Cluster Members shall be entitled to separate invoices in respect of the provision of Deliverables;

the separate invoices will correlate to the Deliverables provided to the respective Buyer and Cluster Members;

the Charges to be paid for the Deliverables shall be calculated on a per Cluster Member and Buyer basis and each Cluster Member and the Buyer shall be responsible for paying their respective Charges;

the Service Levels and corresponding Service Credits (here having the meaning given to it in Call-Off Schedule 14) will be calculated in respect of each Cluster Member and Buyer, and they will be reported and deducted against Charges due by each respective Cluster Member and Buyer; and

such further adjustments as the Buyer and each Cluster Member may notify to the Supplier from time to time.



## **Annex A – Cluster Members**

The Deliverables shall also be provided for the benefit of the following Cluster Members:

Name of Cluster Member	Services to be provided	Duration	Special Terms
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

**Call-Off Schedule 18 (Background Checks)**

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## **Call-Off Schedule 13 (Implementation Plan and Testing) – NOT USED**

## Call-Off Schedule 14 (Service Levels)

### 1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

<b>"Critical Service Level Failure"</b>	has the meaning given to it in the Order Form;
<b>"Service Credits"</b>	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
<b>"Service Credit Cap"</b>	has the meaning given to it in the Order Form;
<b>"Service Level Failure"</b>	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
<b>"Service Level Performance Measure"</b>	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
<b>"Service Level Threshold"</b>	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

### 2. What happens if you don't meet the Service Levels

The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.

The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.

The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.

A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:

- 2.1.1 the Supplier has over the previous (twelve) 12 Month period exceeded the Service Credit Cap; and/or
- 2.1.2 the Service Level Failure:

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- exceeds the relevant Service Level Threshold;
  - has arisen due to a Prohibited Act or wilful Default by the Supplier;
  - results in the corruption or loss of any Government Data; and/or
  - results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- 2.1.3 the Buyer is entitled to or does terminate this Contract pursuant to Clause 10.4 (CCS and Buyer Termination Rights).

Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

- 2.1.4 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
- 2.1.5 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
- 2.1.6 there is no change to the Service Credit Cap.

### 3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this paragraph **Error! Reference source not found.** shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for material Default.

## **Part A: Service Levels and Service Credits**

### **1. Service Levels**

If the level of performance of the Supplier:

is likely to or fails to meet any Service Level Performance Measure; or

is likely to cause or causes a Critical Service Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 1.2.3 if a Service Level Failure has occurred, deduct the applicable Service Level Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for material Default).

### **Service Credits**

The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

## Annex A to Part A: Services Levels and Service Credits Table

**[Guidance Note:** The following are included by way of example only.  
Procurement-specific Service Levels should be incorporated]

Service Levels				Service Credit for each Service Period
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	
[Accurate and timely billing of Buyer	Accuracy /Timelines	at least 98% at all times	[ ]	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure
Access to Buyer support	Availability	at least 98% at all times	[ ]	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure

The Service Credits shall be calculated on the basis of the following formula:

[Example:

Formula: x% (Service Level Performance Measure) - x% (actual Service Level performance)	=	x% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer
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Worked example: 98% (e.g. Service Level Performance Measure requirement for accurate and timely billing Service Level) - 75% (e.g. actual performance achieved against this Service Level in a Service Period) = 23% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer]

## Part B: Performance Monitoring

### 2. Performance Monitoring and Performance Review

Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.

The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to paragraph **Error! Reference source not found.** of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:

- 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
- 3.1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
- 3.1.3 details of any Critical Service Level Failures;
- 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
- 3.1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
- 3.1.6 such other details as the Buyer may reasonably require from time to time.

The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:

- 3.1.7 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
- 3.1.8 be attended by the Supplier's Representative and the Buyer's Representative; and
- 3.1.9 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.



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The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.

The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

**Satisfaction Surveys**

The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

## Call-Off Schedule 15 (Call-Off Contract Management)

### 1. DEFINITIONS

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

**"Operational Board"** the board established in accordance with paragraph 4.1 of this Schedule;

**"Project Manager"** the manager appointed in accordance with paragraph 2.1 of this Schedule;

### 2. PROJECT MANAGEMENT

- 2.1 The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2 The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3 Without prejudice to paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

### 3. Role of the Supplier Contract Manager

- 3.1 The Supplier's Contract Manager's shall be:
- 3.1.1 the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
  - 3.1.2 able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;
  - 3.1.3 able to cancel any delegation and recommence the position himself; and
  - 3.1.4 replaced only after the Buyer has received notification of the proposed change.
- 3.2 The Buyer may provide revised instructions to the Supplier's Contract Manager's in regards to the Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.

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- 3.3 Receipt of communication from the Supplier's Contract Manager's by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

## **4. ROLE OF THE OPERATIONAL BOARD**

- 4.1 The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2 The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in the Order Form.
- 4.3 In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4 Each Party shall ensure that its board members shall make all reasonable efforts to attend board meetings at which that board member's attendance is required. If any board member is not able to attend a board meeting, that person shall use all reasonable endeavours to ensure that a delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5 The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

## **5. Contract Risk Management**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Call-Off Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
  - 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling project plans.
- 5.3 The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4 The Supplier will maintain a risk register of the risks relating to the Call Off Contract which the Buyer's and the Supplier have identified.

## **Annex: Contract Boards**

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

### **Call-Off Schedule 16 (Benchmarking) NOT USED**

### **Call-Off Schedule 17 (MOD Terms) – NOT USED**

### **Call-Off Schedule 18 (Background Checks)**

#### **1. When you should use this Schedule**

This Schedule should be used where Supplier Staff must be vetted before working on Contract.

#### **2. Definitions**

**“Relevant Conviction”** means any conviction listed in Annex 1 to this Schedule.

#### **3. Relevant Convictions**

3.1.1 The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.

3.1.2 Notwithstanding Paragraph 2.1.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):

- (a) carry out a check with the records held by the Department for Education (DfE);
- (b) conduct thorough questioning regarding any Relevant Convictions; and
- (c) ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the

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provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.

## **Annex 1 – Relevant Convictions**

## **Call-Off Schedule 19 (Scottish Law) – NOT USED**

## **Call-Off Schedule 20 (Call-Off Specification)**

This Schedule sets out the characteristics of the Deliverables that the Supplier will be required to make to the Buyers under this Call-Off Contract

### **APPENDIX A: STATEMENT OF REQUIREMENTS**

#### **1. Executive Summary**

The Care Quality Commission (CQC) is the independent regulator of health and social care in England. CQC make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage care services to improve. We do this by registering, monitoring, inspection and rating, enforcement and using our independent voice.

The Care Quality Commission (CQC) from 6<sup>th</sup> April 2015 has had a Statutory duty to operate a market oversight scheme ("MOS") to assess the financial sustainability of the most difficult to replace providers of Adult Social Care (ASC). This duty arises from the financial difficulties experienced by Southern Cross in 2011, at the time the largest provider of care homes in the UK. The purpose of the scheme is to protect people using care services and their families and carers from the anxiety and distress that may be caused by the failure of a major care provider "the Provider" and to minimise any disruption to their care. We do this by monitoring the performance and finances of the most significant social care providers in England and will give Local Authorities an early warning where we think one of these is at risk of failure and the delivery of services is going to be affected.

The MOS will identify where failure is likely, allowing the right people (Providers, shareholders, lenders and other stakeholders) to take the right action to potentially avoid failure and to support Local Authorities to plan in case failure does happen. Through its operation, the MOS aims not to pre-empt or precipitate provider failure and market exit, nor will the CQC or government bailout failing providers or act as a lender of last resort.

Based on eligibility criteria agreed in Parliament, there are currently approximately 60 providers in this marketplace who are in the MOS.

The purpose of this procurement is to establish a panel of no more than 6 Suppliers who may be requested to provide external legal expertise, when required. Details of the award process is contained in contract schedule 8: Award procedure of the legal services contract terms and conditions.

Due to the potentially complex, large and international nature of the businesses subject to the

review noted below, the firm engaged will need to have significant resources.

## 2. The Requirement

3. To provide external expertise, when required, to provide two main types of services:

4.

1. Independent Business Reviews

5.

6. The legislative framework for market oversight enables CQC to arrange for or require the provider to arrange for a person with appropriate expertise to carry out a review of the provider's business (an 'IBR') if it considers that there is a significant financial risk to the financial sustainability of the care provider (the Provider)'s business. The legislation allows CQC to recover such costs incurred in connection with the IBR from the provider (other than its administrative costs in making the arrangements).

7.

8. CQC may require a comprehensive review or may require a narrower review which focuses on particular aspects of legal, financial or commercial risk. This may require very specialist advice, such as detailed commercial, contract, restructuring, insolvency legal expertise. The range of services could include (but is not limited to) providing advice on matters such as:

9.

- The legal impact of a Provider's restructuring proposal in relation to the Provider's financial position and sustainability;
- In relation to options outlined within the analysis prepared by a Provider's Administrators/Insolvency Practitioner, the potential impact on the Provider's financial sustainability from a legal perspective;
- The implications of the terms of a contract on a Provider's financial sustainability;
- The implications of specific contingent liabilities (e.g. pending legal action) on the financial sustainability of a Provider;
- The implications of leasehold agreements on the financial sustainability of a Provider;
- The impact of a specific incident/event on a Provider's financial/insurance agreements and the subsequent implications for a Provider's financial sustainability;
- The implications of proposed/completed changes in group structure (including complexities with off-shore companies) and the impact of this on a Provider's financial sustainability;
- The impact of a Provider's lending agreements/securities on their financial sustainability; and
- The impact of a merger/acquisition on a Provider's financial sustainability.

10.

2. Consultancy Services

11.

12. Secondly, there will be areas where the Market Oversight team will need some external legal expertise to supplement the expertise of CQC's in-house legal services to ensure that CQC arrives at appropriate and proportionate judgements on legal and financial risks, restructuring options together with consequences on the same.

13.

14. These may include:

15.

- General advice, expertise or training in respect of CQC's ongoing obligations to assess the financial sustainability of providers within the scheme; and
- Assistance in respect of specified providers: issuing, analysing and risk assessing



legal, financial and commercial concerns.

16.

17. Core capabilities required include the ability to:

18.

- Provide sound judgement based on prior experiences of leading detailed and complicated legal matters in the Adult Social Care sector;
- Provide legal and commercial expertise and insight as highly specialised skills and knowledge will be required to comprehensively understand complex legal, commercial and financial matters.

19.

20. Added Value Services

21.

22. In addition to the two main services described above, there may be the requirement for a further two added value services:

23.

24. (1) Secondment

25.

26. Over time, there may be opportunities for a secondment directly into the CQC Market Oversight Team. Where this need arises, CQC would intend to approach any of the Suppliers who are on the panel to understand if this could be supported. The secondment opportunities are likely to be at below partner level for a period in line with the GLAS Framework Customer Guidance. The financial arrangements for the secondment would be outside of the value of this contract and CQC would seek to ensure that all firms on the panel had the opportunity to support a secondment at an appropriate time.

27.

28. (2) Training

29.

30. To provide training relating to Continuing Professional Development (CPD) of the Market Oversight Team as required. The training will invariably be done in house at CQC's offices in London or alternatively at a venue to be arranged by the host in London or virtually. The expectation is that the training requirement is unlikely to exceed four, 60 minute sessions per annum. The topics to be covered in the training will be determined by changes to the market that necessitate a learning update and will be agreed with a Supplier as and when the need arises. There will be no additional cost to CQC for the training with this being considered as an additional added value to the overall service in line with the GLAS Framework Agreement Customer Guidance.

31.

32. Tenderers are required to respond by detailing their proposal based on the above requirements and completing the pricing schedule below. Costs should be proposed on an inclusive and whole life basis, and should be competitive and sustainable for the full contract term.

33.

34. Note that the prices for the cost of a secondee will not form part of the financial evaluation. However, the costs will be applied should CQC decide to implement the option of seconding an employee from the Tenderer.

## Cost Envelope

### 35. Duration of Contract

Start Date	End Date	Extension Options (If Applicable)
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1 January 2024	31 December 2025	up to 11 months **
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*\*\*Please note the Framework Agreement's core terms state the following definition:*

- *Framework Agreement Start Date was 1 December 2021 and End Date is 30 November 2024*
- *the Definitions schedule defines the "Call-Off Expiry Date" as:*

*(a) the scheduled date of the end of a Call-Off Contract as stated in the Order Form;  
or*

*(b) 2 years after the End Date of the Framework Contract; whichever is earlier;*

*Our understanding is any Call-Off Contract Term cannot go beyond 30 November 2026. Our intended start date for the Call Off is 1 January 2024; therefore, the Call-Off Contract Term can only be for 2 years with an option to extend for 11 months. (1 January 2024 to 31 December 2025 with option to extend from 1 January 2026 to 30 November 2026).*

*However, the CCS website states that the Framework Agreement RM 6179 "will run for a period of 3 years, with an option to extend for a further 12 months".*

*If the Framework Agreement is extended until 30 November 2025, any Call-Off Contracts could last up until 30 November 2027. To keep our options open, we will draft Call-Off term provisions to allow for an extension of "up to 24 months" which would allow for 2+ 23 months years should the Framework Agreement be extended or for 2 years + 11 months if it is not.*

## **36. Authority Responsibilities**

CQC will appoint a representative to act as contract manager and the supplier will also nominate a lead contact. The CQC contract manager will hold regular meetings with the supplier.

## **37. Supplier Responsibilities**

The supplier shall:

- Appoint a contract and/or a programme manager to oversee the work and liaise with/report as required to CQC's programme manager;
- Provide senior level resource(s) to oversee the programme manager on an ongoing basis;
- Agree the nature and frequency of meetings required with CQC;
- Perform quality assurance on all aspects of the programme;
- Provide CQC with timely and ongoing evaluation and quality assurance information relating to the programme;
- Provide CQC with updates on costs and progress, on a weekly basis or as required by CQC;
- Be responsible for safe custody of any material provided by CQC for the fulfilment of

this contract, whilst in its care. Some of the information and data is highly commercially sensitive and therefore should be kept securely. There is also a requirement to enter into a Non-Disclosure Agreement between all parties.

### 38. Contract Management Arrangements

There will be a clear programme plan with deliverables which will be monitored by CQC and the supplier.

39. All contracts will be managed within an agreed timescale and cost envelope.

40.

41. Changes to cost envelope and timing to deliver contract to be agreed in writing at least one week before proposed changes are made.

Additionally, the supplier will be expected to:

- Communicate and meet (e.g. online) frequently with CQC as agreed;
- Work within agreed key performance indicators relating to quality, delivery of products and levels of service;
- Measure performance and provision of service on an ongoing basis against specific target dates;
- Provide reports on progress to the contract manager / programme manager;
- Attend key meetings in person to review progress and discuss the service, as required by the contract manager / programme manager
- Attend a post contract review with the CQC to review whether the objectives of the contract were met, to review the benefits achieved; and
- Identify any lessons learnt for future programmes.

### 42. Key Performance Indicators (KPIs)

Indicator	Measured by	Target	Review Frequency
43. Services provided on time 95% of the time.	Service delivery against milestones	95% timeliness target	Annually
All information provided in a format agreed by CQC 100% of the time.	On receipt of each document.	100% Accuracy	Annually
All information factual and accurate at first presentation 90% of the time.	Review of each report.	90% Accuracy	Annually
Response time to initial request.	Time of Response	No more than two working days.	Annually

#### **44. Skills and Knowledge Transfer**

- 45. There is a specific task requirement of knowledge transfer to the CQC team as set out
- 46. above.

## **Call-Off Schedule 21 (Northern Ireland Law) – NOT USED**

## **Call-Off Schedule 23 (HMRC Terms) – NOT USED**

## Call-Off Schedule 24 (Special Schedule)

### LEGAL SERVICES CONTRACT

Where the Services provided under a Call-Off Contract include Legal Services, the following provisions shall apply: -

**The Core Terms shall be amended as follows: -**

#### **3.1 All Deliverables**

- 3.1.3 The Supplier shall bring to the attention of the Buyer any conflict between:
- (a) the Core Terms or Special Terms in a Contract;
  - (b) Call-Off Schedule 24 (Special Schedule); and/or
  - (c) any of the requirements in Clause 3.1.1;
- and shall comply with the Buyer's decision on the resolution of any such conflict.

#### **9. Intellectual Property Rights (IPRs)**

9.1 Subject to Clause 9.2, each Party keeps ownership of its own Existing IPRs.

9.2 Unless otherwise provided in the Order Form:

- (a) Intellectual Property Rights in the output from the Deliverables shall vest in the Supplier who shall grant to the Buyer a non-exclusive, unlimited, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change, exploit and sub-license the same; and
- (b) the Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferrable worldwide licence to use, change and sub-licence Supplier's Existing IPR to enable it to both:
  - (i) receive and use the Deliverables; and
  - (ii) make use of the deliverables provided by a Replacement Supplier.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing. However, nothing shall prevent a Buyer from using any techniques, ideas, Know-How which the Buyer has gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in the disclosure of the Supplier's Confidential Information or an infringement of IPRs.

9.5 If there is an IPR Claim, the Supplier indemnifies CCS and each Buyer against all Losses incurred as a result.

9.6 If an IPR Claim is made: -

- (a) the Buyer shall notify the Supplier in writing of the IPR Claim and the Buyer shall not make any admissions which may be prejudicial to its defence or settlement. The Supplier shall at its own expense conduct all negotiations and any litigation arising out of or in connection with the IPR Claim provided always that the Supplier shall: -

- (i) consult CCS and the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (ii) take due and proper account of the interests of the CCS and the Buyer;
  - (iii) consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and
  - (iv) not settle or compromise the IPR Claim without the prior written approval of the Buyer (not to be unreasonably withheld or delayed).
- (b) or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
  - (i) obtain for CCS and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR; or
  - (ii) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the accuracy, completeness, reliability, functionality or performance of the Deliverables.

## **11. How much you can be held responsible for**

- 11.11 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Buyer to any document or information provided by the Supplier in its provision of the Deliverables, and no failure of the Buyer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligations of a professional Supplier employed in a buyer / supplier relationship.
- 11.12 Save as otherwise expressly provided, the obligations of the Buyer under the Contract are obligations of the Buyer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligations upon, or in any other way fetter or constrain the Buyer in any other capacity, nor shall the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the buyer to the Supplier.
- 11.13 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Buyer for the Deliverables supplied by that individual on behalf of the Supplier and the Buyer shall not bring any claim under the Contract against that individual or such service company in respect of the Contract save in the case of Fraud or any liability for death or personal injury. Nothing in this Clause 11.13 shall in any way limit the liability of the Supplier in respect of the Deliverables, and such liability shall be uncapped unless otherwise specified in the Order Form.

## **34 Resolving Disputes**

### **Complaint Handling**

- 34.8 If a Complaint is made by any Buyer, either Party shall notify the other Party in writing of the Complaint which if not resolved by operation of the Supplier's usual Complaint handling procedure within 5 Working Days of becoming aware of the Complaint and, if the Supplier is providing the written notice, such notice shall contain full details of the Supplier's plans to resolve the Complaint.
- 34.9 Without prejudice to any:
- (a) rights and remedies that a complainant may have at Law (including under a Contract), and
  - (b) obligation of the Supplier to take remedial action under the provisions of the Contract,



**Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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the Supplier shall use its best endeavours to resolve the Complaint within 10 Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

## **Call-Off Schedule 25 (Secondment Agreement)**



Secondment  
Agreement

## New Call-Off Schedule 26

**The Buyer's security policy: the CQC Information Security Standards (V1.0)**

[www.cqc.org.uk/sites/default/files/20190228%20CQC%20Information%20Governance%20Policies.pdf](http://www.cqc.org.uk/sites/default/files/20190228%20CQC%20Information%20Governance%20Policies.pdf)

## Call-Off Special Terms Schedule A: Service Delivery & Charges

- 1) In this Call-Off Special Terms Schedule A, the expressions identified below shall have the following meanings:

**“Legal Services Panel Contract”** means the Call-Off Contract for the provision of Legal services for CQC’s Market Oversight Scheme between the Buyer and each Supplier (entered into following a Further Competition Procedure in accordance with the provisions of the Framework Contract);

**“Care Provider”** means an organization that provides health and/or social care services and is registered with the Buyer;

**“Framework Contract”** means the framework agreement established between CCS and the Supplier (Framework Ref: RM6179);

**“IBR”** means as an independent business review as more particularly described in the Statement of Requirements;

**“Letter of Engagement”** means the written order submitted by the Buyer to the Supplier setting out its requirements in the forms set out in Annex 1 to the Call-Off Special Terms Schedule B;

**“Ordered Services”** means the specific services identified in a Letter of Engagement which are based on the Statement of Requirement;

- 2) The Supplier shall provide the Ordered Services to the Buyer in accordance with the provisions of the Legal Services Panel Contract and each Letter of Engagement.
- 3) In consideration of providing the Ordered Services, the Buyer shall pay the Supplier in accordance with the provisions of the Legal Services Panel Contract and each Letter of Engagement.
- 4) Where the Ordered Services are for an IBR, the Supplier acknowledges that pursuant to s55 (4) of the Care Act 2014, the Buyer may recover the Charges incurred in connection with the Supplier’s provision of the Ordered Services from the Care Provider. As such, the Supplier agrees to enter into a Letter of Engagement which shall be signed by the Buyer, the Supplier and the Care Provider to enable the Buyer to recover the Charges from the Care Provider.

# Call-Off Special Terms Schedule B - Process for ordering Deliverables

In this Call-Off Special Terms Schedule B, the expressions identified below shall have the following meanings:

“Legal Services Panel” means the Call-Off Contract for the provision of Legal Services for CQC Market Oversight Scheme between the Buyer and each Supplier (entered into following a Further Competition Procedure in accordance with the provisions of the Framework Contract);

“**Care Provider**” means an organization that provides health and/or social care services and is registered with the Buyer;

“**Order Award Procedure**” means the award process applied by the Buyer when selecting a Panel Supplier to source Ordered Services from, as set out in Annex 3 to this Call-Off Special Terms Schedule B – Order Award Procedure for Selection of Panel Suppliers;

“**Framework Contract**” means the framework agreement established between CCS and the Supplier (Framework Ref: RM6179);

“**IBR**” means as an independent business review as more particularly described in the Statement of Requirements;

“**Letter of Engagement**” means the written order submitted by the Buyer to a Panel Supplier setting out its specific requirements in the forms set out in Annex 1 to this Call-Off Special Terms Schedule B upon the award of work under clause 2 or clause 3 of this schedule;

“**Order**” means an order by the Buyer for a Panel Supplier to provide the Deliverables

“**Ordered Services**” means the specific services identified in an Order or a Letter of Engagement;

“**Panel**” means a panel made up of all the Suppliers that have been awarded Legal Services Contracts by the Buyer pursuant to the provisions of the Framework Contract;

“**Panel Supplier(s)**” means a supplier(s) on the Panel;

“**Regulations**” means the Public Contracts Regulations 2015 (as amended);

“**Statement of Requirements**” means the Buyer’s statement detailing its requirements issued for the further competition in accordance with the provisions of the Framework Contract;

## 1. OVERVIEW

- 1.1. If the Buyer can determine that its requirements can be met by any of the Panel Suppliers then the Buyer may place an Order in accordance with clause 2 and the Order Award Procedure set out in Annex 3 to this Call-Off Special Terms Schedule B - Order Award Procedure.
- 1.2. If the Buyer decides to source the Ordered Services through the Panel then it will award its Letter of Engagement in accordance with the procedure set out in this Schedule.

## **2. PLACING AN ORDER**

- 2.1. If the Buyer wishes to order Ordered Services under the Legal Services Panel Contract it shall:
  - 2.1.1. identify a Panel Supplier following the process in Annex 3 to this Schedule;
  - 2.1.2. submit a draft Letter of Engagement to the chosen Panel Supplier; and
  - 2.1.3. subject to the chosen Panel Supplier having sufficient capacity to meet the Buyer's requirements and a conflict of interest clearance undertaken by the chosen Panel Supplier, make an order to the chosen Panel Supplier by signing the Letter of Engagement.
  - 2.1.4. The above requirements must be complied with whenever placing an Order and no Order shall be placed with the same Panel Supplier consecutively to ensure fairness in the distribution of work. However, the Buyer reserves the right to depart from this process in exceptional circumstances such as a Panel Supplier's prior/historical knowledge of the Ordered Services.

### **3.2 Chosen Panel Supplier's Obligations**

- 3.2.1 The chosen Panel Supplier will in writing by the time and date specified by the Buyer at the same time as the submission of the Letter of Engagement in accordance with clause 2.1 above (which in any event shall not exceed three (3) Working Days) provide the Buyer with either:-
- 3.2.2 a statement to the effect that it does not wish to perform the Order; or
- 3.2.3 a response agreeing to deliver the Order and providing its estimated Charges. In the event that the chosen Panel Supplier perform the Order, it should submit, as a minimum:
  - a. email response subject line to comprise the Buyer's unique reference number and the Panel Supplier's name, so as to clearly identify the Panel Supplier;
  - b. a brief summary, in the email, stating whether or not the chosen Panel Supplier wishes to perform the Order; and

c. a proposal covering the requirements of the Order.

3.2.4 The chosen Panel Supplier shall ensure that any price(s) submitted in relation to an Order placed pursuant to this clause 2 shall be based on the price(s) contained in the Call-Off Tender.

### **3. NO ORDER**

3.1. Notwithstanding the fact that the Buyer has followed the procedure set out above in clause 2, it may cancel, postpone, delay or end the procedure without buying any Ordered Services. Nothing in this Legal Services Panel Contract shall oblige the Buyer to place any Order.

### **4. FORM OF ORDER**

4.1. Subject to clauses 1 to 3 above, the Buyer will place an Order with a Panel Supplier by serving an order in writing in substantially the form of Letter of Engagement or such similar or analogous form agreed with the Panel Supplier including systems of ordering involving, electronic mail or other on-line solutions.

4.2. Following receipt of a Letter of Engagement, the Panel Supplier shall promptly and in any event within a reasonable period determined by the Buyer and notified to it in writing at the same time as the submission of the Order or draft Letter of Engagement (which in any event shall not exceed 3 (three) Working Days) acknowledge receipt of the Letter of Engagement and either sign and return it or notify the Buyer forthwith if it is unable to fulfil the Order. The Letter of Engagement shall be signed on behalf of the Buyer, the Supplier, and in the case of an IBR, the Care Provider(s).

## **Annex 1 to Call-Off Special Terms Schedule B – Form of Letter of Engagement**

### **INDEPENDENT BUSINESS REVIEW SERVICES**

*[Guidance: the independent business review may involve a single care provider or multiple entities within a group, complete as appropriate]*

Care Quality Commission  
Private & Confidential  
Law Firm's name:

**[INSERT ADDRESS]**

**The Paying Company's name and address and the name(s) of care provider(s) and address(es):**

*[Guidance: where a company (e.g. a holding company) within the group of entities undergoing an independent business review under this Letter has agreed to reimburse the CQC for the costs of the IBR, add that entity as a party to this Letter together with the care provider(s)]*

[INSERT DETAILS]

CQC's Ref: [INSERT DETAILS]

Date: [INSERT]

Dear Sirs

**Letter of Engagement for the provision of an Independent Business Review of  
[INSERT GROUP'S NAME/NAME(S) OF CARE PROVIDER(S)]**

**1. Background**

1.1 We refer to the Legal Services Panel Contract for the provision of Legal Services for Market Oversight Scheme between (1) the Care Quality Commission ("the CQC") and (2) [INSERT PANEL SUPPLIER'S NAME] ("the Law Firm") dated [INSERT DATE] ("the Agreement") under which the Law Firm has been selected, in accordance with the Framework Contract (Framework Ref: RM6269) to provide the services described in Appendix 1 of this Letter of Engagement ("the Services").

1.2 The purpose of this Letter of Engagement ("Letter") is to commission the Law Firm to carry out an independent business reviews ("IBR") of [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE], [which are set out in Appendix 3]. For the purposes of this Letter:

- References to the Appendices are references to the appendices to this Letter; and
- The following Appendices shall form part of this Letter.
  - Appendix 1 – Scope of the Services
  - Appendix 2 – Charges

*[Guidance: if the independent business review involves multiple entities within a group, identify the entities in Appendix 3 and insert a collective group name below]*

- [Appendix 3 –INSERT GROUP'S NAME IF APPLICABLE)]

1.3 From 6<sup>th</sup> April 2015, CQC has been empowered by Section 55 of the Care Act 2014 to operate a market oversight scheme to assess the financial sustainability of the most difficult to replace providers of Adult Social Care.

1.4 The market oversight operating model and the legislative framework gives CQC the ability to commission the Services and recover from the care provider concerned the costs incurred for the provision of the Services.

1.5 This Letter sets out the Services that the Law Firm will provide in respect of the [INSERT NAME(S) OF CARE PROVIDER(S) NAME/ GROUP'S NAME IF APPLICABLE] to CQC and the terms and conditions on which those services will be



provided. The Law Firm's duty of care and responsibilities in connection with the Services are owed solely to CQC.

- 1.6 Any term defined in the Agreement shall have the same meaning when used in this Letter unless inconsistent with the context or otherwise defined herein.

## **2. Scope of the Services**

2.1 The Services are set out in Appendix 1 to this Letter.

2.2 The start date for the provision of the Services is [INSERT DATE]. The Services will be subject to the terms of this Letter including its Appendices.

2.3 The Law Firm shall provide reports with his fundings and conclusion as set out in Appendix 1 ("Reports")

## **3. Timetable and cooperation**

3.1 A detailed timetable ("the Timetable") for the delivery of the Services will be agreed following discussions between CQC and [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]. The initial stage of the engagement is expected to take place during the week commencing [INSERT DATE]. Following that, the Law Firm will submit a draft report to the authorised signatories of the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] ([INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executives") and CQC for confirmation of factual accuracy.

3.2 The Law Firm's ability to comply with the Timetable will be dependent upon full co-operation of [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executives and other relevant personnel of the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE], and upon the timely and accurate disclosure of all information that has been requested including but not limited to the information set out in Appendix 1.

3.3 In accordance with Section 55(5) of the Care Act 2014, the Law Firm may, on behalf of CQC, require access to the auditors and other professional advisors of the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE], and their work papers. [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executives must authorise the release of the same.

3.4 In the event that the Law Firm is unable to obtain the information required following a request, it shall promptly inform CQC and the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executives and advise of any impact on the Timetable.

## **4. Engagement Team**

The Law Firm will appoint a lead ("Engagement Leader") who will lead the team engaged in the delivery of the Services ("Engagement Team"). The day to day management will be the responsibility of the Engagement Leader. The Engagement Team will also include [INSERT NAMES OF INDIVIDUALS].

## **5. Charges**

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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- 5.1 The price for the Services will be based upon the degree of responsibilities and skills involved in delivering the Services, the time necessarily expended by the Law Firm and based on agreed rates within the Agreement and in accordance with the calculation and payment details set out in Appendix 2 ("the Charges"). In consideration of providing the Services, CQC shall pay to the Law Firm the Charges reasonably incurred by the Law Firm for the provision of the Services.
- 5.2 Under s55 (2)(b) of the Care Act 2014, CQC may arrange for, or require a care provider to arrange for, a person with appropriate expertise to carry out an independent review of the business. As a consequence of this provision under s55 (4) of the Care Act 2014, CQC is able to recover such costs incurred in connection with such arrangements from the [INSERT NAME OF THE CARE PROVIDER/ CARE PROVIDERS AS APPLICABLE] as the Charges. The [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] agree that they shall be [liable] [jointly and severally liable] to pay to CQC the Charges in full.
- 5.3 The [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] undertake(s) to pay the Charges in relation to this IBR of the [INSERT CARE PROVIDER'S NAME/ GROUP'S NAME IF APPLICABLE] to CQC in full. If the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] fail(s) to pay the Charges, CQC may recover the Charges from the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] pursuant to paragraph 5.2 above. The [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] acknowledge(s) and agree(s) that CQC will claim the full amount of the Charges from [it] [all or any of them].
- 5.4 The [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] shall be issued with invoices by CQC to enable CQC to recover the Charges incurred as described in paragraph 5.3 above. The [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] shall settle all invoices issued by CQC within 5 working days of receipt. Any failure by the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] to pay such invoices shall be a breach of this Letter
- 5.5 In the event that the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] dispute(s) any invoice to be paid by [it] [them] then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with the dispute resolution procedure in paragraph 10.
- 5.6 In the event that the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] fail(s) to settle any undisputed invoice within 5 working days, CQC may consider alternative courses of legal action to recover the Charges including but not limited to debt recovery.
- 5.7 By signing this Letter, the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] agree(s) that [it] [they] will reimburse CQC the Charges it has paid to the Law Firm in accordance with Section 55 (4) of the Care Act 2014.

**[Guidance: where a company (e.g. a holding company) within the group of entities undergoing an independent business review under this Letter has agreed to reimburse the CQC for the costs of the IBR, use the following texts below as paragraphs 5.3 to 5.7)]**

## Framework Schedule 6 (Order Form Template and Call-Off Schedules)

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- a) The Paying Company undertakes to pay the Charges in relation to this IBR of the [INSERT CARE PROVIDER'S NAME/ GROUP'S NAME IF APPLICABLE] to CQC in full. If the Paying Company fails to pay the Charges, CQC may recover the Charges from the [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] pursuant to paragraph 5.2 above. The [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] acknowledges and agrees that CQC will claim the full amount of the Charges from [it] [all or any of them].
- b) The Paying Company shall be issued with invoices by CQC to enable CQC to recover the Charges incurred as described in paragraph 5.3 above. The Paying Company shall settle all invoices issued by CQC within 5 working days of receipt. Any failure by the Paying Company to pay such invoices shall be a breach of this Letter.
- c) In the event that the Paying Company (or any of the [INSERT NAME OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE]) disputes any invoice to be paid by [it] [them] then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with the dispute resolution procedure in paragraph 10.
- d) In the event that the Paying Company fails to settle any undisputed invoice within 5 working days, CQC may consider alternative courses of legal action to recover the Charges including but not limited to debt recovery.
- e) By signing this Letter, the Paying Company and [INSERT NAME(S) OF THE CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] agree that they will reimburse CQC the Charges it has paid to the Law Firm in accordance with Section 55 (4) of the Care Act 2014.

## 6 Disclosure of Information

- 6.1 The [INSERT NAME(S) OF CARE PROVIDER(S)/ GROUP'S NAME IF APPLICABLE] Executives hereby authorise the disclosure to the CQC of any information relating to the affairs of the [INSERT NAME(S) OF CARE PROVIDER(S)/ GROUP'S NAME IF APPLICABLE] that may come into the Law Firm's possession. The [INSERT NAME(S) OF CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] will accept the risk and will not hold the Law firm liable if the draft Reports and Reports, any information contained in these documents, or the Law Firm's other communications with the CQC result in any adverse consequences, in relation to assessments made or otherwise, of [INSERT NAME(S) OF CARE PROVIDER/ CARE PROVIDERS IF APPLICABLE] and any [INSERT GROUP'S NAME IF APPLICABLE].

## 7. Confidentiality

- 7.1 The Reports (and Reports including those referred to under paragraph 6 above) will be provided solely for the confidential use of the CQC and the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executives and should not be made available to any party without the prior written consent of the CQC. The Law Firm will accept no responsibility and will deny any liability to any other party that is shown or gains access to the Reports and will be entitled to make this clear in those documents.
- 7.2 Any material or advice provided by the Law Firm under this Letter, save for the Reports, shall be provided solely for the confidential use of the CQC and should not be made available to any party without the prior written consent of the CQC.

## 8 Third Party Rights

A person who is not a party to the agreement set out in this Letter has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it.

## **9. Data Protection and Security**

The provisions in the Agreement on protection of information and data security and security policy shall apply to the Parties to this Letter.

## **10. Dispute Resolution**

10.1.1 If a dispute arises out of or in connection with this Letter ("Dispute") then depending on which parties are affected by the Dispute the procedure set out in this paragraph shall be followed:

10.1.2 any party shall give to the other(s) written notice of the Dispute, setting out its nature and full particulars together with relevant supporting documents ("Dispute Notice"). On service of the Dispute Notice, in the first instance the CQC's Manager of Market Oversight, the [INSERT SENIOR REPRESENTATIVE OF THE CARE PROVIDER(S)/ GROUP ENTITY] and an authorised member of the Law Firm's Engagement Team shall attempt in good faith to resolve the Dispute;

10.1.3 if the CQC's Manager of Market Oversight, [INSERT SENIOR REPRESENTATIVE OF THE CARE PROVIDER(S)/GROUP ENTITY] and the authorised member of the Law Firm's Engagement Team as applicable are unable to resolve the Dispute within 20 days of service of the Dispute Notice, the Dispute shall be referred to the CQC's Head of Market Oversight, the [INSERT MORE SENIOR REPRESENTATIVE OF THE CARE PROVIDER(S)/GROUP ENTITY] and the Law Firm's Engagement Leader who shall attempt to negotiate a settlement to it; and

10.1.4 if the Dispute is not resolved as a result of the processes in paragraphs 10.1.2 and 10.1.3 above within 40 days of service of the Dispute Notice, the Dispute shall be referred to the CQC's Director of Market Oversight, [INSERT SENIOR REPRESENTATIVE OF THE CARE PROVIDER(S)/GROUP ENTITY TO DEAL WITH FINAL STAGE OF DISPUTE RESOLUTION] and the authorised senior partner of the Law Firm who will attempt to settle it.

## **11 Counterparts**

The agreement set out in this Letter may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **12. Governing Law and Jurisdiction**

The agreement set out in this Letter shall be governed by and construed in accordance with English Law.

Signed for the Care Provider

As authorised signatory of [INSERT NAME OF CARE PROVIDER] I have read and understood the terms and conditions of this Letter including the Appendices and confirm that [INSERT NAME OF CARE PROVIDER] agrees to and accepts them, including but not limited to, the clauses relating to payment of the Charges to the Law Firm, liability to CQC and the limitation of liability of the Law Firm. Further, [INSERT NAME OF CARE PROVIDER] acknowledges that the duty of care and responsibilities of the Law Firm in connection with the work set out in this Letter are owed solely to the Care Quality Commission.

Authorised Signatory

Authorised Signatory

**[Guidance: where a company (e.g. a holding company) within the group of entities undergoing an independent business review under this Letter has agreed to reimburse the CQC and has been named as a party to this Letter, insert the following paragraph:]**

[Signed for the Paying Company]

As authorised signatory of [INSERT NAME OF PAYING COMPANY] I have read and understood the terms and conditions of this Letter including the Appendices and confirm that [INSERT NAME OF PAYING COMPANY] agrees to and accepts them, including but not limited to, the clauses relating to payment of the Charges to the Law Firm, liability to CQC and the limitation of liability of the Law Firm. Further, [INSERT NAME OF PAYING COMPANY] acknowledges that the duty of care and responsibilities of the Law Firm in connection with the work set out in this Letter are owed solely to the Care Quality Commission.

Authorised Signatory

Authorised Signatory

Signed for the Law Firm

As authorised signatory of [INSERT NAME OF LAW FIRM], I have read and understood the terms and conditions of this Letter including the Appendices and confirm that [INSERT NAME OF LAW FIRM] agrees to and accepts them.

Authorised Signatory

**Framework Schedule 6 (Order Form Template and Call-Off Schedules)**

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Authorised Signatory

Signed for the Care Quality Commission

As authorised signatory of the Care Quality Commission, I have read and understood the terms and conditions of this Letter and the Appendices and confirm that the Care Quality Commission agrees to and accepts them.

Authorised Signatory

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### APPENDICES:

Appendix 1 – Scope of the Services

Appendix 2 – Charges

*[Guidance: if the independent business review involves multiple entities within a group, identify the entities in Appendix 3 and insert their group name below]* [Appendix 3 –XXXXXX Group Entities]

## **Appendix 1 – Scope of the Services**

### **1. Introduction and objectives of the independent business review (“IBR”)**

Under section 55(2)(b) of the Care Act 2014, CQC may arrange for a person with appropriate professional expertise to carry out an independent review of the business of registered care providers within the Market Oversight Scheme.

**[INSERT REASONS FOR THE IBR AND OTHER BACKGROUND INFORMATION]**

The Law Firm will assess and advise on the following in relation to impact on the financial sustainability of **[INSERT NAME(S) OF CARE PROVIDER(S)/GROUP]:**

### **2. The Scope of the Services**

#### **2.1 The Law Firm will perform the following:**

**[INSERT DETAILS]**

### **3. Reporting**

At the conclusion of (each phase of) work the Law Firm will issue written reports setting out its findings and conclusions. The Law Firm may also summarise its findings and conclusions in presentations. The written reports and the handouts that accompany the presentations constitute “the Reports”: a term used in this Letter.

The Law Firm will provide the (**[INSERT NAME(S) OF CARE PROVIDER(S)/ GROUP'S NAME IF APPLICABLE]** Executives (as defined above) with drafts of the Reports prior to their release and request confirmation that the information they contain is factually accurate. Where the (**[INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]** Executives fail to supply confirmation, or where the Law Firm and the (**[INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]** Executive cannot agree on any matters, the Law Firm may draw attention to this in the final Reports it releases.

The Law Firm will also provide the CQC on request with drafts of the Reports for comment. The Law Firm will reflect any comments made by the CQC in the final Reports it releases only to the extent that it considers necessary.

In addition, the Law Firm will provide the (**[INSERT OF NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]** Executives and the CQC with periodic updates outlining progress made, highlighting issues coming to its attention and explaining how these issues have been or are to be resolved.

### **4. General Limitations on Scope**

#### **4.1 Focus of work**

The Services will be directed towards the affairs of the Care Provider(s) and **[INSERT GROUP'S NAME IF APPLICABLE]**, where material. The Law Firm's Reports will be prepared for the CQC and the Care Provider(s) and will not address any issues from the



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perspective of the other ([INSERT GROUP'S NAME IF APPLICABLE]), unless otherwise stated.

### 4.2 Management roles

No person representing the LawFirm will assume any responsibility for the management or direction of the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE], the sole responsibility of which remains with the directors and management of each entity. Attendance by a person representing the Law Firm at board meetings will not constitute a de facto or shadow directorship of that person and his or her attendance will be restricted to that part of the board meeting agenda relating to discussion of the Services.

### 4.3 Reliance on information

The Law Firm will not verify the reliability or accuracy of any information obtained from the ([INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]), although the Law Firm will draw attention to any inconsistencies that come to light that it considers to be material.

### 4.4 Completeness of scope

The scope of the Services may not be sufficient to address all of the [INSERT NAME(S) OF CARE PROVIDER(S)], and the other [INSERT GROUP'S NAME IF APPLICABLE] or the CQC's concerns or issues nor may it result in the identification of all matters that may be of interest to the [INSERT NAME(S) OF CARE PROVIDER(S)], or the [INSERT GROUP'S NAME IF APPLICABLE].

### 4.5 Forecasts

The [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executive will be responsible for the preparation of forecasts and for determining which assumptions to use. The Law Firm's work will not provide any assurance, express or implied that the forecasts will be achieved.

### 4.6 Third party advisers

When carrying out the Services the Law Firm may require sight of specialist third party (*modelling, pensions, valuation, taxation, legal*) advice and the Law Firm may need to rely on that advice. The [INSERT NAME(S) OF CARE PROVIDER(S)] will choose, appoint, monitor and pay such third party advisers and the Law Firm will have no responsibility in respect of those advisers or their work.

## 5. Initial information

The information to be provided to the Law Firm (in accordance with the Timetable) regarding [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] is as follows:

- 
- 

Any additional information required from [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] for the purposes of the Services will be requested by the Law Firm as needed.

## Appendix 2 – Charges

The Law Firm's fees will be calculated on the basis of time spent by the Engagement Team, evaluated at the hourly rates in operation when the work is performed.

The daily rates applicable to the Services at the time of this Letter are:

Grade	Day rate
Partner	
Legal Director/ Counsel or Equivalent	
Senior Solicitor / Senior Associate	
Solicitor /Associate	
Newly Qualified Solicitor /Associate, Junior Solicitor / Associate	
Trainee	
Paralegal / Legal Assistant	
Legal Project Manager	

### 2. Estimate of fees

The Law Firm estimates that its fees will amount to approximately £XXXXXX excluding outlays and VAT. However, if the assignment takes longer or involves more resource than is currently anticipated, the Law Firm may need to increase the estimate. (The Law Firm will advise the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE] Executives and the CQC of any potential increases as soon as they become apparent and will not proceed with further work without the consent of CQC and the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE].)

### 3. Payment

The Law Firm will render invoices at least every four weeks, including outlays and VAT. Invoices will be paid by the CQC in full, upon presentation of each invoice.

In accordance with Section 55(4) of the Care Act 2014, CQC will recover from the [INSERT NAME(S) OF CARE PROVIDER(S)] all costs that it will incur as a result of this Independent Business Review. The [INSERT NAME(S) OF CARE PROVIDER(S)] agree to pay CQC all such costs incurred by CQC.

**[Guidance: where a company (e.g. a holding company) within the group of entities undergoing an independent business review under this Letter has agreed to reimburse the CQC for the costs of the IBR, insert the following paragraph:]**

**In the event of a failure by the Paying Company to pay invoices as described above, the CQC, in accordance with Section 55(4) of the Care Act 2014, will recover from the [INSERT NAME(S) OF CARE PROVIDER(S)] (as defined above) all costs that it has incurred as a result of this Independent Business Review under this Letter. The [INSERT NAME(S) OF CARE PROVIDER(S)] agree(s) to pay the CQC all such costs incurred by the CQC. ]**

### 4. Assistance from the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE].

In order to keep fees to a minimum and to ensure that the Timetable can be achieved, the Law Firm may require the [INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME

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**IF APPLICABLE** to analyse internal management information or produce information that is not currently available. The Law Firm will endeavour to provide the **[INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]** Executives with advance notice of its requirements, and **[INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]** Executives should allocate sufficient management resources by the **[INSERT NAME(S) OF CARE PROVIDER(S) / GROUP'S NAME IF APPLICABLE]** to ensure that those requirements are met on a timely basis. Additional fees or outlays may arise as a result of difficulties in obtaining information.

[Appendix 3 –XXXXXX Group Entities]

**[Guidance: if the independent business review involves multiple entities within a group, name the entities in this appendix]**

## Annex 2 to Call-Off Special Terms Schedule B – Form of Letter of Engagement

### CONSULTANCY SERVICES

Care Quality Commission  
Private & Confidential  
Law Firm's name:

[INSERT ADDRESS]

CQC's Ref: [INSERT DETAILS]

Date: [INSERT DETAILS]

Dear Sirs

**Letter of Engagement for the provision of Consultancy Services of relating to [title of service]**

#### 1. Background

1.1 We refer to the Legal Services Panel Contract for the provision of Legal Services for Market Oversight between (1) the Care Quality Commission ("the CQC") and (2) [INSERT PANEL SUPPLIER'S NAME] ("the Law Firm") dated [INSERT DATE] ("the Agreement") under which the Law Firm has been selected, in accordance with the Framework Contract (Framework Ref: RM6269) to provide the services as described in Appendix 1 of this Letter of Engagement ("the Services").

1.2 The purpose of this Letter of Engagement ("Letter") is to commission the Law Firm to carry out consultancy work relating to [title of service], [which are set out in Appendix 1].

For the purposes of this Letter:

- References to the Appendices are references to the appendices to this Letter; and
- The following Appendices shall form part of this Letter.
  - Appendix 1 – Scope of the Services
  - Appendix 2 – Charges

1.3 From 6<sup>th</sup> April 2015, CQC has been empowered by Section 55 of the Care Act 2014 to operate a market oversight scheme to assess the financial sustainability of the most difficult to replace providers of Adult Social Care.

1.4 The market oversight operating model and the legislative framework gives CQC the ability to commission the Services and recover from the care provider concerned the costs incurred for the provision of the Services.

1.5 This Letter sets out the Services that the Law Firm will provide in respect of the consultancy work relating to [title of service], provided to CQC and the terms and

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conditions on which those services will be provided. The Law Firm's duty of care and responsibilities in connection with the Services are owed solely to CQC.

- 1.6 Any term defined in the Agreement shall have the same meaning when used in this Letter unless inconsistent with the context or otherwise defined herein.

## 2 Scope of the Services

- 2.1 The services are set out in Appendix 1 to this Letter of Engagement ("the Services").
- 2.2 Any work carried out by the Law Firm from **[insert date]** and prior to the date of this Letter of Engagement in connection with the services described in Appendix 1 will be regarded as forming part of the Services. The Services will be subject to the terms of this Letter of Engagement and its Appendices, and the terms of the Agreement.

A detailed timetable ("the Timetable") for the delivery of the Services will be agreed following discussions between CQC and the Law Firm.

The Law Firm will appoint a lead ("Engagement Leader") who will lead the team engaged in the delivery of the Services ("Engagement Team"). The day to day management will be the responsibility of the Engagement Leader. The Engagement Team will also include **[INSERT NAMES OF INDIVIDUALS]**.

- 5.1 In consideration of providing the Services, CQC shall pay to the Law Firm all charges reasonably incurred by the Law Firm for the provision of the Services. These charges will be based upon the agreed rates in the Agreement, and the degree of responsibilities and skills involved, and the time necessarily occupied by the Law Firm. Details regarding the calculation and payment of the charges are set out in Appendix 2. By signing this Letter of Engagement, CQC agrees that it will pay such invoices rendered by the Law Firm. A person who is not a party to the agreement set out in this Letter of Engagement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it. The agreement set out in this Letter of Engagement shall be governed by and construed in accordance with English Law. The agreement set out in this Letter of Engagement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

As authorised signatory of the CQC, I have read and understood the terms and conditions of this Letter of Engagement including its Appendices, and confirm that CQC agrees to and accepts them. Further, CQC acknowledges that the duty of care and responsibilities of the Law Firm in connection with the work set out in this letter are owed solely to the CQC.

Signed for the Care Quality Commission:

Name:

Position:

Date:

As authorised signatory of the Law Firm, I have read and understood the terms and conditions of this Letter of Engagement including its Appendices and confirm that the Law Firm agrees to and accepts them.

Signed for [insert registered name of the Law Firm]:

Name:

Position:

Date:

## **APPENDICES:**

Appendix 1 – Scope of the Services

Appendix 2 – Charges

## **Appendix 1 – Scope of the Services**

### **1. Introduction and objectives of Project**

*[Short background paragraph to cover:*

- Purpose of the work
- What **CQC** expects
- Entities to be included in, or excluded from, the work
- Locations to be visited; set out material locations that will not be visited

### **2. The Scope of the Services**

The Law Firm will perform the following:

- [Insert standard matters to be agreed with CQC]
- [Specify the extent of verification work (if any)]

The Law Firm shall raise with CQC all matters that it considers of significance in the context of the Services as they arise during the course of its work.

### **3. Reporting**

At the conclusion of (each phase of) work the Law Firm will issue written reports setting out its findings and conclusions. The Law Firm may also summarise its findings and conclusions in presentations. The written reports and the handouts that accompany the presentations constitute the Reports.

Where reports relate to a Care Provider, the Law Firm will provide the Care Provider with drafts of the Reports prior to their release and request confirmation that the information they contain is factually accurate. Where the Care Provider fails to supply confirmation, or where the Law Firm and the Care Provider cannot agree on any matters, the Law Firm may draw attention to this in the Reports as finally released.

The Law Firm will also provide CQC on request with drafts of the Reports, for comment. The Law Firm will reflect any comments made by the CQC in the Reports as finally released only to the extent that it considers necessary.

In addition, the Law Firm will provide CQC with periodic updates outlining progress made, highlighting issues coming to its attention and explaining how these issues have been or are to be resolved.

### **4. General limitations on scope**

*4.1 Focus of work - To be agreed*

*4.2 Management roles - To be agreed*

*4.3 Reliance on information - To be agreed*

*4.3 Completeness of scope - To be agreed*

*4.5 Forecasts* - To be agreed

*[4.6 Third party advisers* - To be agreed.]

## **5. Initial information**

To be agreed:



## Appendix 2 – Charges

### 1. Basis of fees

The Law Firm's fees will be calculated on the basis of time spent by the Engagement Team, evaluated at the hourly rates in operation when the work is performed.

The daily rates applicable to the Services at the time of this Letter are:

<i>Grade</i>	<i>Day rate</i>
Partner	
Legal Director/ Counsel or Equivalent	
Senior Solicitor / Senior Associate	
Solicitor /Associate	
Newly Qualified Solicitor /Associate, Junior Solicitor / Associate	
Trainee	
Paralegal / Legal Assistant	
Legal Project Manager	

### 2. Estimate of fees

The Law Firm estimates that its fees will amount to approximately £[...] excluding outlays and VAT. However, if the assignment takes longer or involves more resource than is currently anticipated, the Law Firm may need to increase the estimate. (The Law Firm will advise CQC of any potential increases as soon as they become apparent and will not proceed with further work without the CQC's consent.)

### 3. Payment

The Law Firm will render invoices at least every four weeks, including outlays and VAT. Invoices will be paid by the CQC in accordance with the terms of the Legal Services Panel Contract, upon presentation of each invoice.

## Annex 3 to Call-Off Special Terms Schedule B – Order Award Procedure for Selection of Panel Suppliers

1. Panel Suppliers will be ranked 1 – 6 based on their scores in the further competition under the Framework Contract for the award of the Legal Services Panel Contracts (“the Ordering List”).
2. Panel Suppliers will be approached by the Buyer on a rotational basis based on the Ordering List to ensure fair distribution of Ordered Services.
3. If Panel Suppliers have already been awarded the supply of Ordered Services, the Buyer must approach the next Panel Supplier on the Ordering List who has not yet been awarded the supply of Ordered Services.
4. Example Ordering List

	Supplier A	Supplier B	Supplier C	Supplier D	Supplier E	Supplier F
Ranking	1	2	3	4	5	6

5. When the next Panel Supplier on the Ordering List is due to be approached for the supply of Ordered Services, The Buyer must send the Panel Supplier the scope of services required for the Ordered Services. The Panel Supplier must at that point review and agree to the wording of the scope, confirm whether there is any conflict of interest and whether it has capacity to undertake the work.
6. Once the Panel Supplier has confirmed there are no conflicts and that it has capacity, the Panel Supplier should provide a quote for the Ordered Services based on the scope of services and agreed panel rates. The Panel Supplier should review and agree to the wording of the scope.
7. If there is a conflict and/or no capacity, the Buyer must contact the next Panel Supplier on the Ordering List and repeat the process. The Buyer must ensure that Ordered Services are not provided by the same Panel Supplier consecutively. However, the Buyer, reserves the right to depart from the rotation in exceptional circumstances such as prior/historical knowledge.

Nothing in this Schedule shall oblige the Buyer to place any Order for Ordered Services. The Buyer shall also be entitled at all times to decline to make an award for Ordered Services.

