



Crown
Commercial
Service



Government
Communication
Service

Call-Off Contract

Dated: 6th September 2018

Framework Reference: RM6003

Public Health England

and

OMD Group Limited

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Call-Off Contract - Call-Off Terms

This Call-Off Contract is made on the 6th day of September 2018

- (1) Public Health England (PHE), with offices at Wellington House, 133-155 Waterloo Road, London SE1 8UG ("the **Client**"); and
- (2) OMD Group Limited a company registered in England and Wales under Company Number 02078820 whose registered office is at 85 Strand, London, WC2R 0DW ("the **Agency**"),

Both the Client and the Agency can be referred to as a "**Party**" or together the "**Parties**".

INTRODUCTION

- (1) The Agency is the sole agency appointed by the Crown Commercial Service (CCS) to the Framework Agreement and is therefore able to enter into this Call-Off Contract to provide the Services to the Client.
- (2) This Call-Off Contract, made between the Client and the Agency, sets out the terms of the Agency's appointment as a provider of the Services to the Client. The Services will be delivered according to the terms of this Call-Off Contract, any agreed Brief and the Framework Agreement.
- (3) The Agency's appointment has been confirmed in the Letter of Appointment.
- (4) The Parties agree that the Services laid out in the Brief shall be supplied in accordance with the terms of the Framework Agreement and this Call-Off Contract.

IT IS AGREED:

1 APPOINTMENT & BRIEFS

- 1.1 Throughout the Term of this Call-Off Contract, the Agency will perform the Services and (where relevant) supply the Services to the Client in accordance with agreed annual scope of work and/or Briefs.
- 1.2 Subject to Clause 1.4 the Parties may agree new Projects to be delivered under this Call-Off Contract by agreeing a new Brief. The Parties may also agree an annual scope of work to be undertaken by the Agency which may or may not include several Briefs. All Briefs and any annual scope of works must be agreed and recorded in writing using the form set out at Schedule 2. Once both Parties have signed a Brief and any annual scope of works, it automatically forms part of this Call-Off Contract.
- 1.3 Any schedule attached to a Brief will describe in detail the different types of Services to be provided under that Brief. A schedule attached to a Brief only applies to the relevant Project to be delivered under that Brief, and not to any other Brief, or to the provision of the Services as a whole.
- 1.4 Where a Brief would result in:
 - 1.4.1 a variation of the Services procured under this Call-Off Contract;
 - 1.4.2 an increase in the Fees agreed under this Call-Off Contract; or
 - 1.4.3 a change in the economic balance between the Parties to the detriment of the Client that is not provided for in this Call-Off Contract,

the relevant term(s) will be will be dealt with as a proposed Variation to this Call-Off Contract in accordance with the Variation procedure set out in Clause 9.

1.5 At the Effective Date the Agency acknowledges that:

- 1.5.1 the Client has delivered or made available to the Agency all of the information and documents that the Agency considers necessary or relevant for the performance of its obligations under this Call-Off Contract;
- 1.5.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the due diligence information received by it;
- 1.5.3 it has raised all relevant due diligence questions with the Client before the Effective Date;
- 1.5.4 it has undertaken all necessary due diligence and has entered into this Call-Off Contract in reliance on its own due diligence alone; and
- 1.5.5 it shall not be excused from the performance of any of its obligations under this Call-Off Contract on the grounds of, nor shall the Agency be entitled to recover any additional costs or charges, arising as a result of any:
 - (a) misinterpretation of the requirements of the Client in the Letter of Appointment or elsewhere in this Call-Off Contract;
 - (b) failure by the Agency to satisfy itself as to the accuracy and/or adequacy of the due diligence information received by it; and/or
 - (c) failure by the Agency to undertake its own due diligence.

2 TERM

- 2.1 This Call-Off Contract starts on the **Effective Date** and ends on the **Expiry Date**, as stated in the Letter of Appointment. The Expiry Date may be changed in accordance with Clause 2.2 or Clause 23.
- 2.2 The Client may extend this Call-Off Contract for any period up to the Extension Expiry Date by giving the Agency notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Letter of Appointment.
- 2.3 The revised date the Call-Off-Contract will end (the New Expiry Date) will be set out in the notice given under Clause 2.2 above.
- 2.4 The terms and conditions of this Call-Off Contract will apply throughout any extended period.
- 2.5 Each Project starts on the Project Commencement Date and ends on the Project Completion Date, unless it is terminated earlier in accordance with Clause 23.

3 NOT USED

4 CLIENT'S OBLIGATIONS

- 4.1 The Client will give the Agency instructions as to its requirements for the Services. These will be included in a Brief and may include start and end dates for each stage of the proposed Services.

5 SERVICE DELAY, DELIVERY & RECTIFICATION

Service Delivery

- 5.1 The Agency will give the Client full and clear instructions as to any Client Materials it reasonably requires to perform the Services.
- 5.2 The Agency will:
- 5.2.1 comply with all Law;
 - 5.2.2 use all reasonable and proper skill and care in its performance of the Services;
 - 5.2.3 comply with all reasonable Client instructions regarding the Services, as long as these instructions do not materially amend the Brief (unless the amendment has been agreed in accordance with Clause 9.1);
 - 5.2.4 keep Client Materials under its control safe and secure and in accordance with any security policy provided by the Client; and
 - 5.2.5 provide the Services by any dates set out in the applicable Brief or any other date(s) agreed by the parties in writing.

Delay

- 5.3 If the Client materially breaches its obligations in connection with this Call-Off Contract (including its payment obligations), and consequently delays or prevents the Agency from performing any of the agreed Services this will be a “**Client Cause**”. In the event of a Client Cause, the Agency will be granted an appropriate extension of time (to be approved by the Client, acting reasonably) to perform the agreed Services. The Agency will not be liable for any Losses incurred by the Client as a result of Client Cause, provided the Agency complies with its obligations set out at Clause 5.4.
- 5.4 The Agency must notify the Client within 2 Working Days of the Agency becoming aware that the Client has breached, or is likely to breach, its obligations in connection with this Call-Off Contract. This notice must detail:
- 5.4.1 the Client Cause and its actual or potential effect on the Agency’s ability to meet its obligations under this Call-Off Contract; and
 - 5.4.2 any steps which the Client can take to eliminate or mitigate the consequences and impact of such Client Cause.
- 5.5 The Agency must use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Client Cause. The Agency must try to mitigate against any Losses that the Client or the Agency may incur, and the duration and consequences of any delay or anticipated delay.
- 5.6 If at any time the Agency becomes aware that it may not be able to perform the Services by any date set out in the applicable Brief (or any other deadline agreed by

the Parties in writing), this will constitute a Default and the Agency will promptly notify the Client of the Default and the reasons for the Default.

- 5.7 If the Default described in Clause 5.6 above is, in the Client's opinion, capable of remedy, the Client may, up to 10 Working Days from being notified of the Default, instruct the Agency to comply with the Rectification Plan Process.

Rectification Plan Process

- 5.8 If instructed to comply with the Rectification Plan Process by the Client under Clause 5.7 above, the Agency will submit a draft Rectification Plan to the Client to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) from being instructed to do so. The Agency shall submit a draft Rectification Plan even if the Agency does not agree that the Default is capable of remedy.
- 5.9 The draft Rectification Plan shall set out:
- 5.9.1 full details of the Default that has occurred, including the underlying reasons for it;
 - 5.9.2 the actual or anticipated effect of the Default; and
 - 5.9.3 the steps which the Agency proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
- 5.10 The Agency shall promptly provide to the Client any further documentation that the Client requires to assess the Agency's reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with Clause 34 (Dispute Resolution Procedure).
- 5.11 The Client may reject the draft Rectification Plan by notice to the Agency if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
- 5.11.1 is insufficiently detailed to be capable of proper evaluation;
 - 5.11.2 will take too long to complete;
 - 5.11.3 will not prevent reoccurrence of the Default;
 - 5.11.4 will rectify the Default but in a manner which is unacceptable to the Client;
or
 - 5.11.5 will not rectify the Default.
- 5.12 The Client will tell the Agency as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.
- 5.13 If the Client rejects the draft Rectification Plan, the Client will give reasons for its decision in its rejection notice. The Agency must take these reasons into account in the preparation of a revised Rectification Plan. The Agency shall submit a revised draft of the Rectification Plan to the Client for review within 5 Working Days (or such other period as agreed between the Parties) of the Client's rejection notice.

- 5.14 If the Client agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Agency shall immediately start work on the actions set out in the Rectification Plan.
- 5.15 For the purposes of this Clause 5, the Client acknowledges and agrees that if the publication of any Client Materials is delayed or does not occur as planned, the Agency will not be liable unless this is caused by its default or neglect.

6 AGENCY: OTHER APPOINTMENTS

- 6.1 Adverse public perception could have a detrimental impact on the Client's desired outcomes for the Project. To minimise this risk, the Agency must not, without the Client's written consent, provide services to a third party during the Term of this Call-Off Contract where the provision of such services (in the reasonable opinion of the Client):
- 6.1.1 has the potential to adversely affect the Client's desired outcome of the Project or diminish the trust that the public places in the Client; or
 - 6.1.2 is likely to cause embarrassment to the Client or bring the Client into disrepute
- 6.2 The only exception to this is if the Agency provides communication services to an existing client, which the Client had been informed about before entering into this Call-Off Contract.
- 6.3 If the Agency becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Agency must notify the Client immediately, providing full details of the nature of the breach and the likely impact on any Projects.
- 6.4 If the Agency breaches Clause 6.1, the Client may terminate this Call-Off Contract, a Project, or any part of a Project with immediate effect in accordance with Clause 23.3.

7 CLIENT: OTHER APPOINTMENTS

- 7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Client is entitled to appoint any other agency to perform services which are the same or similar to the Services.

8 PERSONNEL

- 8.1 The Agency must ensure that Agency Staff who provide the Services:
- 8.1.1 are appropriately experienced, qualified and trained to provide the Services in accordance with this Call-Off Contract;
 - 8.1.2 apply all reasonable skill, care and diligence in providing the Services;
 - 8.1.3 obey all lawful instructions and reasonable directions of the Client and provide the Services to the reasonable satisfaction of the Client; and
 - 8.1.4 are vetted in accordance with Good Industry Practice and, where applicable, the security requirements of the Client and the Standards.

- 8.2 The Agency will be liable for all acts or omissions of the Agency Staff. Any act or omission of a member of any Agency Staff which results in a breach of this Call-Off Contract is a breach by the Agency.
- 8.3 The Client acknowledges and agrees that it may be necessary for the Agency to replace the personnel providing the Services with alternative personnel with similar levels of seniority and experience.
- 8.4 The Agency will seek to ensure that any Key Individual responsible for the provision of the Services will remain involved in the provision of the Services. If any Key Individual leaves the Agency, or ceases to be involved in the provision of the Services for any reason (for example, if they are promoted to a different role within the Agency), the Agency will consult with the Client and, subject to the Client's prior Approval, appoint a suitable replacement.
- 8.5 If the Client reasonably believes that any of the Agency Staff are unsuitable to undertake work on this Call-Off Contract, it will notify the Agency who will then end the person's involvement in providing the Services.

9 VARIATIONS AND CANCELLATIONS

- 9.1 Either Party may request a change to this Call-Off Contract, a Project or a Brief. Any requested change must not amount to a material change of this Call-Off Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".
- 9.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
- 9.3 Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The time limits shall be reasonable and ultimately at the discretion of the Client, having regard to the nature of the Services and the proposed Variation.
- 9.4 If the Agency requests a Variation, the Client can ask the Agency to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
- 9.4.1 the impact of the proposed Variation on the Services and the Agency's ability to meet its other obligations under this Call-Off Contract (including in relation to other Briefs);
 - 9.4.2 the initial cost of implementing the proposed Variation and any ongoing costs post-implementation;
 - 9.4.3 any increase or decrease in the Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
 - 9.4.4 a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - 9.4.5 any other information the Client reasonably asks for in response to the Variation request.

- 9.5 The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
- 9.6 If the Parties agree the Variation, the Agency will implement it, and be bound by it as if it was part of this Call-Off Contract.
- 9.7 Until a Variation is agreed, the Agency must continue to perform and be paid for the Services as originally agreed, unless otherwise notified by the Client.
- 9.8 Subject to Clauses 9.9 and 23.1 the Client can ask the Agency to suspend or cancel any Project or Brief, or any part of a Project, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Client Approver in writing. The Agency will take all reasonable steps to comply with any such request.
- 9.9 In the event of any cancellation under Clause 9.8, the Client will pay the Agency all Charges reasonably and properly incurred by the Agency (including charges imposed by Media Owners or third party vendors from the cancellation) during the Project Notice Period, provided that the Agency uses all reasonable endeavours to mitigate any charges or expenses.

10 APPROVALS AND AUTHORITY

- 10.1 For the purposes of this Call-Off Contract, any reference to Client Approval means written approval in one of the following ways:
- 10.1.1 the Client issuing a purchase order bearing the signature of an Authorised Client Approver; or
 - 10.1.2 e-mail from the individual business e-mail address of an Authorised Client Approver; or
 - 10.1.3 the signature of an Authorised Client Approver on the Agency's documentation.
- 10.2 Any reference to Agency Approval means written approval in one of the following ways:
- 10.2.1 e-mail from the individual business e-mail address of an Authorised Agency Approver; or
 - 10.2.2 the signature of an Authorised Agency Approver on the Client's documentation.
- 10.3 The Agency will seek the Client's prior Approval of any estimates or quotations for any costs to be paid by the Client that are not agreed in a Brief.
- 10.4 If the Client does not approve of any matter requiring Approval, it must notify the Agency of its reasons for disapproval within 14 days of the Agency's request.
- 10.5 If the Client delays approving or notifying the Agency as to its disapproval, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

11 PROJECT MANAGEMENT

- 11.1 During the Term of this Call-Off Contract, the Agency will:

- 11.1.1 keep the Client fully informed as to the progress and status of all Services, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties; and
 - 11.1.2 promptly inform the Client of any actual or anticipated problems relating to the Services.
- 11.2 During the Term, the Parties' respective project managers will arrange and attend meetings to review the status and progress of the Services and the Project(s), and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.
- 11.3 Unless otherwise agreed in the Brief, the Agency will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within 3 Working Days of such discussions. If the Client does not question any of the subject matter of a contact report within 7 Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

12 CHARGES AND INVOICING

- 12.1 The Agency will invoice the Client in respect of Charges (including all Fees, Expenses and Third Party Costs). The Fees for the Services will be the full and exclusive remuneration of the Agency for supplying the Services. Unless expressly agreed in writing by the Client in the Briefs, the Fees will include every cost and expense of the Agency directly or indirectly incurred in connection with the performance of the Services.
- 12.2 All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Client shall, following the receipt of a valid VAT invoice, pay to the Agency a sum equal to the VAT chargeable in respect of the Services where applicable. The Agency shall comply with all applicable HMRC and tax guidance and rules in respect of the payment or otherwise of VAT (or applicable sales taxes) by the Client.
- 12.3 The Agency will invoice the Client in accordance with the payment profile agreed in the Briefs. Each invoice will include all supporting information required by the Client to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 12.4 The Client will pay the Agency the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Client may, without prejudice to any other rights and remedies under this Call-Off Contract, withhold or reduce payments in the event of unsatisfactory performance.
- 12.5 If the Client does not pay an undisputed amount properly invoiced by the due date, the Agency has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.6 If at any time during the Term the Agency reduces its Fees for Services provided in accordance with the terms of the Framework Agreement, the Agency shall immediately reduce the Fees for the Services under this Call-Off Contract by the same amount. This obligation applies whether or not the Services are offered in a catalogue provided under the Framework Agreement.

- 12.7 The Client is entitled to deduct from any sum due any money that the Agency owes the Client. This includes any sum which the Agency is liable to pay to the Client in respect of breach of this Call-Off Contract. In these circumstances, the Agency may not assert any credit, set-off or counterclaim against the Client.
- 12.8 The Agency will indemnify the Client on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Client at any time in respect of the Agency's failure to account for or to pay any VAT on payments made to the Agency under this Call-Off Contract. Any amounts due under Clause 12.2 will be paid by the Agency to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 12.9 If there is a dispute between the Parties about an amount invoiced, the Client will pay the undisputed amount by the due date. The Agency will not suspend the supply of the Services in any Project, unless the Agency is entitled to terminate that Project for a failure to pay undisputed sums in accordance with Clause 23.8.

13 THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING

Assignment and Sub-Contracting

- 13.1 Other than where a Sub-Contractor is agreed in the Letter of Appointment or a Brief, the Agency will not, without the prior Approval of the Client, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Call-Off Contract or any part of it.
- 13.2 In requesting Approval to sub-contract, the Agency will:
- 13.2.1 use reasonable care and skill in the selection of proposed Sub-Contractors;
 - 13.2.2 if the Client requests, obtain more than one quote for a particular sub-contracted service; and
 - 13.2.3 provide the Client with a business case for sub-contracting all or part of the Services, identifying why it is economically advantageous for the Agency to sub-contract to its proposed sub-contractor. The Client may reject the Agency's request to appoint a proposed sub-contractor if it considers the proposed sub-contractor does not provide value for money.
- 13.3 If the Client consents to the Agency's proposed sub-contractor, it shall be a Sub-Contractor as the term is defined in Schedule 1 (Definitions).
- 13.4 In granting consent to any assignment, novation, sub-contracting or disposal, the Client may set additional terms and conditions it considers necessary.
- 13.5 The Agency shall ensure that its Sub-Contractor does not further sub-contract all or part of the Services.
- 13.6 Any contracts the Agency enters into with third party suppliers for Services ("**Sub-Contracts**") must be on terms that are in line with the Agency's standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Call-Off Contract.

- 13.7 Provided that the Agency has notified the Client of any significant restrictions or contract terms contained in any Sub-Contracts, the Client hereby acknowledges that:
- 13.7.1 its right to use or otherwise benefit from any Services acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
 - 13.7.2 it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Agency is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Client or Client Affiliates.
- 13.8 The Agency will promptly provide the Client with a copy of any Sub-Contract if requested to do so.
- 13.9 The Agency will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 13.10 The Agency will obtain the Client's Approval before commissioning services from any Agency Affiliate.

Supply Chain Protection

- 13.11 The Agency will ensure that all Sub-Contracts contain provisions:
- 13.11.1 requiring the Agency to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice;
 - 13.11.2 requiring the Agency to verify any invoices submitted by a Sub-Contractor in a timely manner;
 - 13.11.3 giving the Client the right to publish the Agency's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - 13.11.4 giving the Agency a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and
 - 13.11.5 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.

14 DISCOUNTS AND REBATES

- 14.1 The Agency will disclose to the Client any commission, discount or rebate earned by the Agency arising in respect of Third Party Costs directly related to the Projects. The Client will receive the full benefit of such commission, discount or rebate.

15 CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION

CONFIDENTIALITY

- 15.1 For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a "**Recipient**". A Party which discloses or makes available Confidential Information is a "**Disclosing Party**".

- 15.2 During the Term and for 7 years after the Project is completed, unless a Recipient has express permission to disclose Confidential Information, it must:
- 15.2.1 treat the Disclosing Party's Confidential Information as confidential and store it securely;
 - 15.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call-Off Contract or with the owner's prior written consent;
 - 15.2.3 use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call-Off Contract; and
 - 15.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 15.3 The Recipient is entitled to disclose Confidential Information if:
- 15.3.1 it is required to so by Law (though in such cases, Clause 15.15 (Freedom of Information) applies to disclosures required under the FOIA or the EIRs);
 - 15.3.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Client regarding this Call-Off Contract (provided that the disclosure is made on a confidential basis);
 - (b) the examination and certification of the Client's accounts (provided that the disclosure is made on a confidential basis) or for any examination under Section 6(1) of the National Audit Act 1983; or
 - (c) a Central Government Body review in respect of this Call-Off Contract; or
 - 15.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010. Such disclosure can only be made to the Serious Fraud Office.
- 15.4 If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
- 15.5 Subject to Clauses 15.3 and 15.4, the Agency may disclose Confidential Information, on a confidential basis, to:
- 15.5.1 Agency Staff and those of its Sub-Contractors who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance under this Call-Off Contract; and
 - 15.5.2 its professional advisers for the purposes of obtaining advice in relation to this Call-Off Contract.

- 15.6 Where the Agency discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Call-Off Contract.
- 15.7 The Client may disclose the Confidential Information of the Agency:
- 15.7.1 to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies;
 - 15.7.2 to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement;
 - 15.7.3 if disclosure is necessary or appropriate in the course of carrying out its public functions;
 - 15.7.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Contract;
 - 15.7.5 on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract; or
 - 15.7.6 to a proposed successor in title (transferee, assignee or novatee) to the Client.
- 15.8 Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this Clause 15.
- 15.9 Nothing in this Clause 15 will prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Call-Off Contract in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.10 If the Agency fails to comply with this Clause 15, the Client can terminate this Call-Off Contract.

TRANSPARENCY

- 15.11 Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Contract (and any Transparency Reports submitted by the Agency under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15 www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein.
- 15.12 The Client will determine whether any of the content of this Call-Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Client may consult with the Agency to inform its decision regarding any redactions but will have absolute discretion over the final decision.
- 15.13 Notwithstanding any other provision of this Call-Off Contract, the Agency consents to the Client publishing this Call-Off Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted.

- 15.14 The Agency will cooperate with the Client to enable publication of this Call-Off Contract.

FREEDOM OF INFORMATION

- 15.15 The Client is subject to the requirements of the FOIA and the EIRs. The Agency will:
- 15.15.1 provide all necessary assistance to the Client to enable it to comply with its Information disclosure obligations;
 - 15.15.2 send all Requests for Information it receives relating to this Call-Off Contract to the Client as soon as practicable and within a maximum of 2 Working Days from receipt; and
 - 15.15.3 provide the Client with a copy of all Information belonging to the Client requested in the Request for Information which is in its possession or control in the form that the Client requires within 5 Working Days of the Client's request.
- 15.16 The Agency must not respond directly to a Request for Information without the Client's prior Approval.
- 15.17 The Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Agency. The Client will take reasonable steps to notify the Agency of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Client will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

16 AGENCY WARRANTIES

- 16.1 The Agency warrants that:
- 16.1.1 it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party; and
 - 16.1.2 the personnel who perform the Services are competent and suitable to do so.
- 16.2 The Agency hereby indemnifies the Client against any Losses incurred by the Client as a result of breach by the Agency of its warranty and undertaking in Clauses 16.1.

17 CLIENT WARRANTIES

- 17.1 The Client warrants that:
- 17.1.1 it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party; and
 - 17.1.2 the Client Materials will not, when used in accordance with this Call-Off Contract and any written instructions given by the Client, infringe third party copyright.

18 LIABILITY

- 18.1 Nothing in this Call-Off Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.
- 18.2 Subject always to Clauses 18.1 and 18.3, the maximum amount the Agency can be liable for in respect of all Defaults shall in no event exceed:
- 18.2.1 in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the lower of five million pounds (£5,000,000) or a sum equal to 125% of the Charges paid or payable by the Client for the first Contract Year; and
 - 18.2.2 in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the lower of five million pounds (£5,000,000) or a sum equal to 125% of the Charges paid to the Agency under this Call-Off Contract in the previous Contract Year.
- 18.3 Subject to Clause 18.1 and except for any claims arising under Clause 20.12, neither Party will be liable to the other in any situation for any:
- 18.3.1 loss of profits;
 - 18.3.2 loss of goodwill or reputation;
 - 18.3.3 loss of revenue;
 - 18.3.4 loss of savings whether anticipated or otherwise; or
 - 18.3.5 indirect or consequential loss or damage of any kind.
- 18.4 Without prejudice to its obligation to pay the undisputed Charges as and when they fall due for payment, the Client's total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.

19 INSURANCE

- 19.1 The Agency will hold insurance policies to the value sufficient to meet its liabilities in connection with this Call-Off Contract (including any specific insurance requirements as are set out in the Briefs). The Agency will provide the Client with evidence that such insurance is in place at the Client's request.
- 19.2 The Agency will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
- 19.3 If, for whatever reason, the Agency fails to comply with the provisions of this Clause 19, the Client may make alternative arrangements to protect its interests. If the Client does so, it may recover the premium and other costs of such arrangements as a debt due from the Agency.
- 19.4 Any insurance effected by the Agency will not relieve it of any liability under this Call-Off Contract. It is the Agency's responsibility to determine the amount of insurance cover that will be adequate to enable the Agency to satisfy any liability in relation to the performance of its obligations under this Call-Off Contract.

- 19.5 The Agency must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Agency will use all reasonable endeavours to notify the Client (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 The Agency acknowledges that the Client retains ownership of Client Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Client Materials produced by the Agency in the course of providing the Services. The Client hereby grants to the Agency a non-exclusive licence to use the Client Materials during the applicable Project Term solely for the purposes of providing the Services.
- 20.2 **[FOR NON CROWN BODIES]**[The Agency hereby assigns to the Client all of the Intellectual Property Rights in the Agency Materials which are capable of being assigned (and in the case of copyright, by way of a present assignment of future copyright), together with the right to sue for past infringement of the Intellectual Property Rights in the Agency Materials.] **[FOR CROWN BODIES, INCLUDING CENTRAL GOVERNMENT DEPARTMENTS]**[The Agency hereby:
- 20.2.1 assigns to the Client all of the Intellectual Property Rights other than copyright and database rights in the Agency Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Agency Materials; and
- 20.2.2 assigns to the Crown all of the copyright and database rights in the Agency Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Agency Materials.][DELETE AS APPROPRIATE]
- 20.3 All Intellectual Property Rights in the Agency Proprietary Materials remain the property of the Agency. The Agency grants to the Client a non-exclusive, royalty-free licence to use any Agency Proprietary Materials, in the Territory, for the period of time and for the purposes set out in the Brief.
- 20.4 Prior to delivery of the Services (or any part thereof) to the Client, the Agency will obtain all licences or consents in respect of Third Party Materials that are required so the Client can use these Third Party Materials for the purposes set out in the Brief. The Agency will notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials.
- 20.5 The Agency agrees:
- 20.5.1 at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Agency Materials; and
- 20.5.2 neither to do nor fail to do any act which would or might prejudice the Client's rights under this Clause 20.

- 20.6 To the extent permitted by law, the Agency shall ensure that all Moral Rights in the Agency Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the Agency Materials.
- 20.7 The Agency will use its reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Agency will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials). If the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Agency will notify the Client and will obtain the Client's Approval prior to incorporating such Third Party Materials into the Services.
- 20.8 The terms of and obligations imposed by this Clause 20 continue after the termination of this Call-Off Contract.
- 20.9 The Agency will indemnify the Client in full against all costs, expenses, damages and losses (whether direct or indirect in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights in connection with the supply or use of the Services, if the claim is attributable to the acts or omission of the Agency or any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client
- 20.10 If the Client receives any notice of any claim for which it appears that the Client is, or may become, entitled to indemnification 20.9 (a "**Claim**"), the Client shall give notice in writing to the Agency as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 20.11 Subject to Clause 20.12, on the giving of a notice by the Client, where it appears that the Client is or may be entitled to indemnification from the Agency in respect of all (but not part only) of the liability arising out of the Claim, the Agency shall (subject to providing the Client with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Client at the Agency's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Agency does elect to conduct the Claim, the Client shall give the Agency all reasonable cooperation, access and assistance for the purposes of such Claim, and the Client shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Agency.
- 20.12 With respect to any Claim conducted by the Agency pursuant to Clause 20.11:
- 20.12.1 the Agency shall keep the Client fully informed and consult with it about material elements of the conduct of the Claim;
 - 20.12.2 the Agency shall not bring the name of the Client into disrepute;
 - 20.12.3 the Agency shall not pay or settle such Claim without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed; and
 - 20.12.4 the Agency shall conduct the Claim with all due diligence.

- 20.13 the Client shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Call-Off Contract if:
- 20.13.1 the Agency is not entitled to take conduct of the Claim in accordance with Clause 20.11;
 - 20.13.2 the Agency fails to notify the Client in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Client or if the Agency notifies the Client in writing that it does not intend to take conduct of the Claim; or
 - 20.13.3 the Agency fails to comply in any material respect with the provisions of Clause 20.12.
- 20.14 If the Agency pays to the Client an amount in respect of an indemnity and the Client subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Client shall forthwith repay to the Agency whichever is the lesser of:
- 20.14.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Client in recovering or obtaining the same; and
 - 20.14.2 the amount paid to the Client by the Agency in respect of the Claim under the relevant indemnity.

21 AUDIT

- 21.1 The Client shall be entitled to appoint an Auditor to undertake audits of the performance of the Services ("**Performance Audit**") during the Term, the term of each Call-Off Contract and for two (2) years after the termination of this Call-Off Contract. The Client shall provide the Agency not less than three (3) weeks' notice prior to any audit and anticipates that it will conduct up to two (2) Performance Audits in each calendar year. For the purposes of Clauses 21.3 to 21.7, "**Auditor**" shall mean:
- 21.1.1 in respect of a Performance Audit, a reputable recognised independent media consultant adhering to appropriate professional standards chosen by the Client in its absolute discretion; and
 - 21.1.2 in respect of a financial audit, a certified or regulated public accounting firm which is nationally or internationally recognized and is specialized in financial compliance audit or a firm whose staff are members of professional accounting bodies or a firm that is itself a member of a professional accounting body, chosen by the Client in its absolute discretion, provided that such firm shall not be (i) the same auditor who has acted as year-end auditor or tax consultant of the Agency Group in the previous 24 months; or (ii) a competitor of the Agency or the Agency Group (e.g. Accenture).

- 21.2 During the Term and for two (2) years after its termination the Agency shall maintain clear, accurate, complete and up to date Records in respect of the performance of the Agency and Agency Group's obligations under this Call-Off Contract. The Agency shall procure compliance by members of the Agency Group with its obligation to maintain Records as set out in this Call-Off Contract.
- 21.3 The Agency shall obtain at its own cost all necessary rights in data which the Agency or Agency Group obtains from third parties to enable the Agency to supply to the Client and its Auditor all such data as the Auditor reasonably requires to fully perform a Performance Audit (for example, performance data, TV ratings, digital impressions, etc). Where the Agency or Agency Group uses direct or indirect majority owned affiliates, specialist buying companies, group buying companies, buying clubs or any other related party to supply services, the Agency shall procure that the affiliates, specialist buying companies, group buying companies, buying clubs or other related party will grant the same rights of audit to the Auditor, including access to AVBs received by Agency Affiliates and to un-billed media reports between Agency Affiliates and their vendors.
- 21.4 Save to the extent that any Records relate to the Agency's other clients and do not relate at all to the Client (including terms related to the Agency's other clients or terms negotiated with Media Owners on behalf of multiple clients) and subject to third party rights therein::
- 21.4.1 all rights in the Records (including Intellectual Property Rights and any data and information created, obtained, compiled or verified by the Agency (including prices paid for media purchased by the Agency on behalf of the Client) will belong to the Client and will be deemed to be assigned to the Client for the purpose of this Call-Off Contract provided that the Agency is entitled to keep copies, or the original as necessary, of such Records in order to comply with its legal and regulatory obligations; and
- 21.4.2 the Agency shall provide the Auditor with full access to all contracts with suppliers with whom media activity has been placed on behalf of the Client during the Term provided that the Agency may redact from the Records the individual names of other clients and their confidential information, including but not limited to financial amounts specific to those other clients.
- 21.4.3 the Records will constitute Confidential Information for the purposes of this Call-Off Contract.
- 21.5 The Agency and Agency Group will allow the Auditor access to all the Records to audit the Agency's compliance with this Call-Off Contract. Any such access shall be at any time during normal business hours for the purposes of auditing or otherwise inspecting the Records provided that in the absence of exceptional circumstances the Agency shall not be obliged to allow such access or inspection more than once during any twelve month period (unless any material discrepancy or any breach of this Call-Off Contract is discovered in which case the Agency shall allow access on such number of occasions as the relevant Client may request). The Agency shall provide all Records and data in a format reasonably requested by the Auditor.
- 21.6 The Agency and Agency Group will afford the Auditor all reasonable assistance in the performance of the audit. The Client and the Auditor will ensure that any information obtained in the course of the audit relating specifically to the Agency's

and Agency Group's business (excluding the Records) is kept in the strictest confidence and not used for any purpose other than the proper conduct of the audit. The Client shall procure that the Auditor complies with the provisions of this clause. Where required by the Agency, the Client shall use reasonable endeavours to procure that the Auditor enters into a non-disclosure agreement in the form of Framework Agreement Schedule 14 (Auditor Non-disclosure Agreement),

- 21.7 In relation to a Performance Audit, the Client shall procure that the Auditor shall deliver a copy of the final draft report to the Agency no less than five (5) days prior to delivery of the final report to the Client to provide the Agency with an opportunity to comment on any inconsistencies or inaccuracies in the report and the Agency acknowledges that when submitting the final report to the Client, the Auditor shall also provide the Client with a summary of any amendments made to the report as a consequence of the Agency's comments.

22 ADVERTISING STANDARDS

- 22.1 Both parties acknowledge that they have a responsibility to comply with all relevant Advertising Regulations.
- 22.2 The parties will co-operate with each other to ensure satisfaction of the requirements of any applicable Advertising Regulations.

23 TERMINATION

Client Rights to Terminate

- 23.1 The Client may, by giving not less than 3 months' written notice to the Agency, terminate this Call-Off Contract without cause.
- 23.2 The Client may terminate or cancel a Project at any time subject to Clause 9 and payment of all Charges specifically set out at Clause 9.
- 23.3 The Client may terminate this Call-Off Contract or a Project by written notice to the Agency with immediate effect if the Agency:
- 23.3.1 commits a material Default which cannot be remedied;
 - 23.3.2 repeatedly breaches any of the terms and conditions of this Call-Off Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
 - 23.3.3 commits a Default, including a material Default, which in the opinion of the Client is remediable but has not remedied such Default to the satisfaction of the Client within 30 days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
 - 23.3.4 breaches any of the provisions of Clauses 6.1 (Agency: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 32 (Prevention of Fraud and Bribery);
 - 23.3.5 is subject to an Insolvency Event;

- 23.3.6 fails to comply with legal obligations; or
- 23.3.7 if at any time during the Term an Occasion of Tax Non-Compliance (as defined in the Framework Agreement) occurs and the Agency fails to comply with Clause 8.8 of the Framework Agreement. Such failure shall constitute a material Default.
- 23.4 The Agency must notify the Client as soon as practicable of any Change of Control or any potential Change of Control.
- 23.5 The Client may terminate this Call-Off Contract with immediate effect by written notice to the Agency within 6 months of:
 - 23.5.1 being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - 23.5.2 where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 23.6 The Client may terminate this Call-Off Contract or a Project by giving the Agency at least 14 days' notice if:
 - 23.6.1 the Framework Agreement is terminated for any reason;
 - 23.6.2 the Parties fail to agree a Variation under Clause 9; or
 - 23.6.3 the Agency fails to implement an agreed Variation.

Agency Rights to Terminate

- 23.7 The Agency may terminate a Project and any Brief in respect of that Project by written notice to the Client if:
 - 23.7.1 the Client has not paid any undisputed amounts falling due under that Project, and
 - 23.7.2 the undisputed sum due remains outstanding for 40 Working Days after the Client has received a written notice of non-payment from the Agency specifying:
 - (a) the Client's failure to pay;
 - (b) the correct overdue and undisputed sum;
 - (c) the reasons why the undisputed sum is due; and
 - (d) the requirement on the Client to remedy the failure to pay.

This right of termination does not apply where the failure to pay is due to the Client exercising its rights under this Call-Off Contract (including the right to set off under Clause 30).

24 CONSEQUENCES OF TERMINATION

- 24.1 Termination of a Project (and any Brief in respect of that Project) in accordance with the terms of this Call-Off Contract by either Party shall not serve to terminate this Call-Off Contract, which will continue in full force and effect.
- 24.2 If this Call-Off Contract is terminated, all ongoing and outstanding Projects (and any Briefs in respect of those Projects) will also terminate on the same date as this Call-Off Contract unless otherwise mutually agreed in writing.
- 24.3 Upon termination of this Call-Off Contract or a Project for any reason:
 - 24.3.1 the Expiry Date or New Expiry Date shall be the date this Call-Off Contract terminates;
 - 24.3.2 the Client will pay the Agency all Charges falling properly due and payable to the Agency prior to the date of termination (in accordance with Clause 9 where relevant);
 - 24.3.3 each Party will, following a reasonable request by the other Party, promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects. On the request of the other Party, each will certify in writing that the same has been done; and
 - 24.3.4 the Agency and its staff will vacate any premises of the Client occupied for any purpose of providing the Services.
- 24.4 Any provisions of this Call-Off Contract which are to continue after termination will remain in full force and effect after this Call-Off Contract is terminated. Such provisions may include (but are not limited to):
 - 24.4.1 Clause 15 (Confidentiality);
 - 24.4.2 Clause 16 (Agency warranties);
 - 24.4.3 Clause 17 (Client warranties);
 - 24.4.4 Clause 18 (Liability);
 - 24.4.5 Clause 19 (Insurance);
 - 24.4.6 Clause 20 (Intellectual Property Rights);
 - 24.4.7 Clause 21 (Audit);
 - 24.4.8 Clause 24 (Consequences of Termination);
 - 24.4.9 Clause 26 (Notices);
 - 24.4.10 Clause 27 (Staff Transfer);
 - 24.4.11 Clause 33 (General); and
 - 24.4.12 Clause 35 (Governing law and jurisdiction).

25 FORCE MAJEURE

- 25.1 Neither Party will have any liability under or be in breach of this Call-Off Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a "**Force Majeure Event**" and the "**Affected Party**").
- 25.2 Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for 60 consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this Call-Off Contract. They must do so in writing, and state the date from which the suspension or termination will come into effect.
- 25.3 If a Force Majeure Event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Call-Off Contract as far as is possible. Where the Agency is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

26 NOTICES

- 26.1 Any notices sent under this Call-Off Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

Notice delivered	Deemed time of delivery	Proof of service
In person	At the time of delivery	Proof that delivery was made (e.g. a signature is obtained)
By first class post, special delivery or other recorded delivery	2 Working Days from the date of posting	Proof that the envelope was addressed and delivered into the custody of the postal authorities
Email	09:00 hours on the first Working Day after sending	Dispatched in an emailed pdf to the correct email address without any error message

- 26.2 The address and email address of each Party will be:

26.2.1 Agency: OMD Group Limited

85 Strand, London, WC2R 0DW

For the attention of: Paul Knight

Email:

[REDACTED]

Client: Public Health England

Wellington House, 133-155 Waterloo Road, London SE1 8UG

For the Attention of Corporate Procurement

Email: corporate.procurement@phe.gov.uk

26.3 For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

27 STAFF TRANSFER

27.1 The Parties agree that

27.1.1 if providing the Services means staff must be transferred from the Client to the Agency, where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Framework Agreement Schedule 11 (Staff Transfer) will apply.

27.2 Where providing the Services does not result in a Relevant Transfer, Part C of Framework Agreement Schedule 11 (Staff Transfer) will apply and Parts A and B of Framework Agreement Schedule 11 (Staff Transfer) shall not apply.

27.3 Part D of Framework Agreement Schedule 11 (Staff Transfer) will apply on the expiry or termination of the Services or any part of the Services.

28 THIRD PARTY RIGHTS

28.1 Except for CCS and the persons that the provisions of this Call-Off Contract confer benefits on, a person who is not a Party to this Call-Off Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

29 DATA PROTECTION, SECURITY AND PUBLICITY

29.1 In addition to its general security obligations under this Call-Off Contract, the Agency shall comply with any security requirements specifically set out in the Brief.

Data Protection

29.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Agency is the Processor. The only Processing that the Agency is authorised to do is listed in Schedule 14 by the Client and may not be determined by the Agency.

29.3 The Agency shall notify the Client immediately if it considers that any of the Client's instructions infringe the Data Protection Legislation.

29.4 The Agency shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Client, include:

29.4.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;

29.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;

29.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

- 29.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 29.5 The Agency shall, in relation to any Personal Data Processed in connection with its obligations under this Call-Off Contract:
- 29.5.1 Process that Personal Data only in accordance with Schedule 14 of the Framework Agreement and / or the Briefs, less the Agency is required to do otherwise by Law. If it is so required the Agency shall promptly notify the Client before Processing the Personal Data unless prohibited by Law;
- 29.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Client as appropriate to protect against a Data Loss Event having taken account of the:
- (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- 29.5.3 ensure that :
- (a) the Agency Staff do not Process Personal Data except in accordance with this Call-Off Contract (and Schedule 14 of the Framework Agreement and / or the Briefs);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Agency Staff who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Agency's duties under this Clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Agency or any Sub-processor;
 - (iii) 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 Client or as otherwise permitted by this Call-Off Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 29.5.4 not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
- (a) the Client or the Agency has provided appropriate safeguards under GDPR Article 46 (as determined by the Client) in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;

- (c) the Agency complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Agency complies with any reasonable instructions notified to it in advance by CCS and/or the Client with respect to the Processing of the Personal Data;
- 29.5.5 at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of this Call-Off Contract unless the Agency is required by Law to retain the Personal Data.
- 29.6 Subject to Clause 29.7, the Agency shall notify the Client immediately if it:
- 29.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 29.6.2 receives a request to rectify, block or erase any Personal Data;
 - 29.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 29.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Call-Off Contract;
 - 29.6.5 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
 - 29.6.6 becomes aware of a Data Loss Event.
- 29.7 The Agency's obligation to notify under Clause 29.6 shall include the provision of further information to the Client in phases, as details become available.
- 29.8 Taking into account the nature of the Processing, the Agency shall provide the Client with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 29.6 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- 29.8.1 the Client with full details and copies of the complaint, communication or request;
 - 29.8.2 such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 29.8.3 the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 29.8.4 assistance as requested by the Client following any Data Loss Event; and
 - 29.8.5 assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.

- 29.9 The Agency shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Agency employs fewer than 250 staff, unless:
- 29.9.1 the Client determines that the Processing is not occasional;
 - 29.9.2 the Client determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 29.9.3 the Client determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 29.10 The Agency shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.
- 29.11 The Agency shall designate a data protection officer if required by Data Protection Legislation.
- 29.12 Before allowing any Sub-processor to Process any Personal Data related to this Call-Off Contract, the Agency must:
- 29.12.1 notify the Client in writing of the intended Sub-processor and Processing;
 - 29.12.2 obtain the written consent of the Client;
 - 29.12.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 29.12 such that they apply to the Sub-processor; and
 - 29.12.4 provide the Client with such information regarding the Sub-processor as the Client may reasonably require.
- 29.13 The Agency shall remain fully liable for all acts or omissions of any Sub-processor.
- 29.14 The Client may, at any time on not less than 30 Working Days' notice, revise this clause 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 this Call-Off Contract).
- 29.15 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Client may on not less than 30 Working Days' notice to the Agency amend this Call-Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 29.16 The Agency will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).
- 29.17 Notwithstanding Clause 29.16, if Malicious Software is found, the Parties will co-operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Services.

Client Data

- 29.18 The Agency will not store, copy, disclose, or use the Client Data except as necessary to perform its obligations under this Call-Off Contract or as otherwise Approved by the Client.
- 29.19 If any Client Data is held and/or Processed by the Agency, the Agency must supply that Client Data to the Client, at the time and in the format the Client requests.
- 29.20 The Agency is responsible for preserving the integrity of any Client Data it holds or Processes, and preventing its corruption or loss.
- 29.21 The Agency will perform secure back-ups of all Client Data and ensure that such back-ups are available to the Client (or to such other person as the Client may direct) on request.
- 29.22 The Agency will ensure that any system it uses to holds any Client Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Client Data, duly notified in writing to the Agency.
- 29.23 If any time the Agency suspects or has any reason to believe that the Client Data is corrupted, lost or sufficiently degraded in any way, then the Agency must notify the Client immediately. This notification must contain information detailing the remedial action the Agency proposes to take.

Publicity and Branding

- 29.24 The Agency may not make any press announcements or publicise this Call-Off Contract or use the Client's name or brand in any promotion or marketing or announcement of orders without Approval from the Client.

30 RETENTION AND SET OFF

- 30.1 If the Agency owes the Client any money, the Client may retain or set off this money against any amount owed to the Agency under this Call-Off Contract or any other agreement between the Agency and the Client. In order to exercise this right, the Client will, within 30 days of receipt of the relevant invoice, notify the Agency of its reasons for retaining or setting off the relevant Charges.
- 30.2 The Agency will make any payments due to the Client without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Agency has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Client.

31 INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 31.1 Where the Agency or any Agency Staff are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call-Off Contract, the Agency will:
- 31.1.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions; and

- 31.1.2 indemnify the Client against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Agency or any Agency Staff.
- 31.2 If any of the Agency Staff is a Worker as defined in Call-Off Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 31.1, the Agency must ensure that its contract with the Worker contains the following requirements:
- 31.2.1 that the Client may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause 31.1, or why those requirements do not apply to it. In such case, the Client may specify the information which the Worker must provide and the period within which that information must be provided;
- 31.2.2 that the Worker's contract may be terminated at the Client's request if:
- (a) the Worker fails to provide the information requested by the Client within the time specified by the Client under Clause 31.2.1; and/or
- (b) the Worker provides information which the Client considers is inadequate to demonstrate how the Worker complies with Clause 31.2.1, or confirms that the Worker is not complying with those requirements; and
- 31.2.3 that the Client may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

32 PREVENTION OF FRAUD AND BRIBERY

- 32.1 The Agency represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:
- 32.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
- 32.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 32.2 The Agency must not:
- 32.2.1 commit a Prohibited Act; or
- 32.2.2 do or suffer anything to be done which would cause the Client or any of the Client's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 32.3 The Agency shall during the Term:
- 32.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are

- adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 32.3.2 keep appropriate records of its compliance with its obligations under 32.3 (a) and make such records available to the Client on request;
- 32.3.3 if so required by the Client, within 20 Working Days of the Effective Date, and annually thereafter, certify to the Client in writing that the Agency and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call-Off Contract are compliant with the Relevant Requirements. The Agency shall provide such supporting evidence of compliance as the Client may reasonably request; and
- 32.3.4 have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Agency Staff or Sub-Contractors or any person acting on the Agency's behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Client on request.
- 32.4 The Agency shall immediately notify the Client in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Agency Staff or Sub-Contractors have:
- 32.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 32.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
- 32.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call-Off Contract; or
- 32.4.4 otherwise suspects that any person or Party directly or indirectly connected with this Call-Off Contract has committed or attempted to commit a Prohibited Act.
- 32.5 If the Agency makes a notification to the Client under to Clause 32.4, the Agency shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
- 32.6 If the Agency breaches Clause 32.4, the Client may by notice:
- 32.6.1 require the Agency to remove any Agency Staff whose acts or omissions have caused the Agency's breach from any Project; or
- 32.6.2 immediately terminate this Call-Off Contract for material Default.
- 32.7 Any notice served by the Client under Clause 32.4 shall set out:
- 32.7.1 the nature of the Prohibited Act;
- 32.7.2 the identity of the Party who the Client believes has committed the Prohibited Act;

- 32.7.3 the action that the Client has elected to take; and
- 32.7.4 if relevant, the date on which this Call-Off Contract shall terminate.

33 GENERAL

- 33.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Call-Off Contract, and that this Call-Off Contract is executed by its duly authorised representative.
- 33.2 This Call-Off Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Call-Off Contract on the basis of any representation that is not expressly incorporated into this Call-Off Contract.
- 33.3 Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
- 33.4 Any entire or partial waiver or relaxation of any of the terms and conditions of this Call-Off Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular breach of this Call-Off Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Call-Off Contract.
- 33.5 This Call-Off Contract does not constitute or imply any partnership, joint venture, agency, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Call-Off Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party's behalf.
- 33.6 Unless expressly stated in this Call-Off Contract, all remedies available to either Party for breach of this Call-Off Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
- 33.7 If any provision of this Call-Off Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Call-Off Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Call-Off Contract.

34 DISPUTE RESOLUTION

- 34.1 If any Dispute arises between the Parties in connection with this Call-Off Contract, they must try to settle it within 20 Working Days of either Party notifying the other of the Dispute.
- 34.2 Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
- 34.3 The obligations of the Parties under this Call-Off Contract will not be suspended, cease or be delayed during a dispute.

- 34.4 If the dispute cannot be resolved by the Parties within 20 Working Days, they must refer it to mediation, unless CCS considers that the dispute is not suitable for resolution by mediation.
- 34.5 If a dispute is referred to mediation, the Parties must:
- 34.5.1 appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment, but if they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party must apply to the Centre for Effective Dispute Resolution to appoint a Mediator
 - 34.5.2 meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged.
- 34.6 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 34.7 If the Parties reach a resolution, a written agreement will be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
- 34.8 If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
- 34.9 If the Parties fail to reach a resolution within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless CCS considers that it is not suitable for resolution by arbitration.
- 34.10 If a dispute is referred to arbitration, the Parties must comply with the following provisions:
- 34.10.1 the arbitration will be governed by the provisions of the Arbitration Act 1996
 - 34.10.2 the London Court of International Arbitration (LCIA) procedural rules will apply, and are deemed to be incorporated into this Call-Off Contract (although if there is any conflict between those rules and this Call-Off Contract, this Call-Off Contract will prevail)
 - 34.10.3 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
 - 34.10.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties
 - 34.10.5 if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
 - 34.10.6 the arbitration proceedings shall take place in London.

35 GOVERNING LAW AND JURISDICTION

- 35.1 This Call-Off Contract will be governed by the laws of England and Wales.
- 35.2 Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all Disputes shall be conducted within England and Wales.

Schedule 1

Definitions and Interpretation

1 INTERPRETATION

1.1 In this Call-Off Contract, any references to numbered Clauses and schedules refer to those within this Call-Off Contract unless specifically stated otherwise. If there is any conflict between this Call-Off Contract, the Letter of Appointment, the provisions of the Framework Agreement and the Brief(s), the conflict shall be resolved in accordance with the following order of precedence:

1.1.1 the Framework Agreement;

1.1.2 the Letter of Appointment (except the Agency Proposal) ;

1.1.3 the Call-Off Terms;

1.1.4 the Brief; and

1.1.5 the Agency Proposal.

1.2 The definitions and interpretations used in this Call-Off Contract are set out in this Schedule 1.

1.3 Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.

1.4 Unless the context otherwise requires:

1.4.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.4.2 words importing the masculine include the feminine and the neuter and vice versa;

1.4.3 the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them;

1.4.4 references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind;

1.4.5 references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.4.6 headings are included in this Call-Off Contract for ease of reference only and will not affect the interpretation or construction of this Call-Off Contract; and

1.4.7 if a capitalised expression does not have an interpretation in Call-Off Schedule 1 (Definitions) or relevant Call-Off Schedule, it shall have

the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall be interpreted in accordance with the relevant market sector/industry. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.5 In this Call-Off Contract, the following terms have the following meanings:

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.
Advertising Regulations	A present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority (including any applicable modification, extension or replacement thereof), together with other UK laws, statutes and regulations which are directly applicable to the Services.
Agency Affiliate	Any member of the Agency Group which is not the Agency and which performs Services to the Client under this Call-Off-Contract.
Agency Confidential Information	Any information that the Agency gives to CCS or to Clients that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however it is conveyed, that relates to the Agency's business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all IPRs.
Agency Group	The Agency and any other company which from time to time directly or indirectly Controls, or is Controlled by, the Agency, or is under the same direct or indirect common Control as the Agency, including: - any affiliated or associated companies of the Agency including any companies with which the Agency has a joint venture; - any trading arm used by the Agency; - any buying club of which the Agency is a member (whether directly or indirectly); and - any Sub-contractor of the Agency or any other entity providing services directly or indirectly to the Agency, where such company is directly and/or indirectly in receipt of: - all or part of any sums paid or payable by CCS and/or any Client; and/or - goods, services or other benefits in kind including AVBs obtained or accrued in lieu of any sums paid or payable or due to be so; and/or - any other equivalent benefit, each as arising in connection with this Call-Off Contract.

	This does not include Media Owners.
Agency Materials	Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Agency for the purposes of a Project, including any Materials adapted, modified or derived from the Client Materials, but excluding Agency Proprietary Materials and Third Party Materials.
Agency Proposal	The Agency's solution in response to the Client's Brief, as set out in the Letter of Appointment.
Agency Proprietary Materials	Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Agency and which: - were in existence prior to the date on which it is intended to use them for a Project, or - are created by or for the Agency outside of a Project and which are intended to be reused across its business.
Agency Staff	All persons employed by the Agency, together with the Agency's agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents and suppliers) used in the performance of the Agency's obligations under this Call-Off Contract.
Agency Volume Bonus or AVB	Any rebate, volume discount or compensation from a Media Owner and/or ad tech supplier for the purchasing of a specified volume of media or from any other media buys, including any and all third party payments; volume or other discounts; commissions; compensation, refunds or bonuses; bonus inventory, free or discounted media, sponsorship or promotional space; barter deals; Services not provided at true market value; service fees arising under service level agreements where no services are actually provided or any other source of financial or other benefit receivable from third parties, (including Media Owners) by the Agency or Agency Group which are either directly or indirectly related to: (a) Media Placements; and/or (b) the aggregate traded volume across all clients of Agency or Agency Group with the relevant third party and/or Media Owner, regardless as to whether these amounts are calculated as a function of media volume or given as a fixed amount; in each case as measured against the prevailing full, undiscounted market rate for the relevant Media Placements or provision of inventory, media, space or other goods or services. For the avoidance of doubt, this definition includes all Client AVBs and Direct AVBs.

Approval	Formal Approval from one Party to another, given in accordance with Clause 10.1 or 10.2.
Associates	A Party's employees, officers, agents, sub-contractors or authorised representatives.
Authorised Agency Approver	Any personnel of the Agency who have the authority to contractually bind the Agency in all matters relating to this Call-Off Contract. They must be named in the applicable Brief, and the Client must be notified if they change.
Authorised Client Approver	Any personnel of the Client who have the authority to contractually bind the Client in all matters relating to this Call-Off Contract. They must be named in the applicable Brief, and the Agency must be notified if they change.
Brief	One or more documents describing the relevant Project(s) as agreed and signed by the parties. Typically comprises both the Client Brief and the Agency's Proposal (whether agreed as part of a further competition or during the Term of this Call-Off Contract).
Call-Off Contract	This contract between the Client and the Agency (entered into under the provisions of the Framework Agreement), which consists of the terms set out in the Letter of Appointment, the Call-Off Terms, the Schedules and any Brief.
Call-Off Terms	The terms and conditions set out in this Call-Off Contract including this Schedule 1 but not including any other Schedules or Brief.
Central Government Body	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: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency.
Change of Control	Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988.
Client Affiliates	Any organisation associated with the Client that will directly receive the benefit of the Services. Client Affiliates must be named in a Brief, or subsequently notified to the Agency.
Client AVBs	A pro rated share of the total AVBs in a given year, calculated based on the proportion of expenditure of the Client's total Media Placements placed via the Agency or Agency Group with each Media Owner compared as against the total combined expenditure by the Agency or Agency Group with the relevant Media Owners or other third party.
Client Brief	The document containing the Client's requirements issued as part of the Call Off Process set out in Section 3 of the Framework Agreement.

Client Cause	A situation where the Client does not fulfil its obligations in connection with this Call-Off Contract (including its payment obligations), and as a consequence the Agency is prevented from performing any of the agreed Services.
Client Confidential Information	All Client Data and any information that the Client or CCS gives to Agencies that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked "confidential"). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Client's business, affairs, developments, trade secrets, Know-How, personnel and suppliers.
Client Data	Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Client's Confidential Information, supplied to the Agency by or on behalf of the Client, or which the Agency is required to generate, process, store or transmit in connection this Call-Off Contract, and any Personal Data for which the Client is the Controller.
Client Materials	Any Client Data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to the Agency or its Associates by or on behalf of the Client.
Commercially Sensitive Information	Information listed in Framework Schedule 7 which: a) relates to the Agency, its IPR or its business or information which the Agency has indicated to CCS that, if disclosed by CCS, would cause the Agency significant commercial disadvantage or material financial loss; and/or b) constitutes a trade secret.
Confidential Information	The Client Confidential Information and/or the Agency Confidential Information.
Charges	All charges payable by the Client for the Services provided under this Call-Off Contract calculated in accordance with Framework Schedule 3 (Charging Structure) and the Letter of Appointment including all Approved costs properly incurred by the Client including but not limited to all Expenses, disbursement, taxes, sub-contractor or Third Party Costs, and Fees.
Contracting Body	CCS, the Client and any other bodies listed in the OJEU Notice.
Contract Year	A consecutive 12-month period during the Term commencing on the Effective Date or each anniversary thereof.
Control	Has the meaning set out in sections 1124 and 450 of the Corporation Tax Act 2010.
Controller	Has the same meaning as set out in the GDPR.

Data Loss Event	Any event that results, or may result, in unauthorised access to Personal Data held by the Agency under this Call-Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call-Off Contract, including any Personal Data Breach.
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 GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to Processing of Personal Data and privacy; and (iii) all applicable Law about the Processing of Personal Data and privacy.
Data Protection Officer	Has the same meaning as set out in the GDPR.
Data Subject	Has the same meaning as set out in the 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.
Default	Any breach of the obligations of the Agency (including but not limited to failing to perform any Services by any date set out in the applicable Brief (or any other deadline agreed by the Parties in writing) and abandonment of this Call-Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Agency, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Call-Off Contract and in respect of which the Agency is liable to the Client.
Direct AVBs	Any accrued AVBs that directly relate to Media Placements purchased by the Client. BSI
Dispute	Any dispute, difference or question of interpretation arising out of or in connection with this Call-Off Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation procedure or any matter where this Call-Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.
Dispute Resolution Procedure	The dispute resolution procedure set out in Clause 34.
DPA 2018	Data Protection Act 2018
Effective Date	The date this Call-Off Contract starts, as set out in the Letter of Appointment.
Employment	The Transfer of Undertakings (Protection of Employment)

Regulations	Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive.
Environmental Information Regulations or EIRs	The Environmental Information Regulations 2004 together with any related guidance and/or codes of practice issued by the Information Commissioner or relevant Government department.
Expenses	Reasonable travelling, hotel, subsistence and other expenses incurred by the Agency in connection with the supply of Services and Deliverables, provided that such Expenses have either received the Client's prior Approval or are in accordance with any expenses policies which have been supplied to the Agency and set out in the agreed Brief.
Expiry Date	The date this Call-Off Contract ends, as set out in the Letter of Appointment.
Extension Expiry Date	The latest date this Call-Off Contract can end, as set out in the Letter of Appointment.
Fees	The Agency fees (including, where applicable, the commission and the incentive as set forth in paragraph 1.2 of Schedule 3 of the Framework Agreement) to be payable by the Client for the Services to be provided under this Call-Off-Contract calculated in a manner that is consistent with the Charging Structure as set out in Schedule 3 of the Framework Agreement (Charging Structure) and as may be amended by the Parties from time to time in accordance with the Framework Agreement or this Call-Off-Contract.
FOIA	The Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
Force Majeure Event	Means: • acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party; • riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; • fire, flood, any disaster and any failure or shortage of power or fuel; and • an industrial dispute affecting a third party for which a substitute third party is not reasonably available; but does not mean • any industrial dispute relating to the Agency, its staff, or any other failure in the Agency's (or a Sub-Contractor's) supply chain; • any event or occurrence which is attributable to the

	wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned; and any failure of delay caused by a lack of funds.
Framework Agreement	The framework agreement between Crown Commercial Services and the Agency reference number: RM3774 referred to in the Letter of Appointment.
Framework Price(s)	The maximum charges the Agency may charge as set out in Schedule 3 to the Framework Agreement.
Further Competition Procedure	The process of a Client issuing a Brief and the Agency submitting a proposal in response to such Brief, as set out in Framework Clause 3.10.
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679)
Good Industry Practice	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.
Impact Assessment	The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4.
Information	The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time.
Insolvency Event	Means, in respect of the Agency [or Framework Guarantor (as applicable)]: a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or b) a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or g) being a "small company" within the meaning of section

	382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or h) where the Agency is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or i) any event analogous to those listed in this definition occurs under the law of any other jurisdiction.
Intellectual Property Rights or IPR	The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration: • any patents or patent applications; • any trade marks (whether or not registered); • inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration; • copyright or design rights (whether registered or unregistered); • database rights; • performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world; • any goodwill in any trade or service name, trading style or get-up; and • any and all other intellectual or proprietary rights.
Invitation to Tender	The invitation to tender for the Framework Agreement issued by CCS;
Key Individuals	Individuals named by the Agency in the Letter of Appointment or Brief as having a major responsibility for delivering the Services.
Know-How	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Agency's or the Client's possession before the Effective Date.
Law	Any law, subordinate legislation, bye-law, enforceable right, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Agency has to comply.
LED	Law Enforcement Directive (Directive (EU) 2016/680)
Letter of Appointment	The Letter of Appointment, substantially in the form set out in Framework Schedule 4, signed by both Parties and dated on

	the Effective Date.
Losses	Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.2.
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.
Materials	Any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, software, or any other material protected by Intellectual Property Rights.
Media Owner	Any third party with whom the Agency or Agency Group contracts or places an order either directly or indirectly for the purchase of Media Placements, including any member of the Media Owner Group.
Media Owner Group	Any other company which from time to time directly or indirectly Controls, or is Controlled by, the Media Owner, or is under the same direct or indirect common Control as the Media Owner, including: - any affiliated or associated companies of the Media Owner including any companies with which the Media Owner has a joint venture; - any trading arm used by the Media Owner; and - any sub-contractor or agency of the Media Owner or any other entity providing services directly or indirectly to the Media Owner.
Media Placement	The advertising, sponsorship or promotional space and/or time in a publication, broadcast stream, press insert, transmission, VOD, website or any other on or off-line platform which is purchased either directly or indirectly from third parties by the Agency or Agency Group in connection with the provision of Services and all clicks howsoever purchased.
Moral Rights	All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world.
New Expiry Date	Has the meaning given to it in Clause 2.3
Personal Data	Has the same meaning as set out in the GDPR.
Personal Data Breach	Has the same meaning as set out in the GDPR.
Processor	Has the same meaning as set out in the GDPR.

Process or Processing	Has the same meaning as set out in the GDPR. "Processed" shall be interpreted accordingly.
Prohibited Act	To directly or indirectly offer, promise or give any person working for or engaged by a Client or CCS a financial or other advantage to: a) induce that person to perform improperly a relevant function or activity; b) reward that person for improper performance of a relevant function or activity; c) 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 this Agreement; or d) commit any offence: • under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or • under legislation or common law concerning fraudulent acts; or • defrauding, attempting to defraud or conspiring to defraud the Client; or • any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK.
Project	Any project(s) agreed between the Parties from time to time by which the Agency is to perform the Services which are the subject of this Call-Off Contract for the Client as more fully described in the applicable Brief;
Project Commencement Date	The date a Project will start, as set out in the relevant Brief.
Project Completion Date	The date by which a Project is to be completed, as set out in the relevant Brief.
Project Notice Period	The period of notice for cancellation of a Project as set out in the Brief.
Project Term	The period during which the Services for each Project will be provided as specified in the applicable Brief.
Protective Measures	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.
Purchase Order	The order number set out in the Letter of Appointment.

Number	
Rate Card	The Agency's rate card set out in Framework Schedule 3.
Records	The accounts and information maintained by the Agency related to the operation and delivery of this Call-Off Contract, including all expenditure which is reimbursable by the Client, as are necessary for the provision of management information and to enable the Client to conduct an audit as set out in Clause 21.
Rectification Plan	The rectification plan pursuant to the Rectification Plan Process.
Rectification Plan Process	The process set out in Clauses 5.8 to 5.14.
Regulations	The Public Contracts Regulations 2015.
Relevant Requirements	All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
Relevant Transfer	A transfer of employment to which the Employment Regulations apply.
Request for Information	A request for information or an apparent request relating to this Call-Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs.
Schedule	Any Schedule attached to this Call-Off Contract.
Services	The Services to be supplied by the Agency under this Call-Off Contract and in accordance with Framework Section 2, as set out in the relevant annual scope of work and/or Brief.
Special Terms	Any terms specifically designated as varying these Call-Off Terms or the terms of any schedule, as set out in the applicable Brief.
Standards	Any: - 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 Agency would reasonably and ordinarily be expected to comply with; - standards detailed in the specification in Framework Section 2 (Services and Key Performance Indicators); - standards detailed by the Client in the Letter of Appointment and any Brief or agreed between the Parties from time to time; or

	relevant Government codes of practice and guidance applicable from time to time.
Sub-Contract	A contract entered into between the Agency and a Sub-Contractor.
Sub-Contractor	Any person or agency appointed by the Agency to provide elements of the Services on behalf of the Agency to the Client. For avoidance of doubt, the term Subcontractor does not include (i) any Media Owners, nor (ii) any intermediaries and other suppliers engaged by the Agency to assist in the completion of or provide services incidental, ancillary or supplemental to the Services, including but not limited to suppliers providing data, equipment, software or facilities shall not be considered a Subcontractor.
Sub-processor	Any third party appointed to Process Personal Data on behalf of the Agency related to this Call-Off Contract.
Tender	The tender submitted by the Agency in response to the Invitation to Tender and set out at Framework Schedule 10 (Call Off Tender).
Term	The period from the Effective Date to the earlier of: - the Expiry Date or New Expiry Date; and - any date of termination.
Territory	The United Kingdom, unless specified otherwise in the applicable Brief. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide.
Third Party Materials	Any Materials used in providing the Services which are either commissioned by the Agency from third parties or which have already been created by a third party and the Agency proposes to use. Excludes software which is owned or licensed by a third party.
Third Party Costs	all third party costs incurred by the Agency on behalf of CCS or the Client in performing the Services, including Net Media Value, subject to CCS or the Client approving all such costs in advance in writing, including the cost of Media Placements purchased on behalf of CCS or the Client and which appear in accordance with the relevant plan for media placement.
Transparency Principles	The principles set out at www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public detailing the requirement for the proactive release of contract information under the Government's transparency commitment.
Transparency Reports	The information relating to the Services and performance of this Call-Off Contract which the Agency is required to provide to the CCS in accordance with its reporting requirements.

Variation	A change in this Call-Off Contract that is formally agreed by both Parties, as detailed in Clause 9.
Variation Form	The template form to process and record variations to this Call-Off Contract as set out at Schedule 3.
Worker	Any Agency Staff to whom the Client considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies . See https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees
Working Day	Any day other than a Saturday, Sunday or public holiday in England and Wales.

Schedule 2

Client Brief



Client Briefing
Template v1.0 16082

Schedule 3

VARIATION FORM

No of Call Off Letter of Appointment being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Client] ("**the Client**")

and

[insert name of Agency] ("**the Agency**")

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

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in this Call-Off Contract.
3. This Call-Off 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 Client

Signature

[Redacted Signature]

Date

06 September 2018

Name (in Capitals)

[Redacted Name]

Address

PHE, Wellington House, 133-155 Waterloo Road, London,
SE1 8UG

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

Signature

[Redacted Signature]

Date

10/09/2018

Name (in Capitals)

[Redacted Name]

Address

Manning Gottlieb OMD, Bankside 3, 90-100 Southwark Street,
London, SE1 0SW