

## **Digital Outcomes and Specialists 3 Framework Agreement Call-Off Contract**

This Call-Off Contract for the Digital Outcomes and Specialists 3 Framework Agreement (RM1043.5) includes

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### [Part B – Terms and conditions](#)

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

The Order Form may include:

- Buyer and Supplier details
- contract term

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

A mockup Order Form (Part A) and Schedules (Part C) are set out below.

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

## Part A - Order Form

<b>Buyer</b>	The Cabinet Office											
<b>Supplier</b>	Softwire Technology Limited											
<b>Call-Off Contract Ref.</b>	DATTDOS 3											
<b>Call-Off Contract title</b>	Iteration of the individual Electoral Registration Digital Service											
<b>Call-Off Contract description</b>	Provision of a new iteration of the individual Electoral Registration Digital Service											
<b>Call-Off Contract period</b>												
<b>Start date</b>	22nd July 2019											
<b>End date</b>	21st July 2020											
<b>(Optional) Maximum Call-Off Contract Extension Period</b>	The Call-Off Contract period can be extended by a maximum of 90 days.											
<b>Latest Extension Period End Date</b>	19th October 2020											
<b>Notice period (prior to the initial Call-Off Contract period) to trigger Call-Off Contract Extension</b>	A notice period of 30 days prior to the end of the initial Call-Off Contract Period will be required prior to the trigger of a Call-Off Contract Extension.											
<b>Call-Off Contract Value</b>	£741,200											
<b>Charging method</b>	<table border="1"> <tr> <td>Capped time and materials (CTM)</td> <td>Yes</td> </tr> <tr> <td>Price per story</td> <td>N/A</td> </tr> <tr> <td>Time and materials (T&amp;M)</td> <td>N/A</td> </tr> <tr> <td>Fixed price</td> <td>N/A</td> </tr> <tr> <td>Other pricing method or a combination of pricing methods agreed by the parties</td> <td>N/A</td> </tr> </table>		Capped time and materials (CTM)	Yes	Price per story	N/A	Time and materials (T&M)	N/A	Fixed price	N/A	Other pricing method or a combination of pricing methods agreed by the parties	N/A
Capped time and materials (CTM)	Yes											
Price per story	N/A											
Time and materials (T&M)	N/A											
Fixed price	N/A											
Other pricing method or a combination of pricing methods agreed by the parties	N/A											

<b>Notice period for termination for convenience</b>	One month written notice
<b>Initial SOW specification</b>	Refer to Annex A of DATTDOS-03 Schedule 3 - SOW

This Order Form is issued in accordance with the Digital Outcomes and Specialists Framework Agreement (RM1043.5).

**Project reference:** DATTDOS-03

**Buyer reference:**

**Order date:** June 19

**Purchase order:** TBC

**From: the Buyer**

Cabinet Office  
4<sup>th</sup> Floor, Windsor House,  
50 Victoria Street  
London  
SW1H 0TL

**To: the Supplier**

Softwire Technology Limited  
020 7485 7500.  
110 Highgate Studios  
53-79 Highgate Road  
London NW5 1TL  
Company Registration 3824658

**Together: the “Parties”**

**Principle contact details**

For the Name: Sarah Hamlyn

Digital Outcomes and Specialists 3 Framework Agreement Call-Off Contract  
[www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract](http://www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract)

Buyer: Title: Commercial Manager  
Email: **REDACTED**  
Phone: **REDACTED**

For the supplier: Name:  
Title: Commercial Director  
Email:  
Phone:

### Data Protection Officers

For the Buyer: Name: Stephen Jones  
Title: Data Protection Officer  
Email: **REDACTED**  
Phone: **REDACTED**

For the supplier: Name: Dan Corder  
Title: Data Protection Officer  
Email: **REDACTED**  
Phone: **REDACTED**

### Buyer contractual requirements

**Digital outcomes and specialists services required:** For the provision of a new iteration of the individual Electoral Registration Digital Service

**Warranty period** N/A.

**Location:** A combination of co-location and remote.

**Staff vetting procedures:** The level of clearance for this requirement is: Security Clearance (S.C)

**Standards:** Cyber Essentials as an immediate requirement and must be working towards achieving Cyber Essentials Plus and ISO 27001:2013, Web Content Accessibility Guidelines (WCAG) 2.1 AA or its European equivalent EN 301 549, General Data Protection Regulations (GDPR) 2018, Privacy and Electronic Communications Regulations (PECR) 2003, Public Contract Regulations 2015, The Service Standard, the Technology Code of Practice.

**Limit on supplier’s liability:** The annual total liability of either Party for all Property defaults will not exceed the total contract value  
 The annual total liability for Buyer Data defaults will not exceed 125% of the charges payable by the buyer to the Supplier during the contract term (whichever is greater)

**Insurance:** Employers’ liability insurance with a minimum limit of £5,000,000.

**Supplier’s information**

**Commercially sensitive information:**

- Supplier Staff bios and case studies provided to Buyer.
- Charges for Supplier Staff
- Trade secrets and other commercially sensitive portions of the Supplier’s commercial proposal to Buyer

**Subcontractors / Partners:** None

**Call-Off Contract Charges and payment**

**The method of payment for the Call-Off Contract Charges (GPC or BACS)** BACS, monthly in arrears. The Supplier will issue electronic invoices monthly in arrears. Payment will be received within 30 days of receipt of an invoice.

**Invoice details**

**Who and where to send invoices to:** REDACTED

**Invoice information required – eg PO, project ref, etc.** P.O Number  
 Service Description  
 Value

Invoice frequency      **REDACTED**

Call-Off Contract      £741,200  
Value:

**Call-Off Contract Charges:**

*Charging Method: BACS*

Role	Normal Rate	Blended Rate for this project
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**Additional Buyer terms**

<b>Warranties, representations and acceptance criteria</b>	As stated in the SOW									
<b>Supplemental requirements in addition to the call-off terms</b>	N/A									
<b>Buyer specific amendments to/refinements of the Call-Off Contract terms</b>	N/A									
<b>Specific terms:</b>	<table border="1"><thead><tr><th>Clause</th><th>Minimum number of days held within the Call-Off Contract</th></tr></thead><tbody><tr><td>6 Warranties, representations and acceptance criteria</td><td>Remains Ninety (90) Days from date of delivery of the Deliverables to the Buyer</td></tr><tr><td>23 Managing Disputes</td><td>Remains various shown within the Call-Off Contract terms</td></tr><tr><td>24 Termination</td><td>Remains Fifteen (15) consecutive Working Days</td></tr></tbody></table>		Clause	Minimum number of days held within the Call-Off Contract	6 Warranties, representations and acceptance criteria	Remains Ninety (90) Days from date of delivery of the Deliverables to the Buyer	23 Managing Disputes	Remains various shown within the Call-Off Contract terms	24 Termination	Remains Fifteen (15) consecutive Working Days
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23 Managing Disputes	Remains various shown within the Call-Off Contract terms									
24 Termination	Remains Fifteen (15) consecutive Working Days									

	30 Help at retendering and handover to replacement supplier	Remains Ten (10) Working days
	32 Contract Changes	Remains Five (5) Working Days
	33 Force Majeure	Remains Fifteen (15) consecutive Calendar Days
	35 Liability	Remains various shown within the Call-Off Contract terms

<b>Formation of Contract</b>	
1.1	By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
1.2	The Parties agree that they have read the Order Form (Part A), the Call-Off Contract terms and conditions (Part B), and the Schedules (Part C), and by signing below agree to be bound by this Call-Off Contract.
1.3	In accordance with the Further Competition procedure set out in Section 3 of the Framework Agreement, this Call-Off Contract will be formed when the Buyer acknowledges the receipt of the signed copy of the Order Form from the Supplier (the “call-off effective date”).
1.4	The Call-Off Contract outlines the Deliverables of the agreement. The Order Form outlines any amendment of the terms and conditions set out in Part B. The terms and conditions of the Call-Off Contract Order Form will supersede those of the Call-Off Contract standard terms and conditions.
<b>2.</b>	<b>Background to the agreement</b>
(A)	The Supplier is a provider of digital outcomes and specialists services and undertook to provide such Services under the terms set out in Framework Agreement number RM1043.5 (the “Framework Agreement”).
(B)	The Buyer served an Order Form for Services to the Supplier on the Order Date stated in the Order Form.
(C)	The parties intend that this Call-Off Contract will not itself oblige the Buyer to buy or the Supplier to supply the Services. Specific instructions and requirements will have contractual effect on the execution of an SOW.

**SIGNED:**

	<b>Supplier:</b>	<b>Buyer:</b>
Name:	Tom Steer	Tim Rogers
Title:	Commercial Director	Commercial Director
Signature:	<b>REDACTED</b>	<b>REDACTED</b>
Date:	<b>REDACTED</b>	<b>REDACTED</b>

## **Part B – Terms and conditions**

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

1.1 The Supplier will start providing the Services in accordance with the dates specified in any Statement of Work (SOW).

1.2 Completion dates for Deliverables will be set out in any SOW.

1.3 Unless the Call-Off Contract period has been either increased in accordance with Clause 1.4 or decreased in accordance with Clause 1.5 then the term of the Call-Off Contract will end when the first of these occurs:

- the Call-Off Contract period End Date listed in the Order Form is reached; or
- the final Deliverable, specified in the final SOW, is completed.

1.4 The Buyer can extend the term of the Call-Off Contract by amending the Call-Off Contract End Date where:

- an Extension Period was specified in the Order Form; and
- written notice was given to the Supplier before the expiry of the notice period set out in the Order Form. The notice must state that the Call-Off Contract term will be extended, and must specify the number of whole days of the extension.

After this, the term of the Call-Off Contract will end on the last day of the Extension Period listed in the notice (the “Extension Period End Date”).

1.5 If the Call-Off Contract is terminated early, either during the initial Call-Off Contract period, or during any Extension Period, the term of the Call-Off Contract will end on the termination date.

1.6 The Supplier will plan on using an agile process, starting with user needs. The methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional circumstances, and where it can be shown to best meet user needs. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths.

### **2. Supplier Staff**

2.1 The Supplier Staff will:

- fulfil all reasonable requests of the Buyer;

- apply all due skill, care and diligence to the provisions of the Services;
  - be appropriately experienced, qualified and trained to supply the Services;
  - respond to any enquiries about the Services as soon as reasonably possible;
- and
- complete any necessary vetting procedures specified by the Buyer.

2.2 The Supplier will ensure that Key Staff are assigned to provide the Services for their Working Days (agreed between Supplier and Buyer) and are not removed from the Services during the dates specified in the relevant SOW.

2.3 The Supplier will promptly replace any Key Staff that the Buyer considers unsatisfactory at no extra charge. The Supplier will promptly replace anyone who resigns with someone who is acceptable to the Buyer. If the Supplier cannot provide an acceptable replacement, the Buyer may terminate the Call-Off Contract subject to clause 23.

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

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

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

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

3.1 Supplier Key Staff providing the Services may only be swapped out with the prior approval of the Buyer.

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

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

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

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

### **5. Due diligence**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **10. Insurance**

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

### **10.1 Subcontractors**

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

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

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

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

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

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

- a broker's verification of insurance; or

- receipts in respect of the insurance premium; or
- other satisfactory evidence of payment of the latest premiums due.

#### 10.4 Supplier liabilities

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

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

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

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

#### 10.5 Indemnity to principals

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

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

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

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

#### 10.7 Premium, excess and deductible payments

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

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

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

## 11. Confidentiality

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

11.2 Disclosure of Confidential Information is permitted where information:

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

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

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

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

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

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

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

## **12. Conflict of Interest**

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

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

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

- is related to someone in another Supplier team who both form part of the same team performing the Services under the Framework Agreement;
  - has a business interest in another Supplier who is part of the same team performing the Services under the Framework Agreement;
  - is providing, or has provided, Services to the Buyer for the discovery phase;
- or
- has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in a Further Competition procedure.

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

## **13. Intellectual Property Rights**

13.1 Unless otherwise specified in the Call-Off Contract:

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

- the Supplier will not have any right to the Intellectual Property Rights of the Buyer or its licensors, including:
  - the Buyer Background IPRs;
  - the Project-Specific IPRs;
  - IPRs in the Buyer Data.

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

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

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

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

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

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

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

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

13.8 At the end of the term of the Call-Off Contract, the Buyer grants to the Supplier a licence to use the Project-Specific IPRs (excluding any information which is the Buyer's

Confidential Information or which is subject to the Data Protection Legislation) on the terms of the Open Government Licence v3.0.

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

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

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

13.12 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, and the Buyer rejects the Request for Approval, then the Call-Off Contract will need to be varied in accordance with Clause 30 'Changes to Services'.

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

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

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

13.15 The indemnity given in Clause 13.13 will be uncapped.

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

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

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

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

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

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

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

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

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

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

13.23 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, and clause 20.3, will be dealt with by the Buyer and the Supplier as follows:

- by the Supplier, where the Malicious Software originates from the Supplier Software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was

present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.

- by the Buyer if the Malicious Software originates from the Buyer Software or the Buyer Data, while the Buyer Data was under the control of the Buyer.

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

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

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

14.1 The Parties will comply with the Data Protection Legislation and agree that the Buyer is the Controller and the Supplier is the Processor. The only processing the Supplier is authorised to do is listed at Schedule 9 unless Law requires otherwise (in which case the Supplier will promptly notify the Buyer of any additional processing if permitted by Law).

14.2 The Supplier will provide all reasonable assistance to the Buyer to prepare any Data Protection Impact Assessment before commencing any processing (including provision of detailed information and assessments in relation to processing operations, risks and measures) and must notify the Buyer immediately if it considers that the Buyer's instructions infringe the Data Protection Legislation.

14.3 The Supplier must have in place Protective Measures, which have been reviewed and approved by the Buyer as appropriate, to guard against a Data Loss Event, which take into account the nature of the data, the harm that might result, the state of technology and the cost of implementing the measures.

14.4 The Supplier will ensure that the Supplier Personnel only process Personal Data in accordance with this Call-Off Contract and take all reasonable steps to ensure the reliability and integrity of Supplier Personnel with access to Personal Data, including by ensuring they:

- i) are aware of and comply with the Supplier's obligations under this Clause;
- ii) are subject to appropriate confidentiality undertakings with the Supplier or relevant Subprocessor

- iii) are informed of the confidential nature of the Personal Data and don't publish, disclose or divulge it to any third party unless directed by the Buyer or in accordance with this Call-Off Contract
- iv) are given training in the use, protection and handling of Personal Data

14.5 The Supplier will not transfer Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are met:

- i) the Buyer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Buyer;
- ii) the Data Subject has enforceable rights and effective legal remedies;
- iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Buyer in meeting its obligations); and
- iv) the Supplier complies with any reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data

14.6 The Supplier will delete or return the Buyer's Personal Data (including copies) if requested in writing by the Buyer at the termination or expiry of this Call-Off Contract, unless required to retain the Personal Data by Law.

14.7 The Supplier will notify the Buyer immediately if it receives any communication from a third party relating to the Parties' obligations under the Data Protection Legislation, or it becomes aware of a Data Loss Event, and will provide the Buyer with full and ongoing assistance in relation to each Party's obligations under the Data Protection Legislation in accordance with any timescales reasonably required by the Buyer.

14.8 The Supplier will maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- i) the Buyer determines that the processing is not occasional;
- ii) the Buyer 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

- ii) the Buyer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

14.9 Before allowing any Subprocessor to process any Personal Data related to this Call-Off Contract, the Supplier must obtain the prior written consent of the Buyer, and shall remain fully liable for the acts and omissions of any Subprocessor.

14.10 The Buyer may amend this Call-Off Contract on not less than 30 Working Days' notice to the Supplier to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **15. Buyer Data**

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

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

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

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

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

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

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

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

15.8 If at any time the Supplier suspects that the Buyer Data that the Supplier has held, used, or accessed has or may become corrupted, lost, breached or significantly degraded

in any way for any reason, then the Supplier will notify the Buyer immediately and will at its own cost comply with any remedial action proposed by the Buyer.

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

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

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

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

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

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

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

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

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

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

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

Digital Outcomes and Specialists 3 Framework Agreement Call-Off Contract  
[www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract](http://www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract)

## **19. Standards and quality**

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

## **20. Security**

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

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

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

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

20.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, as amended from time to time and currently available at: <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

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

## **21. Accessibility**

21.1 The Buyer and Supplier will ensure they understand what the law says about accessibility and should therefore consult the following:

- Equality Act 2010, equality duty
- The Public Sector Bodies (Website and Mobile Applications)(No.2) Regulations 2018

- Public Contract Regulations 2015

21.2 Where an existing feature of the system is compliant with WCAG 2.1 the Supplier shall ensure that it remains so in the new system.

21.3 The Supplier will ensure that any new features are compliant with WCAG 2.1 to conformance level AA or above.

21.4 Where an existing feature of the system is not compliant with WCAG 2.1, the Supplier will make reasonable efforts to improve it. If significant changes are required to improve accessibility of existing features of the IERDS platform, including to bring them in line with WCAG 2.1 (Level AA), this shall require an increase to the Call-Off Contract Value to be agreed under a CCN by the Parties.

## **22. Incorporation of terms**

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

## **23. Managing disputes**

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

23.2 Nothing in this prevents a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.

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

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

23.4 The procedure for mediation is as follows:

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

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

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

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

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

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

23.7 The expert will act on the following basis:

- they will act as an expert and not as an arbitrator and will act fairly and impartially;
- the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
- any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 Working Days of the expert's determination being notified to the Parties
- the process will be conducted in private and will be confidential;
- the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.

23.8 Without prejudice to any other rights of the Buyer under the Call-Off Contract, the obligations of the Parties under the Call-Off Contract will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination and the Supplier and the Supplier Staff will comply fully with the Requirements of the Call-Off Contract at all times.

## **24. Termination**

24.1 The Buyer will have the right to terminate the Call-Off Contract at any time by giving the notice to the Supplier specified in the Order Form. The Supplier's obligation to provide the Services will end on the date set out in the Buyer's notice.

24.2 The minimum notice period (expressed in Working Days) to be given by the Buyer to terminate under this Clause will be the number of whole days that represent 20% of the total duration of the current SOW to be performed under the Call-Off Contract, up to a maximum of 30 Working Days.

24.3 Partial days will be discounted in the calculation and the duration of the SOW will be calculated in full Working Days.

24.4 The Parties acknowledge and agree that:

- the Buyer's right to terminate under this Clause is reasonable in view of the subject matter of the Call-Off Contract and the nature of the Service being provided.
- the Call-Off Contract Charges paid during the notice period given by the Buyer in accordance with this Clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this Clause without cause.
- Subject to clause 34 (Liability), if the Buyer terminates the Call-Off Contract without cause, they will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate such Loss. If the Supplier holds insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Supplier as a result of termination.

24.5 The Buyer will have the right to terminate the Call-Off Contract at any time with immediate effect by written notice to the Supplier if:

- the Supplier commits a Supplier Default and if the Supplier Default cannot, in the opinion of the Buyer, be remedied; or
- the Supplier commits any fraud.

24.6 Either Party may terminate the Call-Off Contract at any time with immediate effect by written notice to the other if:

- the other Party commits a Material Breach of any term of the Call-Off Contract (other than failure to pay any amounts due under the Call-Off Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 Working Days of being notified in writing to do so;
- an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business
- a Force Majeure Event occurs for a period of more than 15 consecutive calendar days.

24.7 If a Supplier Insolvency Event occurs, the Buyer is entitled to terminate the Call-Off Contract.

## **25. Consequences of termination**

25.1 If the Buyer contracts with another Supplier, the Supplier will comply with Clause 29.

25.2 The rights and obligations of the Parties in respect of the Call-Off Contract (including any executed SOWs) will automatically terminate upon the expiry or termination of the relevant Call-Off Contract, except those rights and obligations set out in clause 24.6.

25.3 At the end of the Call-Off Contract period (howsoever arising), the Supplier must:

- immediately return to the Buyer:
  - all Buyer Data including all copies of Buyer Software and any other software licensed by the Buyer to the Supplier under the Call-Off Contract;
  - any materials created by the Supplier under the Call-Off Contract where the IPRs are owned by the Buyer;
  - any items that have been on-charged to the Buyer, such as consumables; and
  - all equipment provided to the Supplier. This equipment must be handed back to the Buyer in good working order (allowance will be made for reasonable wear and tear).
- immediately upload any items that are or were due to be uploaded to the repository when the Call-Off Contract was terminated (as specified in Clause 27);
- cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and the replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and the replacement Supplier;
- destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 months after the date of expiry or termination (whichever is the earlier), and provide written confirmation to the Buyer that the data has been destroyed, except where the retention of Buyer Data is required by Law;
- vacate the Buyer premises;
- work with the Buyer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;

- return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
- provide all information requested by the Buyer on the provision of the Services so that:
  - the Buyer is able to understand how the Services have been provided; and
  - the Buyer and the replacement supplier can conduct due diligence.

25.4 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where the Call-Off Contract states otherwise.

25.5 All licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services will be terminated at the end of the Call-Off Contract period (howsoever arising) without the need for the Buyer to serve notice except where the Call-Off Contract states otherwise.

25.6 Termination or expiry of the Call-Off Contract will not affect:

- any rights, remedies or obligations accrued under the Call-Off Contract prior to termination or expiration;
- the right of either Party to recover any amount outstanding at the time of such termination or expiry;
- the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses:
  - 8 - Payment Terms and VAT
  - 9 - Recovery of Sums Due and Right of Set-Off
  - 11 - Confidentiality
  - 12 - Conflict of Interest
  - 13 - Intellectual Property Rights
  - 24 - Consequences of Termination
  - 28 - Staff Transfer
  - 34 - Liability
  - 35 - Waiver and cumulative remedies
- any other provision of the Framework Agreement or the Call-Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of the Call-Off Contract.

## 26. Supplier's status

26.1 The Supplier is an independent Contractor and no contract of employment or partnership is created between the Supplier and the Buyer. Neither Party is authorised to act in the name of, or on behalf of, the other Party.

## 27. Notices

27.1 Any notices sent must be in writing. For the purpose of this Clause, an email is accepted as being in writing.

27.2 The following table sets out the method by which notices may be served under the Call-Off Contract and the respective deemed time and proof of Service:

Delivery type	Deemed delivery time	Proof of Service
Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message

27.3 The address and email address of each Party will be the address and email address in the Order Form.

## **28. Exit plan**

28.1 The Buyer and the Supplier will agree an exit plan during the Call-Off Contract period to enable the Supplier Deliverables to be transferred to the Buyer ensuring that the Buyer has all the code and documentation required to support and continuously develop the Service with Buyer resource or any third party as the Buyer requires. The Supplier will update this plan whenever there are material changes to the Services. A Statement of Work may be agreed between the Buyer and the Supplier to specifically cover the exit plan.

## **29. Staff Transfer**

29.1 The Parties agree that nothing in the Call-Off Contract or the provision of the Services is expected to give rise to a transfer of employment to which the Employment Regulations apply.

29.2 The Supplier will fully indemnify the Buyer against all Supplier Staff Liabilities which arise as a result of any claims brought against the Buyer due to any act or omission of the Supplier or any Supplier Staff.

29.3 The indemnity given in Clause 28.2 will be uncapped.

## **30. Help at retendering and handover to replacement supplier**

30.1 When requested, the Supplier will (at its own expense where the Call-Off Contract has been terminated before end of term due to Supplier cause) help the Buyer to migrate the Services to a replacement Supplier in line with the exit plan (Clause 27) to ensure continuity of the Services. Such help may include Supplier demonstrations of the existing code and development documents, software licences used and Buyer approval documents. The Supplier will also answer Service and development-related clarification questions.

30.2 Within 10 Working Days of a request by the Buyer, the Supplier will provide any information needed by the Buyer to prepare for any procurement exercise or to facilitate any potential replacement Supplier undertaking due diligence. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case the Supplier will provide the information in a redacted form.

### **31. Changes to services**

31.1 It is likely that there will be changes to the scope of the Services during the Call-Off Contract period. Agile projects have a scope that will change over time. The detailed scope (eg as defined in user stories) can evolve and change during the Call-Off Contract Period. These changes do not require formal contract changes but do require the Buyer and Supplier to agree these changes.

31.2 Any changes to the high-level scope of the Services must be agreed between the Buyer and Supplier. The Supplier will consider any request by the Buyer to change the scope of the Services, and may agree to such request.

### **32. Contract changes**

32.1 All changes to the Call-Off Contract which cannot be accommodated informally as described in Clause 31 will require a Contract Change Note.

32.2 Either Party may request a contract change by completing and sending a draft Contract Change Note in the form in Schedule 4 of Part C - The Schedules ('the **Contract Change Notice**') to the other Party giving sufficient information to enable the other Party to assess the extent of the change and any additional cost that may be incurred. The Party requesting the contract change will bear the costs of preparation of the Contract Change Notice. Neither Party will unreasonably withhold or delay consent to the other Party's proposed changes to the Call-Off Contract.

32.3 Due to the agile-based delivery methodology recommended by the Framework Agreement, it may not be possible to exactly define the consumption of Services over the duration of the Call-Off Contract in a static Order Form. The Supplier should state the initial value of all Services that are likely to be consumed under the Call-Off Contract.

### **33. Force Majeure**

33.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Call-Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under the Call-Off Contract for the length of a Force Majeure event. If a Force Majeure event prevents a Party from performing its obligations under the Call-Off Contract for more than 15 consecutive calendar days, the other Party may terminate the Call-Off Contract with immediate effect by notice in writing.

## **34. Entire agreement**

34.1 The Call-Off Contract constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.

34.2 Each of the Parties agrees that in entering into the Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in the Call-Off Contract.

34.3 Nothing in this Clause or Clause 34 will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.

## **35. Liability**

35.1 Neither Party excludes or limits its liability for:

- death or personal injury;
- bribery or fraud by it or its employees;
- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- any liability to the extent it cannot be excluded or limited by Law.

35.2 In respect of the indemnities in Clause 13 (Intellectual Property Rights) and Clause 28 (Staff Transfer) the Supplier's total liability will be unlimited. Buyers are not limited in the number of times they can call on this indemnity.

35.3 Subject to the above, each Party's total aggregate liability relating to all Losses due to a Default in connection with this agreement resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the Call-Off Contract Charges paid, due or which would have been payable under the Call-Off Contract in the 6 months immediately preceding the event giving rise to the liability.

- Losses covered by this clause 34.3 that occur in the first 6 months of a Call-Off Contract, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Call-Off Contract Charges for the first 6 months of the Call-Off Contract.

35.4 Subject to clause 34.1, in no event will either Party be liable to the other for any:

- loss of profits;
- loss of business;
- loss of revenue;
- loss of or damage to goodwill;
- loss of savings (whether anticipated or otherwise); or
- any indirect, special or consequential loss or damage.

35.5 The Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:

- the additional operational or administrative costs and expenses arising from any Material Breach; and/or
- any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Law.

35.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Buyer to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a client and Buyer relationship.

35.7 Unless otherwise expressly provided, the obligations of the Buyer under the Call-Off Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in the Call-Off Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under the Call-Off Contract on the part of the Buyer to the Supplier.

35.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this Clause have been reached.

## **36. Waiver and cumulative remedies**

36.1 The rights and remedies provided by this agreement may be waived only in writing by the Buyer or the Supplier representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.

36.2 Unless a right or remedy of the Buyer is expressed to be exclusive, the exercise of it by the Buyer is without prejudice to the Buyer's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

## **37. Fraud**

37.1 The Supplier will notify the Buyer if it suspects that any fraud has occurred, or is likely to occur. The exception to this is if while complying with this, it would cause the Supplier or its employees to commit an offence.

37.2 If the Supplier commits any fraud relating to a Framework Agreement, the Call-Off Contract or any other Contract with the government:

- the Buyer may terminate the Call-Off Contract

Digital Outcomes and Specialists 3 Framework Agreement Call-Off Contract  
[www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract](http://www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract)

- CCS may terminate the Framework Agreement
- CCS and/or the Buyer may recover in full from the Supplier whether under Clause 36.3 below or by any other remedy available in law.

37.3 The Supplier will, on demand, compensate CCS and/or the Buyer, in full, for any loss sustained by CCS and/or the Buyer at any time (whether such loss is incurred before or after the making of a demand following the indemnity hereunder) in consequence of any breach of this Clause.

### **38. Prevention of bribery and corruption**

38.1 The Supplier will not commit any Prohibited Act.

38.2 The Buyer and CCS will be entitled to recover in full from the Supplier and the Supplier will, on demand, compensate CCS and/or the Buyer in full from and against:

- the amount of value of any such gift, consideration or commission; and
- any other loss sustained by CCS and/or the Buyer in consequence of any breach of this Clause

### **39. Legislative change**

39.1 The Supplier will neither be relieved of its obligations under the Call-Off Contract nor be entitled to increase the Call-Off Contract prices as the result of a general change in Law or a Specific Change in Law without prior written approval from the Buyer.

### **40. Publicity, branding, media and official enquiries**

40.1 The Supplier will take all reasonable steps to not do anything which may damage the public reputation of the Buyer. The Buyer may terminate the Call-Off Contract for Material Breach where the Supplier, by any act or omission, causes material adverse publicity relating to or affecting the Buyer or the Call-Off Contract. This is true whether or not the act or omission in question was done in connection with the performance by the Supplier of its obligations hereunder.

### **41. Non Discrimination**

41.1 The Supplier will notify CCS and relevant Buyers immediately of any legal proceedings issued against it by any Supplier Staff on the grounds of discrimination.

### **42. Premises**

42.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.

42.2 The Supplier will use the Buyer's premises solely for the Call-Off Contract.

42.3 The Supplier will vacate the Buyer's premises upon termination or expiry of the Call-Off Contract.

42.4 This Clause does not create any tenancy or exclusive right of occupation.

42.5 While on the Buyer's premises, the Supplier will:

- ensure the security of the premises;
- comply with Buyer requirements for the conduct of personnel;
- comply with any health and safety measures implemented by the Buyer;
- comply with any instructions from the Buyer on any necessary associated safety measures; and
- notify the Buyer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

42.6 The Supplier will ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Buyer on request.

42.7 All Equipment brought onto the Buyer's premises will be at the Supplier's risk. Upon termination or expiry of the Call-Off Contract, the Supplier will remove such Equipment.

### **43. Equipment**

43.1 Any Equipment brought onto the premises will be at the Supplier's own risk and the Buyer will have no liability for any loss of, or damage to, any Equipment.

43.2 Upon termination or expiry of the Call-Off Contract, the Supplier will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

### **44. Law and jurisdiction**

44.1 The Call-Off Contract will be governed by the Laws of England and Wales. Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England and Wales.

### **45. Defined Terms**

<b>'Assurance'</b>	The verification process undertaken by CCS as described in section 5 of the Framework Agreement
<b>'Background IPRs'</b>	For each Party: <ul style="list-style-type: none"><li>• IPRs owned by that Party before the date of the Call-Off Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures;</li><li>• IPRs created by the Party independently of the Call-Off Contract; and/or</li></ul>

	<ul style="list-style-type: none"> <li>For the Buyer, Crown Copyright which is not available to the Supplier otherwise than under the Call-Off Contract; but excluding IPRs owned by that Party subsisting in Buyer Software or Supplier Software</li> </ul>
<b>'Buyer'</b>	A UK public sector body, or Contracting Body, as described in the OJEU Contract Notice, that can execute a competition and a Call-Off Contract within the Framework Agreement
<b>'Buyer Background IPRs'</b>	Background IPRs of the Buyer
<b>'Buyer's Confidential Information'</b>	<p>All Buyer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Suppliers of the Buyer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</p> <p>Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</p>
<b>'Buyer Data'</b>	Data that is owned or managed by the Buyer, including Personal Data gathered for user research, eg recordings of user research sessions and lists of user research participants
<b>'Buyer Software'</b>	Software owned by or licensed to the Buyer (other than under or pursuant to this Call-Off Contract), which is or will be used by the Supplier for the purposes of providing the Services
<b>'Call-Off Contract'</b>	<p>The legally binding agreement (entered into following the provisions of the Framework Agreement) for the provision of Services made between a Buyer and the Supplier</p> <p>This may include the key information summary, Order Form, requirements, Supplier's response, Statement of Work (SOW), Contract Change Notice (CNN) and terms and conditions as set out in the Call-Off Contract Order Form</p>
<b>'Charges'</b>	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract, as set out in the applicable SOW(s), in consideration of the full and proper performance by the Supplier of the Supplier's obligations under the Call-Off Contract and the specific obligations in the applicable SOW
<b>'Commercially Sensitive'</b>	Information, which CCS has been notified about, (before the start date of the Framework Agreement) or

<b>Information'</b>	the Buyer (before the Call-Off Contract start date) with full details of why the Information is deemed to be commercially sensitive
<b>'Comparable Supply'</b>	The supply of services to another customer of the Supplier that are the same or similar to any of the Services
<b>'Confidential Information'</b>	CCS's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to): <ul style="list-style-type: none"> <li>• any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> <li>• any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</li> </ul>
<b>'Contracting Bodies'</b>	The Buyer and any other person as listed in the OJEU Contract Notice or Regulation 2 of the Public Contracts Regulations 2015, as amended from time to time, including CCS
<b>'Control'</b>	Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly
<b>'Controller'</b>	Takes the meaning given in the Data Protection Legislation.
<b>'Crown'</b>	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>'Data Loss Event'</b>	Any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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.
<b>'Data Protection Impact Assessment'</b>	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>'Data Protection Legislation'</b>	All applicable Law about the processing of personal data and privacy (including the GDPR, LED and DPA 2018) and including if applicable legally binding guidance and codes of practice issued by the

	Information Commissioner.
<b>'Data Protection Officer'</b>	Takes the meaning given in the Data Protection Legislation.
<b>'Data Subject'</b>	Takes the meaning given in the Data Protection Legislation.
<b>'Default'</b>	<ul style="list-style-type: none"> <li>• any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)</li> <li>• any other default, act, omission, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff in connection with or in relation to the Framework Agreement or this Call-Off Contract</li> </ul> <p>Unless otherwise specified in this Call-Off Contract the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer</p>
<b>'Deliverable'</b>	A tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the Buyer by the Supplier as part of the Services as defined in the Order Form and all subsequent Statement of Work
<b>'Digital Marketplace'</b>	The government marketplace where Services will be bought <a href="https://www.digitalmarketplace.service.gov.uk/">(https://www.digitalmarketplace.service.gov.uk/)</a>
<b>'DPA 2018'</b>	Data Protection Act 2018.
<b>'Employment Regulations'</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC 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
<b>'Equipment'</b>	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under the Call-Off Contract
<b>'Extension Period'</b>	The period (expressed in Working Days) that the initial Call-Off Contract term is extended by following notice given by the Buyer to the Supplier in accordance with Clause 1.4, such period not to exceed the number of whole days that represent 25% of the initial Call-Off

	Contract period.
<b>'FoIA'</b>	The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
<b>'Force Majeure'</b>	<p>Force Majeure means anything affecting either Party's performance of their obligations arising from any of the following:</p> <ul style="list-style-type: none"> <li>● acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party</li> <li>● riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li> <li>● acts of government, local government or Regulatory Bodies</li> <li>● fire, flood, any disaster and any failure or shortage of power or fuel</li> <li>● an industrial dispute affecting a third party for which a substitute third party is not reasonably available</li> </ul> <p>The following do not constitute a Force Majeure event:</p> <ul style="list-style-type: none"> <li>● any industrial dispute relating to the Supplier, its staff, or any other failure in the Supplier's (or a Subcontractor's) supply chain</li> <li>● 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</li> </ul>
<b>'Framework Agreement'</b>	The Framework Agreement between CCS and the Supplier for the provision of the Services dated 27/09/2018
<b>'Further Competition'</b>	The Further Competition procedure as described in Section 3 (how Services will be bought) of the Framework Agreement.
<b>'GDPR'</b>	The General Data Protection Regulation (Regulation (EU) 2016/679).
<b>'Good Industry Practice'</b>	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice ( <a href="https://www.gov.uk/service-manual/technology/code-">https://www.gov.uk/service-manual/technology/code-</a>

	<a href="#">of-practice.html</a> ) and the government service design manual ( <a href="https://www.gov.uk/service-manual">https://www.gov.uk/service-manual</a> )
<b>'Group'</b>	A company plus any subsidiary or holding company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006
<b>'Group of Economic Operators'</b>	A partnership or consortium not (yet) operating through a separate legal entity.
<b>'Holding Company'</b>	As described in section 1159 and Schedule 6 of the Companies Act 2006
<b>'Information'</b>	As described under section 84 of the Freedom of Information Act 2000, as amended from time to time
<b>'Insolvency Event'</b>	may be: <ul style="list-style-type: none"> <li>● a voluntary arrangement</li> <li>● a winding-up petition</li> <li>● the appointment of a receiver or administrator</li> <li>● an unresolved statutory demand</li> <li>● a Schedule A1 moratorium</li> </ul>
<b>'Intellectual Property Rights' or 'IPR'</b>	means: <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
<b>'Key Staff'</b>	Means the Supplier Staff named in the SOW as such
<b>'KPI Target'</b>	The acceptable performance level for a key performance indicator (KPI)
<b>'Law'</b>	Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
<b>'LED'</b>	Law Enforcement Directive (Directive (EU) 2016/680).
<b>'Loss'</b>	All losses, liabilities, damages, costs, expenses

	(including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly
<b>'Lot'</b>	A subdivision of the Services which are the subject of this procurement as described in the OJEU Contract Notice
<b>'Malicious Software'</b>	Any software program or code intended to destroy, or cause any undesired effects. It could be introduced wilfully, negligently or without the Supplier having knowledge of its existence.
<b>'Management Charge'</b>	The sum paid by the Supplier to CCS being an amount of 1.0% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or termination of any Call-Off Contract
<b>'Management Information'</b>	The Management Information (MI) specified in section 6 of the Framework Agreement
<b>'Management Information (MI) Failure'</b>	If any of the below instances occur, CCS may treat this as an 'MI Failure': <ul style="list-style-type: none"> <li>● there are omissions or errors in the Supplier's submission</li> <li>● the Supplier uses the wrong template</li> <li>● the Supplier's report is late</li> <li>● the Supplier fails to submit a report</li> </ul>
<b>'Material Breach' (Framework Agreement)</b>	A breach by the Supplier of the following Clauses in the Framework Agreement: <ul style="list-style-type: none"> <li>● Subcontracting</li> <li>● Non-Discrimination</li> <li>● Conflicts of Interest and Ethical Walls</li> <li>● Warranties and Representations</li> <li>● Provision of Management Information</li> <li>● Management Charge</li> <li>● Prevention of Bribery and Corruption</li> <li>● Safeguarding against Fraud</li> <li>● Data Protection and Disclosure</li> <li>● Intellectual Property Rights and Indemnity</li> <li>● Confidentiality</li> <li>● Official Secrets Act</li> <li>● Audit</li> </ul>
<b>'Material Breach' (Call-Off Contract)</b>	A single serious breach of or persistent failure to perform as required in the Call-Off Contract
<b>'OJEU Contract Notice'</b>	The advertisement for this procurement issued in the Official Journal of the European Union
<b>'Order Form'</b>	An order in the form set out in Part A of the Call-Off

Digital Outcomes and Specialists 3 Framework Agreement Call-Off Contract  
[www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract](http://www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract)

	Contract for Digital Outcome and Specialist Services placed by a Buyer with the Supplier
<b>'Other Contracting Bodies'</b>	All Contracting Bodies, or Buyers, except CCS
<b>'Party'</b>	<ul style="list-style-type: none"> <li>● for the purposes of the Framework Agreement; CCS or the Supplier</li> <li>● for the purposes of the Call-Off Contract; the Supplier or the Buyer,</li> </ul> and 'Parties' will be interpreted accordingly
<b>'Personal Data'</b>	Takes the meaning given in the Data Protection Legislation.
<b>'Personal Data Breach'</b>	Takes the meaning given in the Data Protection Legislation.
<b>'Processing'</b>	This has the meaning given to it under the Data Protection Legislation but, for the purposes of this Framework Agreement and Call-Off Contract, it will include both manual and automatic processing. 'Process' and 'processed' will be interpreted accordingly.
<b>'Processor'</b>	Takes the meaning given in the Data Protection Legislation.
<b>'Prohibited Act'</b>	<p>To directly or indirectly offer, promise or give any person working for or engaged by a buyer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>● induce that person to perform improperly a relevant function or activity</li> <li>● reward that person for improper performance of a relevant function or activity</li> <li>● commit any offence: <ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul> </li> </ul>
<b>'Project-Specific IPRs'</b>	<ul style="list-style-type: none"> <li>● Intellectual Property Rights in items, including Deliverables, created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Call-Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or</li> <li>● Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under the Call-Off Contract;</li> </ul> but not including the Supplier Background IPRs
<b>'Property'</b>	The property, other than real property and IPR, issued

	or made available to the Supplier by the Buyer in connection with a Call-Off Contract
<b>'Protective Measures'</b>	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 such measures adopted by it.
<b>'Regulations'</b>	The Public Contracts Regulations 2015 (at <a href="http://www.legislation.gov.uk/uksi/2015/102/contents/made">http://www.legislation.gov.uk/uksi/2015/102/contents/made</a> ) and the Public Contracts (Scotland) Regulations 2012 (at <a href="http://www.legislation.gov.uk/ssi/2012/88/made">http://www.legislation.gov.uk/ssi/2012/88/made</a> ), as amended from time to time
<b>'Regulatory Bodies'</b>	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in the Framework Agreement or the Call-Off Contract
<b>'Release'</b>	The Deliverable for a particular Statement of Work. Its delivery by the Supplier and its acceptance by the Buyer completes the Statement of Work.
<b>'Reporting Date'</b>	The seventh day of each month following the month to which the relevant MI relates. A different date may be chosen if agreed between the Parties
<b>'Request for Information'</b>	A request for information or an apparent request under the Code of Practice on Access to Government Information, FoIA or the Environmental Information Regulations
<b>'Self Audit Certificate'</b>	The certificate in the form as set out in Framework Agreement Schedule 1 - Self Audit Certificate, to be provided to CCS by the Supplier in accordance with Framework Agreement Clause 7.6.
<b>'Services'</b>	Digital outcomes, digital specialists, user research studios or user research participants to be provided by the Supplier under a Call-Off Contract
<b>'Specific Change in Law'</b>	A change in the Law that relates specifically to the business of CCS and which would not affect a Comparable Supply
<b>'Statement of Requirements'</b>	A statement issued by CCS or any Buyer detailing its Services requirements issued in the Call-Off Contract
<b>'Statement of Work' (SOW)</b>	The document outlining the agreed body of works to be undertaken as part of the Call-Off Contract between the Buyer and the Supplier. This may include (but is

	not limited to) the Statement of Requirements, the Deliverable(s), the completion dates, the charging method. Multiple SOWs can apply to one Call-Off Contract
<b>'Subcontractor'</b>	Each of the Supplier's Subcontractors or any person engaged by the Supplier in connection with the provision of the digital services as may be permitted by Clause 9.18 of the Framework Agreement or the Call-Off Contract
<b>'Subprocessor'</b>	Any third party appointed to process Personal Data on behalf of the Supplier under this Call-Off Contract.
<b>'Supplier'</b>	The Supplier of Digital Outcomes and Specialists services who successfully bid for Call-Off Contracts as outlined in the Contract Notice within the Official Journal of the European Union (OJEU Notice). The identifying details of the Supplier to be bound by the terms of the Call-Off Contract are set out in the Order Form.
<b>'Supplier Background IPRs'</b>	Background IPRs of the Supplier
<b>'Supplier Software'</b>	Software which is proprietary to the Supplier and which is or will be used by the Supplier for the purposes of providing the Services
<b>'Supplier Staff'</b>	All persons employed by the Supplier including the Supplier's agents and consultants used in the performance of its obligations under the Framework Agreement or the Call-Off Contract
<b>'Supplier Staff Liabilities'</b>	Any claims, actions, proceedings, orders, demands, complaints, Losses and any awards or compensation reasonably incurred in connection with any claim or investigation related to employment
<b>'Warranty Period'</b>	The period set out in Annex A to Schedule 3 under the heading Warranty Period
<b>'Working Day'</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales, from 9am to 5pm unless otherwise agreed with the Buyer and the Supplier in the Call-Off Contract

## **Part C - The Schedules**

### **Schedule 1 - Requirements - our requirement what we need (brief description of requirement)**

Build of a new iteration of the Individual Electoral Registration digital service. This includes a new Serverless based citizen facing front-end, and the migration of existing components to new container based infrastructure on the public cloud.

## **Schedule 2 - Supplier's response**

Please refer to the Supplier specification in Annex A.

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

### Sch 3.1 SOW Details

<b>Date of SOW:</b>	<i>22<sup>nd</sup> July 2019</i>
<b>SOW Reference:</b>	<i>DOS-03</i>
<b>Buyer:</b>	<i>The Cabinet Office</i>
<b>Supplier:</b>	<i>Softwire Technology Limited</i>
<b>Release Type(s):</b>	<i>Please enter here</i>
<b>Phase(s) of Development:</b>	<i>Choose an item</i>
<b>Release Completion Date:</b>	<i>21st July 2020</i>
<b>Duration of SOW</b>	<i>12 calendar months</i>
<b>Charging Method(s) for this Release:</b>	<i>Monthly in arrears</i>

3.1.1 The Parties will execute a SOW for the complete Release. Delivery will be executed early and often as per the deployment plan created by the Supplier and agreed with the Buyer. Note that any ad-hoc Service requirements are to be treated as individual Releases in their own right (in addition to the Releases at the delivery stage); and the Parties should execute a separate SOW in respect of each.

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

### Sch 3.2 Key Staff

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

3.2.2 **REDACTED**

### Sch 3.3 Deliverables

3.3.1 To be added in agreement between the Buyer and Supplier

## Sch 3.4 Call-Off Contract Charges

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

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

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

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

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

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

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

Where:

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

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

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

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

3.4.4 Risks or contingencies will be included in the Charges. The Parties agree that the assumptions, representations, risks and contingencies included in Annex A to Schedule 3, will apply in relation to the Charges.

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

3.4.6 Multiple SOWs can operate concurrently.

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

3.4.8 Buyer dependencies in relation to the Charges for a SOW are set out in the relevant SOW.

**Sch 3.5. Call-Off Contract Extension Period**

Where the Buyer has specified an Extension Period in the Order Form, the Parties agree that an Extension Period of up to 3 months of the initial Call-Off Contract Period can be added to the term of the Call-Off Contract, to accommodate any changes to the Deliverables, or delay in meeting the Buyer’s requirements. The Buyer must give the Supplier the minimum notice specified in the Order Form that an Extension Period is required, set out how long the Extension Period is to be, and obtain prior written approval from the Supplier before applying any Extension Period to the Call-Off Contract period.

**Sch 3.6. Agreement of statement of works**

BY SIGNING this SOW, the parties agree to be bound by the terms and conditions set out herein:	
<b>For and on behalf of the Supplier:</b>	
Name and title	REDACTED
Signature and date	REDACTED
<b>For and on behalf of the departmental Buyer:</b>	

Name and title	<b>REDACTED</b>
Signature and date	<b>REDACTED</b>

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

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



Name:

Click here to enter text.

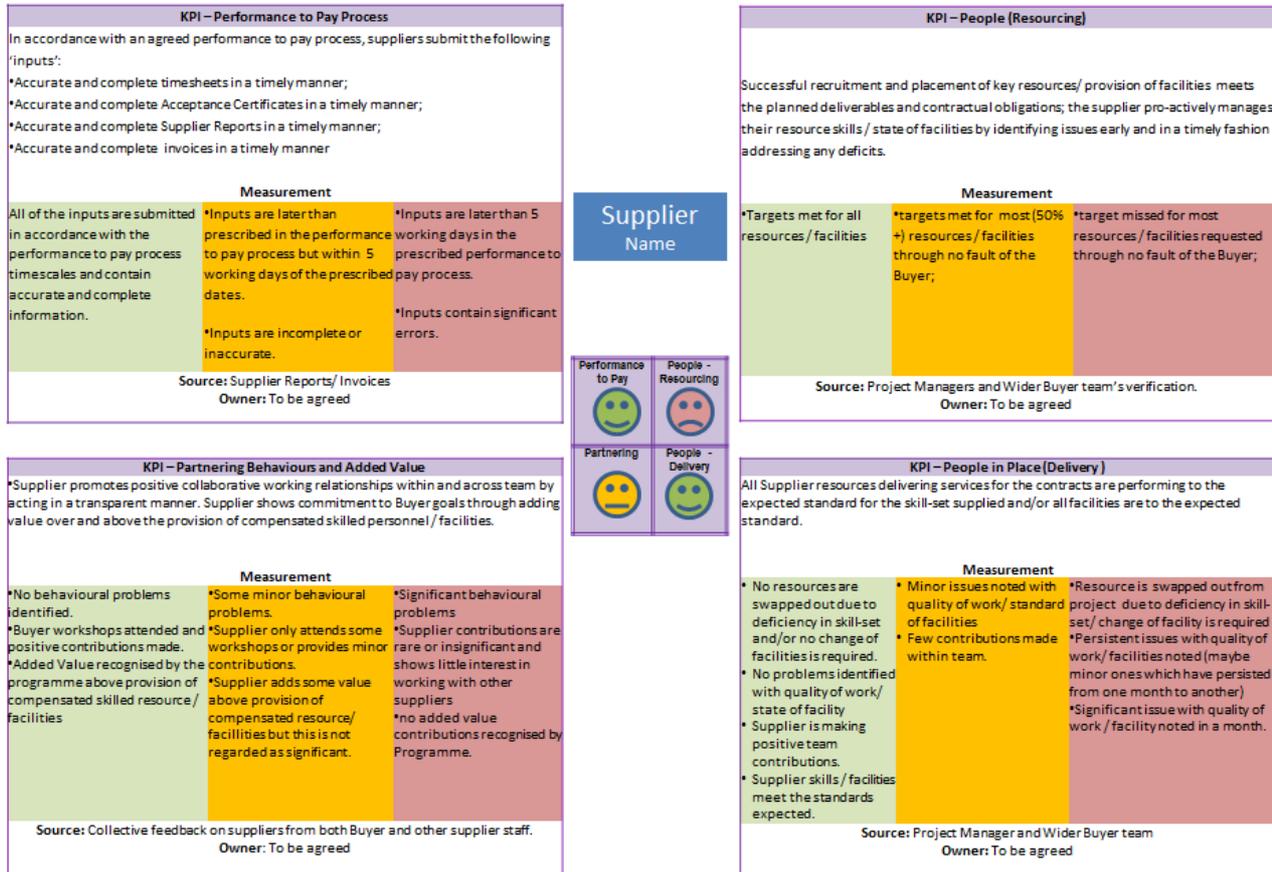
Address:

Click here to enter text.

## Schedule 5 - Balanced Scorecard

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

# Balanced Scorecard



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

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

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

4. Following agreement of final scores, the process is repeated as per the agreed schedule

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

## Schedule 6 - Optional Buyer terms and conditions

### Sch 6.1 Service Level Objectives

The service level object schedule is a quantitative means that the buyer will use to evaluate the quality and performance of the services or solution delivered by the Supplier during the Warranty Period.

Unless by prior agreement with the Buyer, the Supplier must design and build a service that will meet or exceed the following service-level objectives;

Subject to the exclusions stated below, the sole liability of the Supplier for failing to meet the service level objectives during the Warranty Period shall be to re-perform the Services so as to meet or exceed the service level objectives. Subject to Schedule 3.4.3, the Call-Off Contract Charges set out in Part A – Order Form of this Call-Off Contract shall apply to such re-performance.

#### Exclusions

The Supplier shall not be liable for any failure to meet the service level objectives herein that:

- a) is caused by factors outside of the Supplier's reasonable control, including any Force Majeure Event or internet access or related problems outside the scope of the Services; or
- b) results from downtime in any related third party systems, e.g. AWS or the postcode lookup provider; or
- b) results from any actions or inactions of the Buyer or any third party;
- c) results from a pre-agreed maintenance window; or
- d) results from the Buyer's and/or third-party equipment, software or other technology; or
- e) arises from the Supplier's termination of the Call-Off Contract in accordance with clause 24 of the Call-Off Contract terms.

#### References:

<https://gds-way.cloudapps.digital/standards/slis.html#run-a-service-level-indicator-sli-workshop>

<https://landing.google.com/sre/sre-book/chapters/service-level-objectives/>

### Sch 6.1.1 - Latency

*Responding rapidly to citizen facing requests*

99.5% of citizen facing requests excluding pages with external requests (e.g. the postcode API) (averaged over 30 days) complete in less than 500 ms

**FAILURE  
BUDGET**

0.5% of requests could exceed 300ms

99% of cold starts less than 1000ms across all API endpoints.

**FAILURE  
BUDGET**

1% of requests could exceed 1000ms

### Sch 6.1.2 - Availability

*Maintaining the ability for citizens to register*

99.9% of well-formed queries receive well-formed responses during enhanced performance periods e.g. around citizen registration deadlines

**FAILURE  
BUDGET**

0.05% of requests could receive invalid responses

99.95% of well-formed queries receive well-formed responses outside of enhanced performance periods

**FAILURE  
BUDGET**

0.1% of requests could receive invalid responses

### Sch 6.1.3 - Throughput

*Scaling to meet peaks in demand*

Burstable throughput of a minimum of 1000 requests per second sustainable for 2 hours

**FAILURE  
BUDGET**

0.00001% of registrations could be irretrievably lost

**Sch 6.1.4 - Durability**

*Protecting registration data in our custody*

99.95% of registrations submitted are retrievable without corruption within 30 days of submission

**FAILURE  
BUDGET**

0.005% of registrations could be irretrievably lost

**Sch 6.2 - [Not Used]**

**Sch 6.3 - KPI's**

Supplier shall provide regular reports to Buyer on the following KPI's:

Defects Rate - How often work will need to be redone or reworked within a sprint, which may have an impact on the budget and completion time.

Velocity - Measurement of the amount of work or features completed in a sprint. The mechanism is required to provide teams with estimate of achievable work in the next sprint.

Sprint burndown - Representation chart showing the amount of work remaining to be done before the end of a sprint to display progress towards the goal.

On-time completion - Visualisation of whether the sprints or tasks were completed by the provided completion date.

## **Sch 6.4 – User Story Readiness - Definition of Ready / Done**

Suppliers must provide an outline of their definition of ready / done for the phasing of the solution components. The buyer has outlined the minimum expectation of components that make up the definitions or ready/done.

### **Sch 6.4.1 - Definition of Ready**

- User story defined and prioritised
- User story Acceptance criteria defined (including failure states)
- Effort estimated
- INVEST aligned (Independent, Negotiable, Estimable, Small, Testable)
- Localisations where applicable
- Monitoring, load test assumptions documented

### **Sch 6.4.2 - Definition of Done**

Where the parties agree it is appropriate, certain conditions listed below for achieving “done” status may be applicable once per Release rather than for each user story.

- Peer reviewed (correctness, efficiency, OWASP)
- User story Acceptance criteria met
- User story Acceptance tests written and pass
- Load testing scenarios updated (where applicable)
- Load testing passed
- Unit tests written and pass
- Acceptance tests written and pass
- Browser capability tested and pass (where applicable)
- Instrumentation and monitoring configured (if specified in acceptance criteria)
- Deployed to test environment
- Documented
- Approved by security / information assurance lead
- Approved by product owner

## **Schedule 7 - How Services are bought (Further Competition process)**

Services are bought under this Call-Off Contract using the Further Competition process set out in Section 3 of the Framework Agreement (How Services will be bought).

## Schedule 8 - Deed of guarantee

This section is not applicable

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

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

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

### **Whereas:**

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

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

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

## **DEFINITIONS AND INTERPRETATION**

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

**'Call-Off Contract'** means [the Guaranteed Agreement] made between the Buyer and the Supplier on 8th July 2019

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

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

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

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

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

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

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

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

References to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this deed of guarantee.

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

### **Guarantee and indemnity**

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

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

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

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

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

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

or under an agreement entered into on the same terms and at the same time as the Call-Off Contract with the Buyer.

### **Demands and notices**

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

[Address of the Guarantor in England and Wales]

[Email address of the Guarantor representative]

For the Attention of [insert details]

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

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

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

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

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

### **BENEFICIARY'S PROTECTIONS**

The Guarantor will not be discharged or released from this deed of guarantee by:

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

This deed of guarantee will be a continuing security for the Guaranteed Obligations and accordingly:

- it will not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed

Obligations or by any omission or delay on the part of the Buyer in exercising its rights under this deed of guarantee

- it will not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Buyer, the Guarantor or any other person
- if, for any reason, any of the Guaranteed Obligations is void or unenforceable against the Supplier, the Guarantor will be liable for that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor
- the rights of the Buyer against the Guarantor under this deed of guarantee are in addition to, will not be affected by and will not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Buyer

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

The Buyer will not be obliged before taking steps to enforce this deed of guarantee against the Guarantor to:

- obtain judgment against the Supplier or the Guarantor or any third party in any court
- make or file any claim in a bankruptcy or liquidation of the Supplier or any third party
- take any action against the Supplier or the Guarantor or any third party
- resort to any other security or guarantee or other means of payment.

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

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

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

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

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

### **GUARANTOR INTENT**

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

### **RIGHTS OF SUBROGATION**

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

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

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

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

### **DEFERRAL OF RIGHTS**

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

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

If the Guarantor receives any payment or other benefit or exercises any set-off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom will be held on trust for the

Buyer and applied in or towards discharge of its obligations to the Buyer under this deed of guarantee.

## **REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Buyer that:

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

This deed of guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **PAYMENTS AND SET-OFF**

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

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

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

## **GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Buyer that it has not entered into this deed of guarantee in reliance upon the Buyer nor been induced to enter into this

deed of guarantee by any representation, warranty or undertaking made by, or on behalf of the Buyer, (whether express or implied and whether following statute or otherwise) which is not in this deed of guarantee

### **ASSIGNMENT**

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

The Guarantor may not assign or transfer any of its rights or obligations under this deed of guarantee.

### **SEVERANCE**

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

### **THIRD-PARTY RIGHTS**

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

### **GOVERNING LAW**

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

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

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

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

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

hereby irrevocably consents to the Service of notices and demands, Service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by

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

Director

Director/Secretary

## **Schedule 9 - Processing, Personal Data and Data Subjects**

### **Subject matter of the processing:**

Processing required to perform diagnostic and testing services to fulfil the Supplier's obligations to provide a new iteration of the Buyer's IERDS platform under the Call-Off Contract.

### **Duration of the processing:**

The duration of the processing shall be as required to fulfil the Supplier's obligations during the Call-Off Contract period set out in Part A – Order Form of the Call-Off Contract.

### **Nature and purposes of the processing:**

Accessing and using personal data for the purpose of diagnostic and testing services in relation to the Supplier's development of the Buyer's IERDS platform under the Call-Off Contract.

### **Type of Personal Data:**

Name, address, date of birth, national insurance number, nationality, passport number, residency details.

### **Categories of Data Subject:**

UK electorate

### **Plan for return or destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data:**

The data will, at the Buyer's request, be returned or destroyed in line with the Supplier's current policy on the destruction of electronic data and the timescales contained therein.

## **Schedule 10 – Alternative Clauses**

### **Part 1: Alternative Jurisdictions**

Not applicable

### **Change Clause 43.1**

Not applicable

## Change Defined Terms

Not applicable

## Change Schedule 8 - Deed of guarantee

This section is not applicable

[Replace paragraph 1]

(1) [Insert the name of the guarantor] a company incorporated under the Laws of [Scotland/Northern Ireland], registered in [Scotland/Northern Ireland] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ('**guarantor**'); in favour of

[Replace initial paragraphs of "Demands and notices"]

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

[Address of the Guarantor in Scotland/Northern Ireland]

[Email address of the Guarantor representative]

For the Attention of [insert details]

or such other address in [Scotland/Northern Ireland] as the Guarantor has from notified to the Buyer in writing as being an address for the receipt of such demands or notices.

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

[Replace section on Governing Law]

### **GOVERNING LAW**

This Deed of Guarantee, and any non-Contractual obligations arising out of or in connection with it, will be governed by and construed in accordance with [Scottish/Northern Irish] Law.

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

Nothing contained in this Clause will limit the rights of the Buyer to take proceedings against the Guarantor in any other court of competent jurisdiction, nor will the taking of any

such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable Law).

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

[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] either at its registered office or on fax number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, Service of process and any other legal summons in [Scotland/Northern Ireland] for the purposes of any legal action or proceeding brought or to be brought by the Buyer in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the Service of notices and demands, Service of process or any other legal summons served in such way.]

## **Part 2: Alternative data protection relationships**

Not applicable

14.1 The Parties will comply with the Data Protection Legislation and agree that the Buyer is the Controller and the Supplier is the Processor. The only processing the Supplier is authorised to do is listed at Schedule 9 unless Law requires otherwise (in which case the Supplier will promptly notify the Buyer of any additional processing if permitted by Law).

## **Schedule 11: Joint Controller Agreement – Not Applicable**

## **Annex A to SOW: Specification**

*The Supplier is required to provide a specification to be completed as part of the initial SOW in Schedule 3. An example breakdown has been provided for guidance and is not exhaustive. The supplier is welcome to use their own approach and format and we would recommend displaying the Agile sprint breakdown using the Alpha, Beta, Live phasing. Please also define your approach to Warranty (considering the Cabinets requirement for an element of flexibility) and whether Cyber Essentials and ISO 27001 certification needs to be gained.*

Digital Outcomes and Specialists 3 Framework Agreement Call-Off Contract  
[www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract](http://www.gov.uk/guidance/digital-outcomes-and-specialists-3-call-off-contract)

## Definitions

For the avoidance of doubt, the definitions in the Call-Off Contract also apply to this Annex A.

The following further definition applies to this Annex A:

**“Remaining Call-Off Contract Value”** means the Call-Off Contract Value minus the value of Services already performed under the Call-Off Contract.

## Summary

The IER Digital Service (IER DS) allows citizens living in the UK to apply to register to vote online. The service has four distinct user journeys for different types of citizen applications: the ordinary journey (representing the majority of applicants) and public servants who are likely to be posted overseas.

Each application goes through a verification process to match applicants with data held by the DWP. The applications are returned to the IER DS with a matched or unmatched indicator and retrieved by the Electoral Registration Officers (EROs) to complete the registration process.

The current solution comprises a front end application written in Scala/Play, and a middle tier application, also written in Scala, which provides APIs to record the submission of a registration, validate the details, bulk download registrations for a specific electoral region, and administer the system. These are hosted on physical infrastructure managed by the Cabinet Office.

This specification details the changes required to deliver the next iteration of the IERDS platform:

- To improve supportability, scalability and resilience, the application is to be moved to a cloud platform utilising the AWS Lambda serverless technology for scalability on the front end elements, and using the GSP standard Kubernetes platform for running the middle tier elements.
- To ensure up-to-date address data, the local postcode database will be replaced with a 3rd party API, together with a new admin interface to allow cabinet office staff to manually add postcodes.

## Alpha

The goal of the alpha phase will be to deliver a thin end-to-end front end registration journey sufficient to enable basic load testing.

To reach this goal, the following will be delivered:

1. A detailed architectural design, agreed with the cabinet office technical architect, making use of the GSP template
2. A security review, documenting key security features within the design, agreed with the cabinet office security team
3. A build and continuous integration pipeline using ConcourseCI which will:

- a. Build/package the front end application (on each commit)
  - b. Run automated functional tests on the new build (on each commit)
  - c. Deploy the new build to a specified AWS environment (when triggered by a developer)
  - d. Deploy/update the cloud infrastructure for a specified environment via terraform scripts (when triggered by a developer)
4. Configuration to ensure that logs are accessible via the cabinet offices preferred solution, currently assumed to be Splunk
  5. Configuration to ensure that performance metrics are available in CloudWatch
  6. Technical design and prototyping to finalise a high level approach for writing serverless endpoints, expected to be based on Node/Express
  7. A library to handle storage of transient session data in encrypted cookies, expected to be based on the existing implementation, suitable for use across multiple lambda endpoints
  8. A library to handle session creation, refresh and expiry, for re-use across endpoints
  9. Implementation of the minimum set of screens needed for the ordinary registration journey:
    - a. Country of residence
    - b. Nationality
    - c. Date of birth
    - d. Name and previous names
    - e. NI number
    - f. Address, with postcode lookup
    - g. Previous addresses
    - h. Do you have a second address
    - i. Open register
    - j. Who else lives at your address
    - k. Contact details
    - l. Summary
    - m. Submit
  10. The implementation of the above screens will match the current registration site, but will use the latest version of the GDS design system.
  11. Automated tests will be written to cover the whole of the ordinary registration journey above
    - a. The existing front end code will be reviewed to ensure all functionality is captured in the new pages and associated tests
  12. The existing middle tier components (a single codebase which provides EMS, Admin, Citizen and Jobs APIs) will be deployed on AWS running on a Kubernetes cluster using GSP templates
    - a. The components will be updated to utilise GSP toolsets for logging and monitoring
    - b. The middle tier components will be added to the ConcourseCI pipeline which will be used to create packaged containers for deployment
  13. The front end and middle tier applications will be connected via a suitable data store (expected to be SQS or DynamoDB)

- a. The front end will store completed registrations in this data store
  - b. The middle tier will asynchronously and transactionally remove items from the store and into the registration database, with the Citizen API code modified for this purpose
14. A mock version of the Address provider will be created to support alpha testing
15. Load tests will be performed on the alpha,
- a. These will simulate the ordinary registration journey above
  - b. The tests will be re-usable, and will be able to simulate realistic traffic spikes based on cabinet office data from previous election events

## Beta Deliverables

The goal of the beta phase will be to complete and exhaustively test the new IERDS platform.

The following will be delivered:

1. Appropriately configured instances of Amazon Web Application Firewall, AWS Advanced Shield and AWS Cloudfront will added to the infrastructure templates, to prevent against malicious attacks, particularly DDOS
2. An Amazon DirectConnect link, or similar VPN based link, will be established to the existing PSN connectivity provider on the production environment.
  - a. Softwire will work with AWS to configure this link
  - b. The Cabinet Office shall be responsible for any other work required to enable PSN connectivity
3. Implementation of the Overseas journey, with additional screens beyond the ordinary journey as follows:
  - a. Date left UK
  - b. Passport type
  - c. Passport / citizenship details
  - d. Last UK address
  - e. Overseas address (manually entered)
  - f. Parents details
4. Implementation of the Armed Forces journey, with additional screen:
  - a. Rank and Service
  - b. Correspondence address
5. Implementation of the Crown Servants journey, with additional screens:
  - a. Role details
  - b. Declaration form download
6. A feedback form which integrates with the Cabinet Offices zendesk account
7. Welsh language versions of the homepage and ordinary journey
  - a. The cabinet office will provide translations should any text be required that is not already available on the existing pages
8. Integration with a third party postcode provider to support postcode lookup
  - a. The Cabinet Office will choose a provider during Alpha with input from Softwire
9. Integration with a third party identity provider to verify applicant identity via the existing FTP based data transfer mechanism

10. The ability for administrative users to configure manual postcode overrides
  - a. New screens in the admin application to view the list of existing postcode overrides, add a new override (postcode / address pairing) and/or delete an existing override
  - b. Overrides shall appear in the list of possible addresses in the registration journey when matching postcodes are entered
11. Migration of scheduled jobs in the middle tier to run on AWS lambdas
  - a. The scope and nature of this migration will be agreed in Alpha, to ensure that there is clear benefit to justify the change
12. The implementation of the above screens will match the current registration site, but will use the latest version of the GDS design system
13. Automated tests will be written to cover the Overseas journey, the Armed Forces journey and the Crown Servants journey above
  - a. The existing front end code will be reviewed to ensure all functionality is captured in the new pages and associated tests
14. Load tests will be performed on the completed system,
  - a. These will simulate all journeys, in broadly representative proportion
  - b. The tests will be re-usable, and will be able to simulate realistic traffic spikes based on cabinet office data from previous election events
  - c. Tests will be run to a scale agreed with the cabinet office, which will be significantly beyond any anticipated or previously observed peak load
15. An external security test will be performed on the system, and any remediation work completed
16. The system will be accessibility tested and issues addressed
  - a. Effort required to address any accessibility issues identified which were present in the existing system shall not be included within the capped budget
17. The system will be deployed to a production ready environment
  - a. The approach here will be agreed with the cabinet office but we anticipate access to production environments being limited to cabinet office staff, and Softwire providing support to them
18. The system will be thoroughly documented and handed over to the cabinet office team

## **Buyer Dependencies**

The Buyer shall, in a timely manner:

1. provide access to its GDS GSP team to assist with infrastructure services;
2. provide access to a named product owner empowered to make decisions on the service;
3. perform acceptance testing and feedback on user stories delivered by the Supplier;
4. deploy the service to a production environment (with support and automated deployments provided by the Supplier);
5. perform any code review required by the Buyer at regular intervals throughout the project;
6. provide access to any existing code required to perform the Services;
7. provide PSN connectivity;

8. organise any penetration tests for the service;
9. work with the Department of Work and Pensions to agree the identity verification mechanism ; and
10. select a postcode lookup provider.

## **Delivery Plan & Status Reports**

The estimated milestone delivery dates are set out in the table below:

Milestone	Estimated Delivery Date
Delivery of Alpha phase	14th October 2019
Delivery of Beta phase	20th January 2020
Live Release	16th March 2020

Softwire will provide status reports to the Client at regular intervals agreed by the Parties describing the progress of the work against the estimated milestone delivery dates set out in the table above.

## **Payment Schedule**

Invoices will be submitted monthly in arrears and paid in accordance with Part A – Order Form of the Call-Off Contract.

5% of the Call-Off Contract Charges incurred prior to acceptance of the Release shall be retained and shall be chargeable and invoiced upon acceptance of the Release prior to commencement of the Warranty Period.

## **Optional Completion Payment**

On or before 13th March 2020 (or such later date agreed by the Parties) the Supplier shall provide a fixed price estimate for completing the Services up to the end of the Warranty Period. Such estimate shall be no greater than the Remaining Call-Off Contract Value. Payment of a single fixed Charge for the remaining Services shall be subject to agreement under a Contract Change Notice or a separate SOW executed by the Parties.

## **Warranty Period**

The Warranty Period shall be 90 calendar days from the date of delivery of the Deliverables to the Buyer for testing by the Buyer's operations team.

During the Warranty Period:

- the Buyer shall perform initial deployment and acceptance testing; and
- subject to the exclusions stated below, the Supplier shall, up to the Remaining Call-Off Contract Value, correct failures of the Deliverables to meet the specifications set out in this Annex A and notified in writing by the Buyer which could not reasonably have been detected and notified by the Buyer to the Supplier during on-going testing and acceptance of the user stories. Should live migration occur within the

Warranty Period, correction of such failures shall apply to the migrated Deliverables.

Any additional warranty to cover the period following live migration of the system shall be covered under a separate SOW to be agreed by the Parties and may require an increase to the Call-Off Contract Value to be agreed under a CCN by the Parties.

#### Exclusions

The Supplier shall not be liable for any failure of the Deliverables to meet the specifications set out in this Annex A that results from:

- a) factors outside of the Supplier's reasonable control, including any Force Majeure Event or internet access or related problems outside the scope of the Services; or
- b) any actions or inactions of the Buyer or any third party;
- c) the Buyer's and/or third-party equipment, software or other technology.

#### **Cyber Security Standards**

The Supplier currently complies with the Cyber Essentials standard and shall comply with additional criteria in its provision of Services under the SOW as agreed by the Parties in writing.