

**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

[Part A - Order Form](#)

FINAL FOR SIGNATURE

## Part B – Terms and conditions

1. Contract start date, length and methodology
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3. Swap-out
4. Staff vetting procedures
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- Schedule 3 - Statement of Work (SOW), including pricing arrangements and Key Staff
- Schedule 4 - Contract Change Notice (CCN)
- Schedule 5 – Ways of Working
- Schedule 6 - Optional Buyer terms and conditions
- Schedule 7 - How Services are bought (Further Competition process)
- Schedule 8 - Deed of guarantee
- Schedule 9 - Processing, Personal Data and Data Subjects
- Schedule 10 – Alternative Clauses
- Schedule 11 – Joint Controller Agreement

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>	Department for Education							
<b>Supplier</b>	Engine Partners UK LLP (The Engine Group)							
<b>Call-Off Contract Ref.</b>	PN200132							
<b>Call-Off Contract title</b>	Get Help to Retrain – Private Beta							
<b>Call-Off Contract description</b>	A production-ready, end to end GDS/DFE compliant digital service for 'Get Help To Retrain' including, for example, the design and build of a public facing digital (web based) application that meets user needs and is secure and scalable, iteration of the service, user research and digital and IT support.							
<b><u>Call-Off Contract period</u></b>								
<b>Start date</b>	13 May 2019 and is valid for up to nine months.							
<b>End date</b>	12 February 2020							
<b>(Optional) Maximum Call-Off Contract Extension Period</b>	48.25 days (25% of 193 working day call-off period) subject to additional internal approvals via a revised business case.							
<b>Latest Extension Period End Date</b>	22 April 2020							
<b>Notice period (prior to the initial Call-Off Contract period) to trigger Call-Off Contract Extension</b>	One calendar month (approval completion required by 11 <sup>th</sup> January 2020).							
<b><u>Call-Off Contract value</u></b>	Final total exclusive of VAT = <b>£1,519,625</b> Final total inclusive of VAT = <b>£1,823,550</b>							
<b>Charging method</b>	<table border="1"> <tr> <td>Capped time and materials (CTM)</td> <td>X</td> </tr> <tr> <td>Price per story</td> <td></td> </tr> <tr> <td>Time and materials (T&amp;M)</td> <td></td> </tr> </table>		Capped time and materials (CTM)	X	Price per story		Time and materials (T&M)	
Capped time and materials (CTM)	X							
Price per story								
Time and materials (T&M)								

	<table border="1"> <tr> <td>Fixed price</td> <td></td> </tr> <tr> <td>Other pricing method or a combination of pricing methods agreed by the parties</td> <td></td> </tr> </table>	Fixed price		Other pricing method or a combination of pricing methods agreed by the parties	
Fixed price					
Other pricing method or a combination of pricing methods agreed by the parties					
<b>Notice period for termination for convenience</b>	One calendar month.				
<b>Initial SOW package</b>	DOS-9214-01				

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

**Project reference:** DOS-9214  
**Buyer reference:** PN200132

**Order date:** 10 May 2019

**Purchase order:** PO number will be confirmed within 28 days of the contract going live.

**From: the Buyer**

Ian Caplan on behalf of the Secretary of State for Education  
Department for Education  
Sanctuary Buildings, 20 Great Smith St, Westminster,  
London SW1P 3BT

**To: the Supplier**

Johan Hogsander, Partner  
Engine Partners UK LLP  
60 Great Portland Street, London W1W 7RT  
Telephone: 07712 546509  
Company number: OC365812

**Together: the "Parties"**

## Principle contact details

For the Buyer:	Name:	Patrick Lee / Shelina Hargrove
	Title:	Service Owner / Product Owner
	Email:	<a href="mailto:Patrick.Lee@education.gov.uk">Patrick.Lee@education.gov.uk</a> <a href="mailto:Shelina.Hargrove@education.gov.uk">Shelina.Hargrove@education.gov.uk</a>
	Phone:	07384 521 315 / 07384 245 394
For the supplier:	Name:	Johan Hogsander
	Title:	Managing Director
	Email:	<a href="mailto:Johan.hogsander@enginegroup.com">Johan.hogsander@enginegroup.com</a>
	Phone:	07979 800377

## Data Protection Officers

For the Buyer:	Name:	Emma Wharram
	Title:	Departmental Data Protection Officer
	Email:	<a href="mailto:emma.wharram@education.gov.uk">emma.wharram@education.gov.uk</a>
	Phone:	07985 655024
For the supplier:	Name:	Louise Cole
	Title:	Legal Counsel
	Email:	<a href="mailto:Louise.cole@enginegroup.com">Louise.cole@enginegroup.com</a>
	Phone:	+44(0)20 3128 8010

## Buyer contractual requirements

**Digital outcomes and specialists services required:** For the provision of Get Help to Retrain Private Beta.

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

**Location:** Sanctuary Buildings, 20 Great Smith Street, London

**Staff vetting procedures:** The level of clearance for this requirement is: Baseline Personnel Security Standard (BPSS) clearance.

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)

All contractors/consultants engaged in departmental business must adhere to DfE Security Policies and Guidance and have achieved BPSS clearance as a minimum before starting work on this requirement (see Schedule 13).

<b>Standards:</b>	The supplier must maintain its registration (on the supplier registration portal, <a href="https://supplierregistration.cabinetoffice.gov.uk/">https://supplierregistration.cabinetoffice.gov.uk/</a> , as current throughout the delivery of this contract and warranty period on the Supplier Registration portal including the standards set within the mandatory questionnaires. See Schedule 12 – Department for Education Additional Security Clauses.
<b>Limit on supplier's liability:</b>	£5 million.
<b>Insurance:</b>	As provided in the Supplier Registration Service, standard supplier questionnaire, which must be maintained for the life of the contract and warranty period.

#### Supplier's information

<b>Commercially sensitive information:</b>	<ul style="list-style-type: none"><li>• Day rates</li><li>• Names and roles of Engine team members</li></ul>
<b>Subcontractors / Partners:</b>	Subcontractors / partners are subject to the terms of this contract. The supplier will be required to provide a list of sub contractors/suppliers as part of contact management.

#### Call-Off Contract Charges and payment

<b>The method of payment for the Call-Off Contract Charges (GPC or BACS)</b>	BACS
<b>Invoice details</b>	As per the Purchase Order (PO).
<b>Who and where to send invoices to:</b>	Nrs.COMMERCIAL@education.gov.uk
<b>Invoice information required – e.g. PO, project ref, etc.</b>	PO number will be confirmed within 28 days of the contract going live.
<b>Invoice frequency</b>	To be agreed based on revised SOW.
<b>Call-Off Contract value:</b>	Final total exclusive of VAT = <b>£1,519,625</b> Final total inclusive of VAT = <b>£1,823,550</b>

## Call-Off Contract Charges:

**REDACTED**

### Additional Buyer terms

#### Warranties, representations and acceptance criteria

No additional warranties.

The Buyer will assess each Statement of Works against the agreed outputs and discuss with the Supplier before signing off the activity or deliverable. This will also include discussing activity which the Buyer agrees should be in the backlog.

#### Supplemental requirements in addition to the call-off terms

Supplier to note Schedule 12: Additional Department for Education Security Clauses.

Contract Management Plan and Exit Plan to be agreed within **one calendar month** from contract start date. These should include a full list of agreed Crown collateral and assets to be handed over at contract end. These will become an additional schedule(s).

#### Buyer specific amendments to/refinements of the Call-Off Contract terms

Supplier to note Schedule 12: Additional Department for Education Security Clauses.

#### Specific terms:

Clause	Minimum number of days held within the Call-Off Contract
6 Warranties, representations and acceptance criteria	Remains Ninety (90) Days from date of Buyer acceptance of release
22 Managing Disputes	Remains various shown within the Call-Off Contract terms
23 Termination	Remains Fifteen (15) consecutive Working Days in the case of Material Breach.
29 Help at retendering and	Remains Ten (10) Working days

handover to replacement supplier	
31 Contract Changes	Remains Five (5) Working Days
32 Force Majeure	Remains Fifteen (15) consecutive Calendar Days
34 Liability	Remains various shown within the Call-Off Contract terms

## Formation of Contract

- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The Parties agree that they have read the Order Form (Part A), 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.

## 2. Background to the agreement

- (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:	Johan Hogsander	Ian Caplan
Title:	Partner	Programme Director (with delegated authority from SRO)
Signature:		
Date:	10 May, 2019	13 May 2019

FINAL FOR SIGNATURE

## **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. 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 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 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.

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[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)

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.

## **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. Incorporation of terms**

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

## **22. Managing disputes**

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

22.2 Nothing in this 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.

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

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

22.4 The procedure for mediation is as follows:

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

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.

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

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

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

22.7 The expert will act on the following basis:

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

22.8 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.

## **23. Termination**

23.1 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.

23.2 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.

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

23.4 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.

23.5 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.

23.6 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.

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

## 24. Consequences of termination

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

24.2 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.

24.3 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.

24.4 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.

24.5 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.

24.6 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.

## 25. Supplier's status

25.1 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.

## 26. Notices

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

26.2 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
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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)

Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message
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26.3 The address and email address of each Party will be the address and email address in the Order Form.

## **27. Exit plan**

27.1 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. This will be in the format agreed in the Exit Plan Schedule which will be worked up and subject to contract variation. The exit plan will be delivered to the department as a minimum 30 days before the contract ends. 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. This will be in the format agreed in the Exit Plan Schedule which will be worked up and subject to contract variation. The exit plan will be delivered to the department as a minimum 30 days before the contract ends.

## **28. Staff Transfer**

28.1 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.

28.2 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.

28.3 The indemnity given in Clause 28.2 will be uncapped.

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

29.1 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.

29.2 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.

### **30. Changes to services**

30.1 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.

30.2 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.

### **31. Contract changes**

31.1 All changes to the Call-Off Contract which cannot be accommodated informally as described in Clause 30 will require a Contract Change Note.

31.2 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.

31.3 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.

### **32. Force Majeure**

32.1 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.

### **33. Entire agreement**

33.1 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.

33.2 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.

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

### **34. Liability**

34.1 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.

34.2 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.

34.3 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.

34.4 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.

34.5 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.

34.6 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.

34.7 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.

34.8 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.

## **35. Waiver and cumulative remedies**

35.1 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.

35.2 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.

## **36. Fraud**

36.1 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.

36.2 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
- 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.

36.3 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.

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

37.1 The Supplier will not commit any Prohibited Act.

37.2 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

### **38. Legislative change**

38.1 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.

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

39.1 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.

### **40. Non Discrimination**

40.1 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.

### **41. Premises**

41.1 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.

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

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

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

41.5 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.

41.6 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.

41.7 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.

## 42. Equipment

42.1 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.

42.2 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.

## 43. Law and jurisdiction

43.1 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.

## 44. 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><li>• For the Buyer, Crown Copyright which is not available to the Supplier otherwise than under the Call-Off Contract;</li></ul> but excluding IPRs owned by that Party subsisting in Buyer Software or Supplier Software

<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 Information'</b>	Information, which CCS has been notified about, (before the start date of the Framework Agreement) or 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>	<p>CCS's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to):</p> <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</li> </ul>

	<p>a fundamental term)</p> <ul style="list-style-type: none"> <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>	Force Majeure means anything affecting either Party's

	<p>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-of-practice.html">https://www.gov.uk/service-manual/technology/code-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>	<p>may be:</p> <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>	<p>means:</p> <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 Direction (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 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'</b>	Takes the meaning given in the Data Protection

<b>'Breach'</b>	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>	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: <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>'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



D\_Digital  
Marketplace listing.0

FINAL FOR SIGNATURE

## Schedule 2 - Supplier's response



DfE National  
Retraining Scheme (



DfE Retraining  
scheme - Engine Pre

FINAL FOR SIGNATURE

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

**Sch 3.1 SOW Details**

<b>Date of SOW:</b>	13 May 2019
<b>SOW Reference:</b>	DOS-9214-01
<b>Buyer:</b>	Department for Education
<b>Supplier:</b>	Engine Partners UK LLP
<b>Work package title:</b>	Get Help to Retrain – Private beta – SOW 1
<b>Phase(s) of Development:</b>	Private beta
<b>Release Completion Date:</b>	
<b>Duration of SOW</b>	13 May 2019 – 7 June 2019
<b>Work package objectives and success criteria</b>	<p><b><u>Policy intent</u></b></p> <p>The National Retraining Scheme (NRS) was announced in The 2017 manifesto. It will be a new service that supports adults in low-medium skilled roles, particularly those in jobs at risk of automation, to learn valuable skills to remain employable and increase opportunities for pay and progression as the economy changes.</p> <p>The key drivers for the Scheme are:</p> <ul style="list-style-type: none"> <li>- Increasing technological change which may lead to a significant number of jobs being displaced or substantially changed due to automation;</li> <li>- Longer working lives, which means that adults need to upskill and reskill throughout their careers for skills to remain relevant and competitive;</li> <li>- Low productivity and poor levels of intermediate skills in comparison to international competitors and the existence of low skills traps, in which adults remain in low-skilled and</li> </ul>

low-paid work;  
- An education system that is not attuned to the needs of adults in terms of: accessibility; flexibility; cost (or need to take on debt); quality information, advice and guidance; and its inability to motivate enough adults to participate and complete valuable learning.

The Scheme will be successful if takes individuals at risk of their job changing or disappearing due to automation, facilitates them getting the skills they need to move into a new occupation, and successfully allows them to move into a stable, more productive job.

Several previous Schemes with similar policy intent have ultimately failed, so we are taking an Agile approach to service design to de-risk it.

### **Summary of the work**

From our user testing so far, we have found that users struggle to navigate a complex careers advice and training landscape.

As part of the National Retraining Scheme, we are looking to provide an optimised route for users to understand their skills, view relevant job profiles (and live jobs), and then find the training they may need to get those jobs.

This journey will need to be developed in a way to both integrate with and test offline support systems, with user research participants evaluating the usability of the private beta service.

We're using the private beta stage to also:

- Test policy propositions
- Integrate with other elements of the service as they're being developed
- Test interface with complex offline delivery system

In private beta, we need to validate our assumptions that we can:

- get most people through the digital service without support
- develop a skills checker which matches people to a job that resonates
- map the training path to a job
- provide a bridge to Providers in a way that doesn't lose large numbers of people

	<p><b><u>Success criteria</u></b></p> <p>The work delivered within this work package will be required to contribute to achievement of the following GHtR product success criteria:</p> <ul style="list-style-type: none"> <li>- users can complete the initial service, exploring careers options and signing up to training (or applying for jobs)</li> <li>- the service will have been developed in a way to both integrate with and test offline support systems, drawing on and integrating with existing government assets (data, content etc.) where appropriate.</li> <li>- Completion of a Government Digital Service (GDS) Beta assessment, demonstrating evidence against the appropriate GDS service standards</li> <li>- Civil Servants (who have been identified by the NRS Programme team) are coached and upskilled so they can work effectively in the programme functions they are assigned to</li> </ul>
<p><b>Work package approach</b></p>	<p>The work will be delivered in accordance with the current agile methodologies and approach in the DDAT function.</p>
<p><b>Work package deliverables and outputs</b></p>	<p><b>Sprint Zero: Initiation Phase (2 weeks, 13 May start)</b></p> <ul style="list-style-type: none"> <li>• Core team on-boarded (hygiene) – tech set up as required, building induction etc. conducted; ways of working agreed - escalated any issues / blockers</li> <li>• Core team on-boarded (content) – overview of programme and how Ghtr private beta fits in; review of Ghtr report and user research stakeholder relationships; other players (e.g. NCS) etc. Any issues / blockers escalated.</li> <li>• Kick-off meetings with permanent civil servants and suppliers: produce plan with timetable (e.g. user research days; product development schedule; roll-out etc.)</li> <li>• Set up and run appropriate ceremonies (e.g. stand-ups, retrospectives, planning meetings, etc).</li> <li>• Engage with, review and iterate <ul style="list-style-type: none"> <li>○ product roadmap</li> <li>○ backlog</li> <li>○ user story map</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Wireframes/sketches of potential changes to the prototype <ul style="list-style-type: none"> <li>- Focus = Key Ghtr journey areas where we have identified that we need to learn more about user needs, following the final Alpha round of research, prior to building the Ghtr private beta product in earnest</li> </ul> </li> <li>● Recruitment and screening of participants for small-scale user research on refined prototype for first days of user research</li> <li>● contribute to show and tells / showcases as appropriate</li> <li>● Planning and prioritisation for subsequent sprints</li> <li>● Working closely with the subject matter expert from the National Careers Service, start to map the online and offline journey, considering the need for careers support</li> <li>○ <i>By end of Sprint 0, have agreed:</i> <ul style="list-style-type: none"> <li>- Draft plan, including revised timescales</li> <li>- Refined Minimum Viable Product (MVP)</li> <li>- Refined roadmap</li> <li>- Refined backlog</li> <li>- Initial sprint planning and show and tell</li> </ul> </li> </ul> <p><b>Sprint One (2 weeks)</b></p> <ul style="list-style-type: none"> <li>● secure and screen sufficient user research participants</li> <li>● Prepare user research questions, based on agreed hypotheses to test areas of greatest uncertainty / where we need to learn the most</li> <li>● conduct user research, using appropriate methodologies</li> <li>● synthesise research findings and record (e.g. slide deck)</li> <li>● further refine user story map</li> <li>● iterate user stories based on user research findings</li> <li>● refine the prototype for user testing, based on work done by the service team post-Alpha</li> <li>● iterate the digital service based on research findings, so the service can be built in earnest having tested the areas of greatest uncertainty as a prototype</li> <li>● Iterate service design based on research findings</li> <li>● contribute to show and tells / showcases as appropriate</li> </ul>
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	<ul style="list-style-type: none"> <li>• Develop a plan for mobilising and on-boarding the full developer team</li> </ul> <p><i>By end of sprint one, have:</i></p> <ul style="list-style-type: none"> <li>○ revised the prototype</li> <li>○ tested bridging period changes to the service with users to validate / discard</li> <li>○ synthesised these findings and fed into the service design and digital service</li> <li>○ used this to refine the roadmap, user story map and backlog prioritisation</li> <li>○ secured and screened sufficient user research participants / users for the following sprint (which will be testing the service, rather than a prototype)</li> </ul>
<p><b>Charging Method(s) for this work package:</b></p>	<p>Invoiced monthly based on agreed deliverables. The supplier will provide regular updates about the progress of work and will work with the buyer to follow the Agile method, adapting and re-planning as necessary, including updating deliverables.</p>

**Additional information (applies to all Sprints)**

3.1.1 The Parties will execute monthly SOW. 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.

3.1.3 Provide first line technical support [within office hours] to users of the digital service throughout the private beta

**Sch 3.2 Key Staff**

3.2.1 The Parties agree that the Key Staff in respect of this Project are detailed in Schedule 13 – Key Staff.

**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 following assumptions, representations, risks and contingencies will apply in relation to the Charges. See Schedule 14 for details.

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

3.4.6 Multiple SOWs can operate concurrently.

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

### **Sch 3.5. 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 25% 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. Any further extension periods would be subject to agreement by the Buyer's Authority and following the necessary approvals processes.

### **Sch 3.6. Methodology – User Research and Data Management**

3.6.1 The Department plan to start with very small numbers of users in the initial version of the product but require testing the service with at least 2,500 users over the course of the GHtR private beta.

3.6.2 The Department will support with the sourcing of users with whom to conduct user research and testing, and we would expect that the service provider would also have the capability to source users (adults in low to medium skilled roles) as necessary to ensure a broad range of users are engaged. Whereas DfE agrees and will resource this blended approach, we consider that user recruitment is a deliverable for the supplier.

3.6.3 The service provider will be required to travel across the country to conduct user research and testing.

3.6.4 During user research the NRS team accepts the supplier will use third-party services like recruitment agencies, research labs, survey tools and transcription services. This usually means that participants' personal data is shared. As a result, the supplier must demonstrate that all user research activity complies with data privacy requirements including:

- being clear what the personal data can be used for - and prohibiting any use apart from this (for example, sharing it with another organisation)
- making sure data is deleted when it's no longer needed
- confirming which organisation is responsible for the data collected (the supplier or the third party)
- ensuring user researchers who use their own laptops during visits to participants, follow the correct procedures about acceptable use and information management, as well as specific procedures for user research data.

### **Sch 3.7 Other requirements**

3.7.1 The contracted team will need to be able to work effectively with other suppliers to the National Retraining Scheme and as directed by the Product Owner within the Department for Education and wider if necessary.

3.7.2 Given the multi-site nature of the National Retraining Scheme programme team, it will be necessary to run the project in a way that supports and is flexible to cross-site working, to enable the input of team members at other DfE sites.

### Sch 3.8. Agreement of statement of works

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

#### For and on behalf of the Supplier:

Name and title                      Johan Hogsander, Partner

Signature and date



10 May, 2019

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

Name and title

Signature and date

X \_\_\_\_\_

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

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

## Schedule 4 - Contract Change Notice (CCN)

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

BETWEEN:

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

and

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

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

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

***Reason for the change;***

***Full Details of the proposed change;***

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

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

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

Signature:

X \_\_\_\_\_

Date: [Click here to enter a date.](#)

Name: [Click here to enter text.](#)

Address: [Click here to enter text.](#)

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

Signature:

X \_\_\_\_\_

Date: [Click here to enter a date.](#)

Name: [Click here to enter text.](#)

Address: [Click here to enter text.](#)

## Schedule 5 – Ways of Working

### What (Objective)

- To achieve best possible outcomes, innovation and value for money through building trusting, incentivising, co-operative and integrated relationships and ways of working with suppliers and NRS team members.

### How (We will do this by)

- building teams that are co-located where possible, but are also inclusive for team members at other sites
- ensuring that product owners/lead contract managers are supported by a supplier manager for each contract
- the supplier manager will be embedded in the product team culture, ceremonies etc
- executing monthly SoWs, covering 2 sprints, linked to monthly supplier meetings and raising of monthly purchase order.
- ensuring the monthly meeting focusses on reviewing sprint goals, outcomes, resourcing, team culture, ways of working, continuous improvement using the balanced scorecard methodology, co-ordinated by the supplier manager and ensuring this is a two-way equal process between supplier and client

## 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):

Our adopted methodology will be agreed, as part of the Contract Management Planning.

# Balanced Scorecard

<p><b>KPI – Performance to Pay Process</b></p> <p>In accordance with an agreed performance to pay process, suppliers submit the following 'inputs':</p> <ul style="list-style-type: none"> <li>•Accurate and complete timesheets in a timely manner;</li> <li>•Accurate and complete Acceptance Certificates in a timely manner;</li> <li>•Accurate and complete Supplier Reports in a timely manner;</li> <li>•Accurate and complete invoices in a timely manner</li> </ul> <p><b>Measurement</b></p> <table border="1"> <tr> <td>All of the inputs are submitted in accordance with the performance to pay process timescales and contain accurate and complete information.</td> <td>*Inputs are later than prescribed in the performance to pay process but within 5 working days of the prescribed dates.</td> <td>*Inputs are later than 5 working days in the prescribed performance to pay process.</td> </tr> <tr> <td></td> <td>*Inputs are incomplete or inaccurate.</td> <td>*Inputs contain significant errors.</td> </tr> </table> <p>Source: Supplier Reports/ Invoices Owner: To be agreed</p>	All of the inputs are submitted in accordance with the performance to pay process timescales and contain accurate and complete information.	*Inputs are later than prescribed in the performance to pay process but within 5 working days of the prescribed dates.	*Inputs are later than 5 working days in the prescribed performance to pay process.		*Inputs are incomplete or inaccurate.	*Inputs contain significant errors.	<p>Supplier Name</p>	<p><b>KPI – People (Resourcing)</b></p> <p>Successful recruitment and placement of key resources/ provision of facilities meets the planned deliverables and contractual obligations; the supplier pro-actively manages their resource skills/ state of facilities by identifying issues early and in a timely fashion addressing any deficits.</p> <p><b>Measurement</b></p> <table border="1"> <tr> <td>*Targets met for all resources/ facilities</td> <td>*targets met for most (50%+) resources/ facilities through no fault of the Buyer;</td> <td>*target missed for most resources/ facilities requested through no fault of the Buyer;</td> </tr> </table> <p>Source: Project Managers and Wider Buyer team's verification. Owner: To be agreed</p>	*Targets met for all resources/ facilities	*targets met for most (50%+) resources/ facilities through no fault of the Buyer;	*target missed for most resources/ facilities requested through no fault of the Buyer;												
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<p><b>KPI – Partnering Behaviours and Added Value</b></p> <p>*Supplier promotes positive collaborative working relationships within and across team by acting in a transparent manner. Supplier shows commitment to Buyer goals through adding value over and above the provision of compensated skilled personnel/ facilities.</p> <p><b>Measurement</b></p> <table border="1"> <tr> <td>*No behavioural problems identified.</td> <td>*Some minor behavioural problems.</td> <td>*Significant behavioural problems</td> </tr> <tr> <td>*Buyer workshops attended and positive contributions made.</td> <td>*Supplier only attends some workshops or provides minor contributions.</td> <td>*Supplier contributions are rare or insignificant and shows little interest in working with other suppliers</td> </tr> <tr> <td>*Added Value recognised by the programme above provision of compensated skilled resource/ facilities</td> <td>*Supplier adds some value above provision of compensated resource/ facilities but this is not regarded as significant.</td> <td>*no added value contributions recognised by Programme.</td> </tr> </table> <p>Source: Collective feedback on suppliers from both Buyer and other supplier staff. Owner: To be agreed</p>	*No behavioural problems identified.	*Some minor behavioural problems.	*Significant behavioural problems	*Buyer workshops attended and positive contributions made.	*Supplier only attends some workshops or provides minor contributions.	*Supplier contributions are rare or insignificant and shows little interest in working with other suppliers	*Added Value recognised by the programme above provision of compensated skilled resource/ facilities	*Supplier adds some value above provision of compensated resource/ facilities but this is not regarded as significant.	*no added value contributions recognised by Programme.	<p>Performance to Pay Partnering</p> <p>People - Resourcing People - Delivery</p>	<p><b>KPI – People in Place (Delivery)</b></p> <p>All Supplier resources delivering services for the contracts are performing to the expected standard for the skill-set supplied and/or all facilities are to the expected standard.</p> <p><b>Measurement</b></p> <table border="1"> <tr> <td>* No resources are swapped out due to deficiency in skill-set and/or no change of facilities is required.</td> <td>* Minor issues noted with quality of work/ standard of facilities</td> <td>*Resource is swapped out from project due to deficiency in skill-set/ change of facility is required</td> </tr> <tr> <td>* No problems identified with quality of work/ state of facility</td> <td>* Few contributions made within team.</td> <td>*Persistent issues with quality of work/ facilities noted (maybe minor ones which have persisted from one month to another)</td> </tr> <tr> <td>* Supplier is making positive team contributions.</td> <td></td> <td>*Significant issue with quality of work/ facility noted in a month.</td> </tr> <tr> <td>* Supplier skills/ facilities meet the standards expected.</td> <td></td> <td></td> </tr> </table> <p>Source: Project Manager and Wider Buyer team Owner: To be agreed</p>	* No resources are swapped out due to deficiency in skill-set and/or no change of facilities is required.	* Minor issues noted with quality of work/ standard of facilities	*Resource is swapped out from project due to deficiency in skill-set/ change of facility is required	* No problems identified with quality of work/ state of facility	* Few contributions made within team.	*Persistent issues with quality of work/ facilities noted (maybe minor ones which have persisted from one month to another)	* Supplier is making positive team contributions.		*Significant issue with quality of work/ facility noted in a month.	* Supplier skills/ facilities meet the standards expected.		
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* Supplier skills/ facilities meet the standards expected.																							

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@crownccommercial.gov.uk](mailto:cloud_digital@crownccommercial.gov.uk).

FINAL FOR SIGNATURE

## Schedule 6 - Optional Buyer terms and conditions

NOT USED

### **Sch 6.1 — Buyer's agent**

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

Not applicable

FINAL FOR SIGNATURE

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

### NOT USED

~~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).~~

Not Applicable

FINAL FOR SIGNATURE

## Schedule 8 - Deed of guarantee

### NOT USED

~~[This section should be completed where a deed of guarantee is part of the buyer's needs. Securing a deed of guarantee may have cost implications and the buyer should consider the appropriateness of seeking one. The relevant sections below should be completed based on the details of the winning supplier.]~~

~~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.~~

<del>'Call-Off Contract'</del>	<del>means [the Guaranteed Agreement] made between the Buyer and the Supplier on [insert date]</del>
<del>'Guaranteed Obligations'</del>	<del>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</del>

~~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

FINAL FOR SIGNATURE

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

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

**To be agreed, and will form part of the Contract Management Plan**

[This should be a high level, short description of what the processing is about ie its subject matter]

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

[Clearly set out the duration of the processing including dates]

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

[Please be as specific as possible, but make sure that you cover all intended purposes.

The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc

The purpose might include e.g.: employment processing, statutory obligation, recruitment assessment etc]

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

[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]

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

[Examples include: Staff (including volunteers, agents and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc]

### **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:**

[Describe how long the data will be retained for, how it will be returned or destroyed]

## Schedule 10 – Alternative Clauses

### Part 1: Alternative Jurisdictions

#### NOT USED

~~[These alternative clauses can be substituted into the appropriate places in the Call-Off Contract in order to effect changes in jurisdiction from England & Wales to either Scotland or Northern Ireland as appropriate. If used, their use should be indicated in the Section A Order Form under “Additional Buyer terms”]~~

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#### ~~Change Clause 43.1~~

~~43.1 The Call-Off Contract will be governed by the Laws of [Scotland/Northern Ireland]. Each Party agrees to submit to the exclusive jurisdiction of the courts of [Scotland/Northern Ireland] and for all disputes to be conducted within [Scotland/Northern Ireland].~~

#### ~~Change Defined Terms~~

~~[Replace the following relevant defined term]~~

<del>'Working Day'</del>	<del>Any day other than a Saturday, Sunday or public holiday in [Scotland/Northern Ireland], from 9am to 5pm unless otherwise agreed with the Buyer and the Supplier in the Call-Off Contract</del>
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#### ~~Change Schedule 8 – Deed of guarantee~~

~~[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**

~~[These template Call-Off terms assume the Buyer is the Data Controller, and the Supplier  
is the Data Processor. If your agreement contains more complex relationships, you will  
need to amend this agreement. Material here has been drawn from PPN 02/18 but you  
should ensure you follow up to date guidance, and seek legal advice where appropriate.]~~

~~[The wide range and complexity of possible relationships precludes a detailed set of  
alternative terms.]~~

~~[You will need to amend 14.1 (text given below for reference) which sets out the standard Buyer Controller Relationships to reflect the actual roles for your Call-Off. You may also need to amend other parts of clause 14.]~~

~~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).~~

~~[You may also wish to add a Schedule 11, based on the PPN 02/18 Schedule Y, to set out the responsibilities of each party and the particulars of the relationship. Add Schedule 11 to the table of contents.]~~

## **Schedule 11: Joint Controller Agreement**

### **NOT USED**

~~[In this schedule you must outline each party's responsibilities for:~~

- ~~● providing information to data subjects under Article 13 and 14 of the GDPR.~~
- ~~● responding to data subject requests under Articles 15-22 of the GDPR~~
- ~~● notifying the Information Commissioner (and data subjects) where necessary about data breaches~~
- ~~● maintaining records of processing under Article 30 of the GDPR~~
- ~~● carrying out any required Data Protection Impact Assessment~~
- ~~● The agreement must include a statement as to who is the point of contact for data subjects.~~

~~The essence of this relationship shall be published.~~

~~You may also wish to include an additional clause apportioning liability between the parties arising out of data protection; of data that is jointly controlled.]~~

## Schedule 12: Department for Education Additional Security Clauses

### Departmental Security Standards

#### Departmental Security Standards for Business Services and ICT Contracts

<p>“BPSS” “Baseline Personnel Security Standard”</p>	<p>a level of security clearance described as pre-employment checks in the National Vetting Policy. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a></p>
<p>“CCSC” “Certified Cyber Security Consultancy”</p>	<p>is NCSC's approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. This approach builds on the strength of CLAS and certifies the competence of suppliers to deliver a wide and complex range of cyber security consultancy services to both the public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a></p>
<p>“CCP” “Certified Professional”</p>	<p>is a NCSC scheme in consultation with government, industry and academia to address the growing need for specialists in the cyber security profession and are building a community of recognised professionals in both the UK public and private sectors. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-professional">https://www.ncsc.gov.uk/scheme/certified-professional</a></p>
<p>“CC” “Common Criteria”</p>	<p>the Common Criteria scheme provides assurance that a developer's claims about the security features of their product are valid and have been independently tested against recognised criteria.</p>
<p>“CPA” “Commercial Product Assurance” [formerly called “CESG Product Assurance”]</p>	<p>is an ‘information assurance scheme’ which evaluates commercial off the shelf (COTS) products and their developers against published security and development standards. These CPA certified products can be used by government, the wider public sector and industry. See website: <a href="https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa">https://www.ncsc.gov.uk/scheme/commercial-product-assurance-cpa</a></p>
<p>“Cyber Essentials” “Cyber Essentials Plus”</p>	<p>Cyber Essentials is the government backed, industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme.</p> <p>There are a number of certification bodies that can be approached for further advice on the scheme; the</p>

	link below points to one of these providers: <a href="https://www.iasme.co.uk/apply-for-self-assessment/">https://www.iasme.co.uk/apply-for-self-assessment/</a>
<p>“Data”</p> <p>“Data Controller”</p> <p>“Data Processor”</p> <p>“Personal Data”</p> <p>“Sensitive Personal Data”</p> <p>“Data Subject”, “Process” and “Processing”</p>	shall have the meanings given to those terms by the Data Protection Act 2018
<p>"Department's Data"</p> <p>"Department's Information"</p>	<p>is any data or information owned or retained in order to meet departmental business objectives and tasks, including:</p> <p>(a) any data, text, drawings, diagrams, images or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Contractor by or on behalf of the Department; or</p> <p>(ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Department is the Data Controller;</p>
<p>“DfE”</p> <p>“Department”</p>	means the Department for Education
“Departmental Security Standards”	means the Department's security policy or any standards, procedures, process or specification for security that the Contractor is required to deliver.
“Digital Marketplace / GCloud”	the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects. Cloud services (e.g. web hosting or IT health checks) are on the G-Cloud framework.
“FIPS 140-2”	this is the Federal Information Processing Standard (FIPS) Publication 140-2, (FIPS PUB 140-2), entitled ‘Security Requirements for Cryptographic Modules’. This document is the de facto security standard used for the accreditation of cryptographic modules.

<p>“Good Industry Practice” “Industry Good Practice”</p>	<p>means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“Good Industry Standard” “Industry Good Standard”</p>	<p>means the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>“GSC” “GSCP”</p>	<p>means the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at: <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>
<p>“HMG”</p>	<p>means Her Majesty’s Government</p>
<p>“ICT”</p>	<p>means Information and Communications Technology (ICT) is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution</p>
<p>“ISO/IEC 27001” “ISO 27001”</p>	<p>is the International Standard for Information Security Management Systems Requirements</p>
<p>“ISO/IEC 27002” “ISO 27002”</p>	<p>is the International Standard describing the Code of Practice for Information Security Controls.</p>
<p>“ISO 22301”</p>	<p>is the International Standard describing for Business Continuity</p>
<p>“IT Security Health Check (ITSHC)” “IT Health Check (ITHC)” “Penetration Testing”</p>	<p>means an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that IT system.</p>
<p>“Need-to-Know”</p>	<p>the Need-to-Know principle is employed within HMG to limit the distribution of classified information to those people with a clear ‘need to know’ in order to carry out their duties.</p>
<p>“NCSC”</p>	<p>The National Cyber Security Centre (NCSC) formerly CESG is the UK government’s National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a></p>

<p>“OFFICIAL” “OFFICIAL-SENSITIVE”</p>	<p>the term ‘OFFICIAL’ is used to describe the baseline level of ‘security classification’ described within the Government Security Classification Policy (GSCP) which details the level of protection to be afforded to information by HMG, for all routine public sector business, operations and services.</p> <p>the ‘OFFICIAL–SENSITIVE’ caveat is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media, as described in the Government Security Classification Policy.</p>
<p>“Secure Sanitisation”</p>	<p>Secure sanitisation is the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level. Some forms of sanitisation will allow you to re-use the media, while others are destructive in nature and render the media unusable. Secure sanitisation was previously covered by “Information Assurance Standard No. 5 - Secure Sanitisation” (“IS5”) issued by the former CESG. Guidance can now be found at: <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at: <a href="https://www.cpni.gov.uk/secure-destruction">https://www.cpni.gov.uk/secure-destruction</a></p>
<p>“Security and Information Risk Advisor” “CCP SIRA” “SIRA”</p>	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also: <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
<p>“SPF” “HMG Security Policy Framework”</p>	<p>This is the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government’s Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently and securely. <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
<p>”Tailored Assurance” [formerly called “CTAS”, or, ”CESG Tailored Assurance”]</p>	<p>is an ‘information assurance scheme’ which provides assurance for a wide range of HMG, MOD, Critical National Infrastructure (CNI) and public sector customers procuring IT systems, products and services, ranging from simple software components to national infrastructure networks. <a href="https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology">https://www.ncsc.gov.uk/documents/ctas-principles-and-methodology</a></p>

- 1.1. The Contractor shall comply with Departmental Security Standards for Contractors which include but are not constrained to the following clauses.
- 1.2. Where the Contractor will provide ICT products or services or otherwise handle information at OFFICIAL on behalf of the Department, the requirements under Cabinet Office Procurement Policy Note – Use of Cyber Essentials Scheme certification - [Action Note 09/14](#) 25 May 2016, or any subsequent updated document, are mandated; that “contractors supplying products or services to HMG shall have achieved, and retain certification at the appropriate level, under the HMG Cyber Essentials Scheme”. The certification scope must be relevant to the services supplied to, or on behalf of, the Department.
- 1.3 The Contractor shall be able to demonstrate conformance to, and show evidence of such conformance to the ISO/IEC 27001 (Information Security Management Systems Requirements) standard, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4 The Contractor shall follow the UK Government Security Classification Policy (GSCP) in respect of any Departmental Data being handled in the course of providing this service, and will handle this data in accordance with its security classification. (In the event where the Contractor has an existing Protective Marking Scheme then the Contractor may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Departmental Data).
- 1.5 Departmental Data being handled in the course of providing an ICT solution or service must be segregated from all other data on the Contractor’s or sub-contractor’s own IT equipment to protect the Departmental Data and enable the data to be identified and securely deleted when required. In the event that it is not possible to segregate any Departmental Data then the Contractor and any sub-contractor shall be required to ensure that it is stored in such a way that it is possible to securely delete the data in line with Clause 1.14.  
(Guidance: Advice on HMG secure sanitisation policy and approved methods are described at <https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media>)
- 1.6 The Contractor shall have in place and maintain physical security, in line with those outlined in ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g. door access) to premises and sensitive areas
- 1.7 The Contractor shall have in place and maintain an access control policy and process for the logical access (e.g. identification and authentication) to ICT systems to ensure only authorised personnel have access to Departmental Data.
- 1.8 The Contractor shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Departmental Data, including but not limited to: physical security controls; good industry standard policies and process; anti-virus and firewalls; security updates and up-to-date patching regimes for anti-virus solutions; operating systems, network devices, and application software, user access controls and the creation and retention of audit logs of system use.

- 1.9 Any data in transit using either physical or electronic transfer methods across public space or cyberspace, including mail and couriers systems, or third party provider networks must be protected via encryption which has been certified to FIPS 140-2 standard or a similar method approved by the Department prior to being used for the transfer of any Departmental Data.
- 1.10 Storage of Departmental Data on any portable devices or media shall be limited to the absolute minimum required to deliver the stated business requirement and shall be subject to Clause 1.11 and 1.12 below.
- 1.11 Any portable removable media (including but not constrained to pen drives, flash drives, memory sticks, CDs, DVDs, or other devices) which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or (sub-)contractors providing the service, shall be both necessary to deliver the service and shall be encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.12 All portable ICT devices, including but not limited to laptops, tablets, smartphones or other devices, such as smart watches, which handle, store or process Departmental Data to deliver and support the service, shall be under the control and configuration management of the contractor or sub-contractors providing the service, and shall be necessary to deliver the service. These devices shall be full-disk encrypted using a product which has been certified to FIPS140-2 standard or another encryption standard that is acceptable to the Department.
- 1.13 Whilst in the Contractor's care all removable media and hardcopy paper documents containing Departmental Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.
- 1.14 When necessary to hand carry removable media and/or hardcopy paper documents containing Departmental Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This clause shall apply equally regardless of whether the material is being carried inside or outside of company premises.
- 1.15 At the end of the contract or in the event of equipment failure or obsolescence, all Departmental information and data, in either hardcopy or electronic format, that is physically held or logically stored on the Contractor's ICT infrastructure must be securely sanitised or destroyed and accounted for in accordance with the current HMG policy using a NCSC approved product or method. Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as a Storage Area Network (SAN) or shared backup tapes, then the Contractor or sub-contractor shall protect the Department's information and data until the time, which may be long after the end of the contract, when it can be securely cleansed or destroyed.

- 1.16 Access by Contractor or sub-contractor staff to Departmental Data shall be confined to those individuals who have a “need-to-know” in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Department. All Contractor or sub-contractor staff must complete this process before access to Departmental Data is permitted.
- 1.17 All Contractor or sub-contractor employees who handle Departmental Data must have annual awareness training in protecting information.
- 1.18 The Contractor shall, as a minimum, have in place robust Business Continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency or crisis to the services delivered. If a ISO 22301 certificate is not available the supplier will provide evidence of the effectiveness of their ISO 22301 conformant Business Continuity arrangements and processes including IT disaster recovery plans and procedures. This should include evidence that the Contractor has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19 Any suspected or actual breach of the confidentiality, integrity or availability of Departmental Data being handled in the course of providing this service, or any non-compliance with these Departmental Security Standards for Contractors, or other Security Standards pertaining to the solution, shall be investigated immediately and escalated to the Department by a method agreed by both parties.
- 1.20 The Contractor shall ensure that any IT systems and hosting environments that are used to handle, store or process Departmental Data shall be subject to independent IT Health Checks (ITHC) using a NCSC approved ITHC provider before go-live and periodically (at least annually) thereafter. The findings of the ITHC relevant to the service being provided are to be shared with the Department and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required.
- 1.21 The Contractor or sub-contractors providing the service will provide the Department with full details of any storage of Departmental Data outside of the UK or any future intention to host Departmental Data outside the UK or to perform any form of ICT management, support or development function from outside the UK. The Contractor or sub-contractor will not go ahead with any such proposal without the prior written agreement from the Department.
- 1.22 The Department reserves the right to audit the Contractor or sub-contractors providing the service within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the service being supplied and the Contractor’s, and any sub-contractors, compliance with the clauses contained in this Section.

- 1.23 The Contractor shall contractually enforce all these Departmental Security Standards for Contractors onto any third-party suppliers, sub-contractors or partners who could potentially access Departmental Data in the course of providing this service.
- 1.24 The Contractor and sub-contractors shall undergo appropriate security assurance activities as determined by the Department. Contractor and sub-contractors shall support the provision of appropriate evidence of assurance and the production of the necessary security documentation such as completing the DfE Security Assurance Model (DSAM) process or the Business Service Assurance Model (BSAM). This will include obtaining any necessary professional security resources required to support the Contractor's and sub-contractor's security assurance activities such as: a NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Professional (CCP) Security and Information Risk Advisor (SIRA)

**\*\*\* ICT-SPECIFIC CLAUSE ONLY \*\*\***

**(This ICT-specific clause should be removed for Business Service Contracts)**

- 1.25 Where the Contractor is delivering an ICT solution to the Department they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Departmental Policy. The Contractor will provide the Department with evidence of compliance for the solutions and services to be delivered. The Department's expectation is that the Contractor shall provide written evidence of:
- Existing security assurance for the services to be delivered, such as: PSN Compliance as a PSN Customer and/or as a PSN Service; NCSC (formerly CESG) Tailored Assurance (CTAS); inclusion in the Common Criteria (CC) or Commercial Product Assurance Schemes (CPA); ISO/IEC 27001 / 27002 or an equivalent industry level certification. Documented evidence of any existing security assurance or certification shall be required.
  - Existing HMG security accreditations or assurance that are still valid including: details of the body awarding the accreditation; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement. Documented evidence of any existing security accreditation shall be required.
  - Documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Contractor shall provide details of who the awarding body or organisation will be and date expected.

**\*\*\*End of Department's Security Standards Clause\*\*\***

**Schedule 13: Key Staff**

**REDACTED**

FINAL FOR SIGNATURE

## Schedule 14: Risks, assumptions and contingencies

### Risks

1. Delay in starting development of the product because onboarding takes longer than expected due to complexity of the project
2. The service is unable to sufficiently test Get help to retain due to difficulties in recruiting enough users in the NRS target group to test the product and be confident in demonstrating value
3. Delivery of the service is delayed due to key APIs from other services not being ready in time

### Assumptions

1. APIs are available to integrate with other key services, including National Careers Service and DWP
2. We can agree a local delivery and testing model with Greater Manchester Combined Authority, to test Get help to retrain in the first few sprints