

# Digital Outcomes and Specialists 5 (RM1043.7)

# Call-Off Schedules

Version 2

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Contents

[Call-Off Schedule 1 (Transparency Reports) Required 3](#_heading=h.1y810tw)

[Call-Off Schedule 2 (Staff Transfer) Required 5](#_heading=h.2xcytpi)

[Call-Off Schedule 3 (Continuous Improvement) Required 35](#_heading=h.zu0gcz)

[Call-Off Schedule 4 (Call Off Tender) Required 37](#_heading=h.1yyy98l)

[Call-Off Schedule 5 (Pricing Details and Expenses Policy) Required 38](#_heading=h.2y3w247)

[Call-Off Schedule 6 (Intellectual Property Rights and Additional Terms on Digital Deliverables) Required 40](#_heading=h.1d96cc0)

[Call-Off Schedule 7 (Key Supplier Staff) Required 49](#_heading=h.3x8tuzt)

[Call-Off Schedule 8 (Business Continuity and Disaster Recovery) Required 51](#_heading=h.2ce457m)

[Call-Off Schedule 9 (Security) Required 56](#_heading=h.rjefff)

[Call-Off Schedule 10 (Exit Management) Required 74](#_heading=h.3bj1y38)

[Call-Off Schedule 13 (Implementation Plan and Testing) Not Required 81](#_heading=h.1qoc8b1)

[Call-Off Schedule 14 (Service Levels and Balanced Scorecard) Required 94](#_heading=h.4anzqyu)

[Call-Off Schedule 15 (Call-Off Contract Management) Required 102](#_heading=h.14ykbeg)

[Call-Off Schedule 16 (Benchmarking) Required 105](#_heading=h.3oy7u29)

[Call-Off Schedule 17 (MOD Terms) Not Required 109](#_heading=h.243i4a2)

[Call-Off Schedule 18 (Background Checks) Required 112](#_heading=h.j8sehv)

[Call-Off Schedule 19 (Scottish Law) Not Required 114](#_heading=h.1idq7dh)

[Call-Off Schedule 20 (Call-Off Specification) Required 116](#_heading=h.1idq7dh)

[Call-Off Schedule 21 (Northern Ireland Law) Not Required 117](#_heading=h.2hio093)

[Call-Off Schedule 25 (Ethical Walls Agreement) Required 119](#_heading=h.wnyagw)

[Call-Off Schedule 26 (Cyber Essentials Scheme) Required 128](#_heading=h.3gnlt4p)

## Call-Off Schedule 1 (Transparency Reports)

### Transparency Reports

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

### Annex A: List of Transparency Reports

|  |  |  |  |
| --- | --- | --- | --- |
| **Title** | **Content** | **Format** | **Frequency** |
| **Call-Off Contract Charges** | Summary of charges for each Statement of Work through the duration of the contract i.e. Spend against contract – Supplier to provide a summary which shall include:   * Overall Call-Off Contract value; * Overall Call-Off Contract value - sum of total value of all SOWs invoiced; * Remaining anticipated value of all SoW still to be invoiced. | Spreadsheet | Monthly |
| **Key Subcontractors and supply chain governance** | * Summary of subcontractors included within the contract and relevant governance. * Prompt payment report demonstrating all subcontractors within the supply chain are paid within 30 days of receiving a valid invoice, as per section 4.8 of the core terms of this contract. | Word Document/Spreadsheet | Monthly |
| **Performance and underperformance management** | Summary of supplier performance. | Balanced Scorecard | Monthly |

## Call-Off Schedule 2 (Staff Transfer) – Not Required

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

### What happens if there is a staff transfer

* 1. The Buyer and the Supplier agree that the commencement of the provision of the Services or of any Part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
  2. Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
     1. the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
     2. the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
     3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
     4. if after the period referred to in paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4:

1. the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2; and
2. the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.
   1. The indemnities in Paragraph 1.2 shall not apply to any claim:
      1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
      2. any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure
   2. The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.
   3. If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

### Limits on the Former Supplier’s obligations

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

### Part D: Pensions

### Definitions

In this Part D, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Actuary** | a Fellow of the Institute and Faculty of Actuaries; |
| **Admission Agreement** | means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires; |
| **Broadly Comparable** | 1. in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and 2. in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,   and "**Broad Comparability"** shall be construed accordingly; |
| **CSPS** | the schemes as defined in Annex D1 to this Part D; |
| **Fair Deal Employees** | those:   1. Transferring Buyer Employees; and/or 2. Transferring Former Supplier Employees; and/or 3. employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C; 4. where the Former Supplier becomes the Supplier those employees;   who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer; |
| **Fair Deal Schemes** | means the relevant Statutory Scheme or a Broadly Comparable pension scheme; |
| **Fund Actuary** | means Fund Actuary as defined in Annex D3 to this Part D; |
| **LGPS** | the schemes as defined in Annex D3 to this Part D; |
| **NHSPS** | the schemes as defined in Annex D2 to this Part D; |
| **New Fair Deal** | the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for Staff Pensions: Staff Transfer from Central Government" issued in October 2013 including:   1. any amendments to that document immediately prior to the Relevant Transfer Date; and 2. any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and |
| **Statutory Schemes** | means the CSPS, NHSPS or LGPS. |

### Supplier obligations to participate in the pension schemes

* 1. In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
  2. The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
  3. The Supplier undertakes:
     1. to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
     2. to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

### Supplier obligation to provide information

* 1. The Supplier undertakes to the Buyer:
     1. to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
     2. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

### Indemnities the Supplier must give

* 1. The Supplier undertakes to the Buyer to indemnify and keep indemnified CCS, NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
  2. The Supplier hereby indemnifies the CCS, NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Subcontractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
     1. relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
     2. arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
  3. The indemnities in this Part D and its Annexes:
     1. shall survive termination of this Contract; and
     2. shall not be affected by the caps on liability contained in Clause 11 (How much you can be held responsible for).

### What happens if there is a dispute

* 1. The Dispute Resolution Procedure will not apply to this Part D and any dispute between the CCS and/or the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the CCS and/or the Buyer and/or the Supplier be referred to an independent Actuary:
     1. who will act as an expert and not as an arbitrator;
     2. whose decision will be final and binding on the CCS and/or the Buyer and/or the Supplier; and
     3. whose expenses shall be borne equally by the CCS and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

### Other people’s rights

* 1. The Parties agree Clause 19 (Other people’s rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
  2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in his or her or its own right under section 1(1) of the CRTPA.

### What happens if there is a breach of this Part D

* 1. The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
     1. commits an irremediable breach of any provision or obligation it has under this Part D; or
     2. commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

### Transferring New Fair Deal Employees

* 1. Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Subcontractor shall:
     1. consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and
     2. procure that the employer to which the Fair Deal Employees are transferred (the **"New Employer"**) complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

### What happens to pensions if this Contract ends

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

### Broadly Comparable Pension Schemes

* 1. If either:
     1. the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or
     2. the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Subcontractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

* 1. Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Subcontractors shall):
     1. supply to the Buyer details of its (or its Subcontractor’s) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
     2. fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme’s Actuary or by the Government Actuary’s Department for the period ending on the Service Transfer Date;
     3. instruct any such Broadly Comparable pension scheme’s Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
     4. provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is terminated;
     5. allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as Part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service **("Shortfall"**), the Supplier or the Subcontractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier; and
     6. indemnify CCS and/or the Buyer and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

### Annex D1: Civil Service Pensions Schemes (CSPS)

### Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **CSPS Admission Agreement** | an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services; |
| **CSPS Eligible Employee** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; and |
| **CSPS** | the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; [**Delete** after 30 September 2018: the Designated Stakeholder Pension Scheme which is scheduled to close to new members in September 2018] and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014. |

### Access to equivalent pension schemes after transfer

* 1. The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
  2. The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

### Annex D2: NHS Pension Schemes

### Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Direction Letter** | an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees; |
| **NHSPS Eligible Employees** | each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:   1. their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or 2. their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),   and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).  For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee; |
| **NHS Body** | has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012; |
| **NHS Pensions** | NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS; |
| **NHSPS** | the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations; |
| **NHS Pension Scheme Arrears** | any failure on the Part of the Supplier or its Subcontractors (if any) to pay employer’s contributions or deduct and pay across employee’s contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees; |
| **NHS Pension Scheme Regulations** | as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time; |
| **NHS Premature Retirement Rights** | rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time; |
| **Pension Benefits** | any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; and |
| **Retirement Benefits Scheme** | a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004. |

### Membership of the NHS Pension Scheme

* 1. In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
  2. The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
  3. The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
  4. The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
  5. Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
  6. The Supplier will (and will procure that its Subcontractors (if any) will) as soon as reasonably practicable and at its (or its Subcontractor’s) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

### Access to NHS Pension Schemes after transfer

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

### Continuation of early retirement rights after transfer

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

### What the buyer do if the Supplier breaches its pension obligations

* 1. The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter.
  2. If the Buyer is entitled to terminate the Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.
  3. In addition to the Buyer's right to terminate the Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or Part of those arrears from any amount due to be paid under this Contract or otherwise.

### Compensation when pension scheme access can’t be provided

* 1. If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:
     1. membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
     2. access to a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

* 1. This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer’s right to terminate the Contract.

### Indemnities that a Supplier must give

* 1. The Supplier must indemnify and keep indemnified the CCS, the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.
  2. The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

### Subcontractors

* 1. If the Supplier enters into a Sub-Contract for the delivery of all or Part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Subcontractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:
     1. if the Supplier has secured a Direction Letter, the Subcontractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Subcontractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Buyer receives a complete copy of each such Subcontractor direction letter as soon as reasonably practicable; or
     2. if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Subcontractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 below (Bulk Transfer Obligations in relation to any Broadly Comparable Scheme) shall apply.
  2. The Supplier shall procure that each Subcontractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Subcontractor that are identical to the indemnities set out in Paragraph 7 of this Annex D2. Where a Subcontractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

### Annex D3: Local Government Pension Schemes (LGPS)

**[Guidance:** Note the LGPS unlike the CSPS & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Authority, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether CCS and or the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

### Definitions

* 1. In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Administering Authority** | in relation to theFund **[insert name]**, the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013; |
| **Fund Actuary** | the actuary to a Fund appointed by the Administering Authority of that Fund; |
| **Fund** | **[insert name]**, a pension fund within the LGPS; |
| **LGPS** | the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme; |
| **LGPS Admission Agreement** | an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013; |
| **LGPS Admission Body** | an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013); |
| **LGPS Eligible Employees** | any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and |
| **LGPS Regulations** | the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS. |

### Supplier must become a LGPS admission body

* 1. Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
  2. The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
  3. The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
  4. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

### Right of set-off

The Buyer shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Subcontractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

### Supplier ceases to be an LGPS Admission Body

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

### Discretionary benefits

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer’s written policy in relation to such benefits at the time of the Relevant Transfer Date.

### Annex D4: Other Schemes

**[Guidance:** Placeholder for Pension Schemes other than LGPS, CSPS & NHSPS]

### Part E: Staff Transfer on Exit

Obligations before a Staff Transfer

### Obligations before a Staff Transfer

* 1. The Supplier agrees that within 20 Working Days of the earliest of:
     1. receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
     2. receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
     3. the date which is 12 Months before the end of the Term; and
     4. receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any 6 Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer.

* 1. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).
  2. The Buyer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
  3. The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
  4. From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier’s Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):
     1. not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces
     2. make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);
     3. not increase the proportion of working time spent on the Services (or the relevant Part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
     4. not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
     5. not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant Part of the Services);
     6. not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
     7. not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
     8. give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
     9. co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
     10. promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
     11. not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
     12. not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
     13. fully fund any Broadly Comparable pension schemes set up by the Supplier;
     14. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
     15. promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
     16. fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
  5. On or around each anniversary of the Effective Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
     1. the numbers of employees engaged in providing the Services;
     2. the percentage of time spent by each employee engaged in providing the Services;
     3. the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
     4. a description of the nature of the work undertaken by each employee by location.
  6. The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
     1. the most recent month's copy pay slip data;
     2. details of cumulative pay for tax and pension purposes;
     3. details of cumulative tax paid;
     4. tax code;
     5. details of any voluntary deductions from pay; and
     6. bank/building society account details for payroll purposes.

### Staff Transfer when the contract ends

* 1. A change in the identity of the supplier of the Services (or Part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply.
  2. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee.
  3. The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
  4. Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
  5. The indemnity in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date.
  6. Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then.
     1. the Replacement Supplier and/or Replacement Subcontractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
     2. the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor;
     3. if such offer of employment is accepted, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment;
     4. if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5.

* 1. The indemnity in Paragraph 2.5 shall not apply to:
     1. any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor, or
     2. any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.
  2. The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.
  3. If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
  4. The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
  5. Subject to Paragraph 2.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

## Call-Off Schedule 3 (Continuous Improvement)

### Buyer’s Rights

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

### Supplier’s Obligations

* 1. The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer’s costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
  2. The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
  3. In addition to Paragraph 2.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year (**"Continuous Improvement Plan"**) for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
     1. identifying the emergence of relevant new and evolving technologies;
     2. changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
     3. new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
     4. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
  4. The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Buyer for Approval within one hundred (100) Working Days of the first Order or six (6) Months following the Start Date, whichever is earlier.
  5. The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.
  6. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
  7. If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer or CCS.
  8. Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 2.5:
     1. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
     2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
  9. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 2.3.
  10. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
  11. Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
  12. At any time during the Contract Period of the Call-Off Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

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

\*Copies of all embedded documents will also be communicated separately.

XXXXXX “redacted under FOIA section No 40 – Personal Information

## Call-Off Schedule 5 (Pricing Details and Expenses Policy)

### Call-Off Contract Charges

* 1. The Supplier shall provide:
     1. as part of the Further Competition Procedure, its pricing for the Deliverables in accordance with the Buyer’s Statement of Requirements.
     2. for each individual Statement of Work (SOW), the applicable Charges, calculated in accordance with the charging methods detailed in the Order Form and using all of the following:

1. the agreed rates for Supplier Staff and/or facilities (which are exclusive of any applicable expenses and VAT) incorporated into the Call-Off Contract;
2. the number of Work Days, or pro rata for every part of a Work Day (see Paragraph 1.2 of Framework Schedule 3 (Framework Pricing)), that Supplier Staff and/or facilities will be required to provide the Deliverables and to meet the tasks sets out in the SOW between the SOW Start Date and SOW End Date; and
3. except in the case of Lot 3 (User Research Studios), a contingency margin of up to 20% of the SOW value (“**Contingency** **Margin**”) applied to the sum calculated on the basis of (a) and (b), to accommodate any changes to the SOW Deliverables during the SOW Start Date and SOW End Date. The Supplier must (i) explain the reasons for its proposed use of, and (ii) obtain the Buyer’s Approval before applying, any amount of the Contingency Margin.
   1. Further to Paragraph 1.5 of Framework Schedule 3 (Framework Pricing), the Supplier will provide a detailed breakdown of its Charges for the Deliverables in sufficient detail to enable the Buyer to verify the accuracy of any invoice submitted.

This detailed breakdown will be incorporated into each SOW and include (but will not be limited to):

* a role description of each member of the Supplier Staff;
* a facilities description (if applicable);
* the agreed day rate for each Supplier Staff;
* any expenses charged for each Work Day for each Supplier Staff, which must be in accordance with the Buyer’s expenses policy (if applicable);
* the number of Work Days, or pro rata for every part day, they will be actively be engaged in providing the Deliverables between the SOW Start Date and SOW End Date; and
* the total SOW cost for all Supplier Staff role and facilities in providing the Deliverables.
  1. If a Capped or Fixed Price has been agreed for a particular SOW:
* the Supplier shall continue to work on the Deliverables until they are satisfactorily complete and accepted by the Buyer at its own cost and expense where the Capped or Fixed Price is exceeded; and
* the Buyer will have no obligation or liability to pay any additional Charges or cost of any part of the Deliverables yet to be completed and/or Delivered after the Capped or Fixed Price is exceeded by the Supplier.
  1. All 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:

### Annex 1 (Expenses Policy)

### Not Applicable – The rates provided for the roles are inclusive of T & S expenses. As documented in line 17 of the completed pricing schedule and the provided clarification responses dated 4 November 2022.

## Call-Off Schedule 6 (Intellectual Property Rights and Additional Terms on Digital Deliverables)

### Definitions

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

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Buyer Property** | the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract; |
| **Buyer Software** | any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables; |
| **Buyer System** | the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables; |
| **Commercial off the shelf Software or COTS Software** | Non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms; |
| **Defect** | any of the following:   1. any error, damage or defect in the manufacturing of a Deliverable; or 2. any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or 3. any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Call Off Contract; or 4. any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; |
| **Emergency Maintenance** | ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault; |
| **ICT Environment** | the Buyer System and the Supplier System; |
| **Licensed Software** | all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Call Off Contract, including any COTS Software; |
| **Maintenance Schedule** | has the meaning given to it in paragraph 8 of this Schedule; |
| **Malicious Software** | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; |
| **New Release** | an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item; |
| **Open Source Software** | computer software that has its source code made available subject to an open-source licence under which the owner of the copyright and other IPR in such software provides the rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge; |
| **Operating Environment** | means the Buyer System and any premises (including the Buyer Premises, the Supplier’s premises or third party premises) from, to or at which:   1. the Deliverables are (or are to be) provided; or 2. the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or 3. where any part of the Supplier System is situated; |
| **Permitted Maintenance** | has the meaning given to it in paragraph 8.2 of this Schedule; |
| **Quality Plans** | has the meaning given to it in paragraph 6.1 of this Schedule; |
| **Sites** | has the meaning given to it in Joint Schedule 1(Definitions), and for the purposes of this Call Off Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place; |
| **Software** | Specially Written Software COTS Software and non-COTS Supplier and third party Software; |
| **Software Supporting Materials** | has the meaning given to it in paragraph 9.1 of this Schedule; |
| **Source Code** | computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software; |
| **Specially Written Software** | any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR; and |
| **Supplier System** | the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System). |

### When this Schedule should be used

* 1. This Schedule is designed to provide additional provisions on Intellectual Property Rights for the Digital Deliverables.

### Buyer due diligence requirements

* 1. The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following;
     1. suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Start Date) future Operating Environment;
     2. operating processes and procedures and the working methods of the Buyer;
     3. ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and
     4. existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.
  2. The Supplier confirms that it has advised the Buyer in writing of:
     1. each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;
     2. the actions needed to remedy each such unsuitable aspect; and
     3. a timetable for and the costs of those actions.
  3. The Supplier undertakes:
     1. and represents to the Buyer that Deliverables will meet the Buyer’s acceptance criteria as set out in each Statement of Work; and
     2. to maintain all interface and interoperability between third party software or services, and Specially Written Software required for the performance or supply of the Deliverables.

### Licensed software warranty

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

### Provision of ICT Services

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

### Standards and Quality Requirements

* 1. The Supplier shall develop, in the timescales specified in the Order Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it (**"Quality Plans"**).
  2. The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them. Approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Deliverables are provided to the standard required by this Contract.
  3. Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.
  4. The Supplier shall ensure that the Supplier Personnel shall at all times during the Call Off Contract Period:
     1. be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;
     2. apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and
     3. obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

### ICT Audit

* 1. The Supplier shall allow any auditor access to the Supplier premises and offices where work is carried out (excluding homeworking) to:
     1. inspect the ICT Environment and the wider service delivery environment (or any part of them);
     2. review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
     3. review the Supplier’s quality management systems including all relevant Quality Plans.

### Maintenance of the ICT Environment

* 1. If specified by the Buyer in the Order Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment (**"Maintenance Schedule"**) and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.
  2. Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as **"Permitted Maintenance"**) in accordance with the Maintenance Schedule.
  3. The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.
  4. The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

### Intellectual Property Rights

* 1. **Assignments granted by the Supplier: Specially Written Software** 
     1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:
        1. the Documentation, Source Code and the Object Code of the Specially Written Software; and
        2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the **"Software Supporting Materials"**).
     2. The Supplier shall:
        1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;
        2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and
        3. without prejudice to paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier’s Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier’s Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.
     3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.
  2. **Licences for non-COTS IPR from the Supplier and third parties to the Buyer**
     1. Unless the Buyer gives its Approval the Supplier must not use any:

1. of its own Existing IPR that is not COTS Software;
2. third party software that is not COTS Software
   * 1. Where the Buyer Approves the use of the Supplier’s Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer’s (or, if the Buyer is a Central Government Body, any other Central Government Body’s) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Call Off Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.
     2. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph 9.2.2. If the Supplier cannot obtain such a licence for the Buyer it shall:
        1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and
        2. only use such third party IPR as referred to at paragraph 9.2.3.1 if the Buyer Approves the terms of the licence from the relevant third party.
     3. Where the Supplier is unable to provide a license to the Supplier’s Existing IPR in accordance with Paragraph 9.2.2 above, it must meet the requirement by making use of COTS Software or Specially Written Software.
     4. The Supplier may terminate a licence granted under paragraph 9.2.1 by giving at least thirty (30) days’ notice in writing if there is an Authority Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.
   1. **Licenses for COTS Software by the Supplier and third parties to the Buyer**
      1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
      2. Where the Supplier owns the COTS Software it shall make available the COTS software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
      3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph 9.3 the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licencee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.
      4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty-six (36) months:
         1. will no longer be maintained or supported by the developer; or
         2. will no longer be made commercially available
   2. **Buyer’s right to assign/novate licences**
      1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to paragraph 9.2 (to:
         1. a Central Government Body; or
         2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.
      2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in paragraph 9.2.
   3. **Licence granted by the Buyer**
      1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 15 (Confidentiality).
   4. **Open Source Publication**
      1. Unless the Buyer otherwise agrees in advance in writing (and subject to paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:
         1. suitable for publication by the Buyer as Open Source; and
         2. based on Open Standards (where applicable),

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

* + 1. The Supplier hereby warrants that the Specially Written Software and the New IPR:
       1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;
       2. have been developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;
       3. do not contain any material which would bring the Buyer into disrepute;
       4. can be published as Open Source without breaching the rights of any third party;
       5. will be supplied in a format suitable for publication as Open Source (**"the Open Source Publication Material"**) no later than the date notified by the Buyer to the Supplier; and
       6. do not contain any Malicious Software.
    2. Where the Buyer has Approved a request by the Supplier for any part of the Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:
       1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and
       2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer’s ability to publish such other items or Deliverables as Open Source.
  1. **Malicious Software**
     1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.
     2. If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.
     3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of paragraph 9.7.2 shall be borne by the Parties as follows:
        1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and
        2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

### IPR asset management

* 1. The Parties shall work together to ensure that there is appropriate IPR asset management under each Call-Off Contract, and:
     1. where the Supplier is working on the Buyer’s System, the Supplier shall comply with the Buyer’s IPR asset management approach and procedures.
     2. where the Supplier is working on the Supplier’s System, the Buyer will ensure that it maintains its IPR asset management procedures in accordance with Good Industry Practice.

Records and materials associated with IPR asset management shall form part of the Deliverables, including those relating to any Specially Written Software or New IPR.

* 1. The Supplier shall comply with any instructions given by the Buyer as to where it shall store all work in progress Deliverables and finished Deliverables (including all Documentation and Source Code) during the term of the Call-Off Contract and at the stated intervals or frequency specified by the Buyer and upon termination of the Contract or any Statement of Work.
  2. The Supplier shall ensure that all items it uploads into 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 other items in the repository within a reasonable timeframe.
  3. The Supplier shall maintain a register of all Open Source Software it has used in the provision of the Deliverables as part of its IPR asset management obligations under this Contract.

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

### Key Supplier Staff

* 1. The Order Form lists the key roles (**“Key Roles”**) and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date and the Statement of Work lists the Key Roles and names of persons who the Supplier shall appoint to fill those Key Roles as of the SOW Start Date.
  2. The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
  3. The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
  4. The Supplier shall not remove or replace and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
     1. requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
     2. the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
     3. the person’s employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
  5. The Supplier shall:
     1. notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
     2. ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
     3. give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff’s employment contract, this will mean at least three (3) Months’ notice;
     4. ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables;
     5. ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom he or she has replaced;
     6. on written request from the Buyer, provide a copy of the contract of employment or engagement (between the Supplier and Supplier Staff) for every member of the Supplier Staff made available to the Buyer under the Call-Off Contract when providing Deliverables under any Statement of Work**[.[; and]**
     7. on written request from the Buyer, provide details of start and end dates of engagement for all Key Staff filling Key Roles under any Statement of Work**.**
  6. The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

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

### Definitions

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

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

### BCDR Plan

* 1. The Buyer and the Supplier recognise that, where specified in Schedule 4 (Framework Management), CCS shall have the right to enforce the Buyer's rights under this Schedule.
  2. Within ten (10) Working Days prior to the Start Date the Supplier shall prepare and deliver to the Buyer for the Buyer’s written approval a plan (a **“BCDR Plan”**), which shall detail the processes and arrangements that the Supplier shall follow to:
     1. ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
     2. the recovery of the Deliverables in the event of a Disaster
  3. The BCDR Plan shall be divided into three sections:
     1. Section1 which shall set out general principles applicable to the BCDR Plan;
     2. Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
     3. Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).
  4. Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### General Principles of the BCDR Plan (Section 1)

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

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

### Business Continuity (Section 2)

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

### Disaster Recovery (Section 3)

* 1. The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
  2. The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
     1. loss of access to the Buyer Premises;
     2. loss of utilities to the Buyer Premises;
     3. loss of the Supplier's helpdesk or CAFM system;
     4. loss of a Subcontractor;
     5. emergency notification and escalation process;
     6. contact lists;
     7. staff training and awareness;
     8. BCDR Plan testing;
     9. post implementation review process;
     10. any applicable Performance Indicators (PI’s) with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Performance Indicators (PI’s) or Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
     11. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
     12. access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
     13. testing and management arrangements.

### Review and changing the BCDR Plan

* 1. The Supplier shall review the BCDR Plan:
     1. on a regular basis and as a minimum once every six (6) Months;
     2. within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and
     3. where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer’s written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer’s approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer’s prior written approval.
  2. Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
  3. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
  4. Following receipt of the Review Report and the Supplier’s Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
  5. The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier’s expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Deliverables.

### Testing the BCDR Plan

* 1. The Supplier shall test the BCDR Plan:
     1. regularly and in any event not less than once in every Contract Year;
     2. in the event of any major reconfiguration of the Deliverables;
     3. at any time where the Buyer considers it necessary (acting in its sole discretion).
  2. If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer’s requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
  3. The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
  4. The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
  5. The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
     1. the outcome of the test;
     2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
     3. the Supplier's proposals for remedying any such failures.
  6. Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

### Invoking the BCDR Plan

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

### Circumstances beyond your control

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

## Call-Off Schedule 9 (Security)

### Part A: Short Form Security Requirements

### Definitions

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

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

### Complying with security requirements and updates to them

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

### Security Standards

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

### Security Management Plan

* 1. **Introduction**
     1. The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.
  2. **Content of the Security Management Plan**
     1. The Security Management Plan shall:

1. comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;
2. identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
3. detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, Information and data (including the Buyer’s Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
4. be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, Information and data (including the Buyer’s Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Deliverables;
5. set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
6. set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with paragraph 2.2 the Security Policy; and
7. be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
   1. **Development of the Security Management Plan**
      1. Within twenty (20) Working Days after the Start Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
      2. If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
      3. The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
      4. Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3.2 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.
   2. **Amendment of the Security Management Plan**
      1. The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
8. emerging changes in Good Industry Practice;
9. any change or proposed change to the Deliverables and/or associated processes;
10. where necessary in accordance with paragraph 2.2, any change to the Security Policy;
11. any new perceived or changed security threats; and
12. any reasonable change in requirements requested by the Buyer.
    * 1. The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:
13. suggested improvements to the effectiveness of the Security Management Plan;
14. updates to the risk assessments; and
15. suggested improvements in measuring the effectiveness of controls.
    * 1. Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.
      2. The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

### Security breach

* 1. Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
  2. Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
     1. immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:

1. minimise the extent of actual or potential harm caused by any Breach of Security;
2. remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
3. prevent an equivalent breach in the future exploiting the same cause failure; and
4. as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.
   1. In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with paragraph 2.2) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

### Data security

* 1. The Supplier will ensure that any system on which the Supplier holds any Government 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).
  1. Where the duration of a Call-Off Contract exceeds one (1) year, the Supplier will review the accreditation status at least once each year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Government Data. If any changes have occurred then the Supplier agrees to promptly re-submit such system for re-accreditation.

### Schedule 10 (Exit Management)

### Definitions

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

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Exclusive Assets** | Supplier Assets used exclusively by the Supplier [**or a Key Subcontractor**] in the provision of the Deliverables; |
| **Exit Information** | has the meaning given to it in Paragraph 3.1 of this Schedule; |
| **Exit Manager** | the person appointed by each Party to manage their respective obligations under this Schedule; |
| **Exit Plan** | the plan produced and updated by the Supplier during the Initial Period in accordance with Paragraph 4 of this Schedule; |
| **Net Book Value** | the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Framework Tender or Call-Off Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice); |
| **Non- Exclusive Assets** | those Supplier Assets used by the Supplier [**or a Key Subcontractor**] in connection with the Deliverables but which are also used by the Supplier [**or Key Subcontractor**] for other purposes; |
| **Registers** | the register and configuration database referred to in Paragraph 2.2 of this Schedule; |
| **Replacement Goods** | any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party; |
| **Replacement Services** | any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party; |
| **Termination Assistance** | the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice; |
| **Termination Assistance Notice** | has the meaning given to it in Paragraph 5.1 of this Schedule; |
| **Termination Assistance Period** | the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule; |
| **Transferable Assets** | Exclusive Assets which are capable of legal transfer to the Buyer; |
| **Transferable Contracts** | Sub- Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation; |
| **Transferring Assets** | has the meaning given to it in Paragraph 8.2.1 of this Schedule; and |
| **Transferring Contracts** | has the meaning given to it in Paragraph 8.2.3 of this Schedule. |

### Supplier must always be prepared for Contract exit and SOW exit

* 1. he Supplier shall:
     1. ensure that all Exclusive Assets listed in the Registers are clearly physically identified as such; and
     2. procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.
  2. Each Party shall appoint an Exit Manager within three (3) Months of the Call-Off Contract Start Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of each SOW and this Contract.

### Assisting re-competition for Deliverables

* 1. The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence whether this is in relation to one or more SOWs or the Call-Off Contract. (the "**Exit Information**").
  2. The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier’s or its Subcontractors’ prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
  3. The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
  4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

### Exit Plan

* 1. The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a Call-Off Contract and SOW Exit Plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer.
  2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
  3. The Exit Plan shall set out, as a minimum:
     1. a detailed description of both the transfer and cessation processes, including a timetable (this may require modification to SOW Exit Plan provisions to be updated and incorporated as part of the SOW;
     2. how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
     3. details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
     4. proposals for the training of key members of the Replacement Supplier’s staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
     5. proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
     6. proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
     7. proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
     8. proposals for the disposal of any redundant Deliverables and materials;
     9. how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
     10. any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
  4. The Supplier shall:
     1. maintain and update the Exit Plan (and risk management plan) no less frequently than:

1. prior to each SOW and no less than every [**six (6) months**] throughout the Contract Period; and
2. no later than [**twenty (20) Working Days**] after a request from the Buyer for an up-to-date copy of the Exit Plan;
3. as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than [**ten (10) Working Days**] after the date of the Termination Assistance Notice;
4. as soon as reasonably possible following, and in any event no later than [**twenty (20) Working Days**] following, any material change to the Deliverables (including all changes under the Variation Procedure); and
   * 1. jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
   1. Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
   2. A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

### Termination Assistance

* 1. The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or, as soon as reasonably practicable, in the case of the Call-Off Contract and each SOW (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
     1. the nature of the Termination Assistance required; and
     2. the start date and initial period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
  2. The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
     1. no such extension shall extend the Termination Assistance Period beyond the date twelve (12) Months after the End Date; and
     2. the Buyer shall notify the Supplier of any such extension no later than twenty (20) Working Days prior to the date on which the Termination Assistance Period is otherwise due to expire.
  3. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
  4. In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

### Termination Assistance Period

* 1. Throughout the Termination Assistance Period the Supplier shall:
     1. continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
     2. provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
     3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
     4. subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Performance Indicators (PI’s) or Service Levels or KPIs, the provision of the Management Information or any other reports or to any other of the Supplier's obligations under this Contract;
     5. at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer;
     6. seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
  2. If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
  3. If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels or KPIs, the Parties shall vary the relevant Service Levels and/or the KPIs accordingly.

### Obligations when the contract is terminated

* 1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
  2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
     1. vacate any Buyer Premises;
     2. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
     3. provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

1. such information relating to the Deliverables as remains in the possession or control of the Supplier; and
2. such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
   1. Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.

### Assets, Sub-contracts and Software

* 1. Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
     1. terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
     2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
  2. Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier, the Buyer shall notify the Supplier setting out:
     1. which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
     2. which, if any, of:

1. the Exclusive Assets that are not Transferable Assets; and
2. the Non-Exclusive Assets,

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

* + 1. which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"),

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

* 1. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
  2. Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
  3. Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
     1. procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
     2. procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
  4. The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
  5. The Buyer shall:
     1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
     2. once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
  6. The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
  7. The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 19 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

### No charges

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

### Dividing the bills

* 1. All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:
     1. the amounts shall be annualised and divided by 365 to reach a daily rate;
     2. the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
     3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

## Call-Off Schedule 13 (Implementation Plan and Testing) (not required)

## Call-Off Schedule 14 (Service Levels and Balanced Scorecard)

**Please note, in addition balanced scorecard reporting.**

**The following measures provided within Made Tech’s technical proposal response,** XXXXXX “redacted under FOIA section No 40 – Personal Information).

### SECTION 2: BALANCED SCORECARD

### Balanced Scorecard

* 1. As an alternative to or in addition to Service Levels (under Section 1 above) and the Supplier’s performance management obligations under the Framework Contract, the Buyer and Supplier may agree to follow the Balanced Scorecard and key performance indicators (“KPIs”) for a Call-Off Contract and one or more of its Statements of Work.

**Made Tech Ltd**

#### A. KPI: Performance to pay process

In accordance with an agreed performance to pay process, suppliers submit the following 'inputs':

* accurate and complete timesheets in a timely manner
* accurate and complete supplier reports in a timely manner
* accurate and complete invoices in a timely manner

**Measurement**

|  |  |  |
| --- | --- | --- |
| **Met** | **Partially met** | **Not met** |
| 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 incomplete or inaccurate | Inputs are later than 5 working days in the prescribed performance to pay process Inputs contain significant errors |

**Source**: Supplier Reports/Invoices

**Owner**: To be agreed

#### B. KPI: People (resourcing)

Successful recruitment and placement of key resources or provision of facilities meets the planned deliverables and contractual obligations. The supplier pro-actively manages their resource skills or state of facilities by identifying issues early, and in a timely fashion, addressing any deficits.

**Measurement**

|  |  |  |
| --- | --- | --- |
| **Met** | **Partially met** | **Not met** |
| Targets met for all resources or facilities | Targets met for most (50%+) resources or facilities through no fault of the Buyer | Targets missed for most resources or facilities requested through no fault of the Buyer |

**Source**: TPM and wider Buyer Team's verification

**Owner**: To be agreed

#### C. KPI: Partnering behaviours and added value

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 or facilities.

**Measurement**

|  |  |  |
| --- | --- | --- |
| **Met** | **Partially met** | **Not met** |
| * No behavioural problems identified * Buyer workshops attended and positive contributions made * Added value recognised by the programme above provision of compensated skilled resource/facilities | * Some minor behavioural problems * Supplier only attends some workshops or provides minor contributions * Supplier adds some value above provision of compensated resource and facilities, but this is not regarded as significant | * Significant behavioural problems * Supplier contributions are rare or insignificant and shows little interest in working with other suppliers * No added value contributions recognised by the Programme |

**Source**: Collective feedback on suppliers from both Buyer and other supplier staff

**Owner**: To be agreed

#### D. KPI: People in place (Delivery)

All Supplier resources delivering services for the contracts are performing to the expected standard for the skill-set supplied and all facilities are to the expected standard.

**Measurement**

|  |  |  |
| --- | --- | --- |
| **Met** | **Partially met** | **Not met** |
| * No resources are swapped out due to deficiency in skill-set and/or no change of facilities is required * No problems identified with quality of work or state of facility * Supplier is making positive team contributions * Supplier skills or facilities meet the standards expected | * Minor issues noted with quality of work or standard of facilities * Few contributions made within team | * Resource is swapped out from project due to deficiency in skill-set or change of facility is required * Persistent issues with quality of work or facilities noted (may be minor ones which have persisted from one month to another) * Significant issue with quality of work or facility noted in a month |

**Source**: TPM and wider buyer team

**Owner**: To be agreed

#### E. KPI: Part 1 Social Value MAC 2.3 & 8.2

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|  |  |  |  |
| --- | --- | --- | --- |
| **Met** | **Almost Met** | **Partially met** | **Not met** |
| * XXXXXX “redacted under FOIA section No 40 – Personal Information | XXXXXX “redacted under FOIA section No 40 – Personal Information | XXXXXX “redacted under FOIA section No 40 – Personal Information | XXXXXX “redacted under FOIA section No 40 – Personal Information |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  | Percentage of 5 milestones complete. | | | |
| Quarter | Year | Good | Approaching target | Requires improvement | Inadequate |
| Jan-Feb-Mar | 2023 | 20% | 16% | 10% | Below 10% |
| Apr-May-Jun | 2023 | 40% | 32% | 20% | Below 20% |
| Jul-Aug-Sep | 2023 | 60% | 48% | 40% | Below 40% |
| Oct-Nov | 2023 | 80% | 64% | 60% | Below 60% |
| Dec | 2023 | 100% | 90% | 80% | Below 80% |

**Source**: Feedback from Supplier

**Owner**: To be agreed

#### E. KPI: Part 2 Social Value Mac 2.3 & 8.2 Influence to support strong, integrated communities

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|  |  |  |
| --- | --- | --- |
| **Met** | **Partially Met** | **Not met** |
| * Made Tech are delivering against all social value commitments within the timeframes proposed | * Made Tech are likely to fall behind in some areas of social value commitment but there is a plan to remedy and largely plans are on track | * Made Tech are failing to achieve any of their social value commitments and there is no plan in place to remedy |

**Source**: Feedback from supplier on each bullet point above

**Owner**: To be agreed

* 1. The purpose of the Balanced Scorecard is to promote contract management activity through measurement of the Supplier’s performance against KPIs. The Buyer and Supplier shall agree the content of the Scorecard before the Call-Off Contract Start Date including the Material KPIs as defined in Framework Schedule 4 (Framework Management). Targets and measures to be listed in the Scorecard (example above for guidance only) should be tailored to meet the Buyer’s needs and the Supplier’s competences.
  2. The recommended process for using the Balanced Scorecard is as follows:
* the Buyer and Supplier agree a template 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.
* on a pre-agreed schedule (for example, Monthly) both the Buyer and the Supplier provide a rating on the Supplier’s performance
* following the initial rating, both Parties meet to review the scores and agree an overall final score for each KPI
* following agreement of final scores, the process is repeating as per the agreed schedule

### Buyer redress for failure to provide Services at or above Service Levels

* 1. The Buyer may ask for a Rectification Plan if the Supplier:
     1. fails to meet **any** of the key performance indicators (“KPIs”) listed within Section 2 (Balanced Scorecard) (“a Default”) on at least **3** occasions within a 12-Month rolling period
     2. demonstrates poor performance of a Call-Off Contract or any Statement of Work, evidenced through Buyer feedback to CCS that the Supplier has scored a ‘red’ status on any one of the KPI targets listed on the Balanced Scorecard, on at least **2** occasions within a **Statement of Work** duration, or within a period of 3 Months (whichever is the earlier)
  2. This Rectification Plan must clearly detail the improvements and associated timeframes within which the Supplier shall meet and achieve the KPI targets. The Rectification Plan must be provided in accordance with Clause 10.3 of the Core Terms and any failure to correct a Default in line with an accepted Rectification Plan, or failure to provide a Rectification Plan within 10 days of the request may result in the Buyer exercising its right to terminate the Contract in accordance with Clause 10.4 of the Core Terms.

### Performance Monitoring and Performance Review

* 1. Within twenty (20) Working Days of the Start Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of KPIs in the Balanced Scorecard will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
  2. The Supplier shall provide the Buyer with performance monitoring reports **("Performance Monitoring Reports"**) in accordance with the process and timescales agreed which shall contain, as a minimum, the following information in respect of the relevant KPIs just ended:
     1. for each KPI, the actual performance achieved over the relevant period;
     2. a summary of all failures to achieve KPIs that occurred during that period;
     3. details of any failures of KPIs across one or more SOW;
     4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
     5. such other details as the Buyer may reasonably require from time to time.
  3. The Parties shall attend meetings to discuss Performance Monitoring Reports **("Performance Review Meetings"**) on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
     1. take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location, format and time (within normal business hours) as the Buyer shall reasonably require;
     2. be attended by the Supplier's Representative and the Buyer’s Representative; and
     3. be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer’s Representative and any other recipients agreed at the relevant meeting.

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

3.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier for any specified period.

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

## Definitions

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

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Operational Board** | the board established in accordance with paragraph 4.1 of this Schedule; and |
| **Project Manager** | the manager appointed in accordance with paragraph 2.1 of this Schedule. |

### Project Management

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

### Role of the Supplier Contract Manager

* 1. The Supplier's Contract Manager's shall be:
     1. the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
     2. able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Contract Manager's responsibilities and obligations;
     3. able to cancel any delegation and recommence the position himself; and
     4. replaced only after the Buyer has received notification of the proposed change.
  2. The Buyer may provide revised instructions to the Supplier's Contract Manager's in regards to the Contract and it will be the Supplier's Contract Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
  3. Receipt of communication from the Supplier's Contract Manager's by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under the Contract.

### Role of the Operational Board

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

### Contract Risk Management

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

### Annex: Contract Boards

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

|  |  |
| --- | --- |
| **Location** | **Frequency** |
| Remotely/DVLA (Morriston Site) TBC prior to review meeting. | Monthly |
|  |  |

## 

## Call-Off Schedule 16 (Benchmarking) – Not Required

## Call-Off Schedule 17 (MOD Terms) – Not Required

## Call-Off Schedule 18 (Background Checks)

### When you should use this Schedule

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

### Definitions

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Relevant Conviction** | means any conviction listed in Annex 1 to this Schedule. |

### Relevant Convictions

* 1. The Supplier must ensure that no person who discloses that they have a Relevant Conviction, or a person who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Deliverables without Approval.
  2. Notwithstanding Paragraph 3.1 for each member of Supplier Staff who, in providing the Deliverables, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier must (and shall procure that the relevant Sub-Contractor must):

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

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Deliverables any person who has a Relevant Conviction or an inappropriate record.

### Annex 1: Relevant Convictions

Any convictions that would prevent the individual meeting DBS and SC certification that is required for this role.

## Call-Off Schedule 19 (Scottish Law) – Not Required

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

\*All embedded documents will be communicated separately.

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



**Worker Engagement Route (including IR35 status)**

Where the Buyer has assessed its requirement is for a supply of resource, the IR35 status of the Key Roles must be detailed in the Specification.

An IR35 assessment has been undertaken and the status outcome was undetermined. However, we have determined that this procurement represents a supply of resource – therefore the off-payroll rules will apply.

## XXXXXX “redacted under FOIA section No 40 – Personal Information

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## Call-Off Schedule 21 (Northern Ireland Law) – Not Required

## Call-Off Schedule 25 (Ethical Walls Agreement)

[**Buyer**]

and

[**Supplier**]

### Ethical Walls Agreement

### Drafting instructions: Ethical Walls Agreement

[**Applicability**: This standard document has been written from the perspective of the Buyer. Its intended use is as an ethical walls agreement between a Government Department and an incumbent company which intends to submit a tender for a Further Competition Procedure for the Deliverables in question. It will need amending if one of the parties is an individual, partnership or a limited liability partnership (LLP).

**Term**: Clause 10.1 should be completed with the appropriate period of time being at least as long as the Further Competition Procedure will take to be completed.

**Context**: This document is a template and may require amendment to suit the circumstances of the transaction you are working on. Please ensure that this document is used in the correct context and amended to reflect that context where necessary. If you are using it as part of a suite of documents, make sure that you have amended it to reflect the deal you are working on.

Required action as follows:

1. Optional provision to be deleted if not required or amended to reflect the circumstances; and
2. Details to be inserted.

Version history:

Document last reviewed by GLD on 1 March 2020]

This Agreement is dated [ ] 20[ ]

Between

1. [**Insert** name of Buyer] (the **"Buyer"**) [acting on behalf of the Crown] of [**insert** Buyer’s address]; and
2. [**Insert** name of Supplier] a **[company]/[limited liability partnership]** registered in England and Wales under registered number [**insert** registered number] whose registered office is at [**insert** Supplier’s registered address] (the **“Supplier”**).

together the “Parties” and each a “Party”.

**Background**

1. The Buyer is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("Agreement") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Further Competition Procedure.
2. The Buyer is conducting a Further Procurement Procedure for the supply of Digital Outcomes and Specialists 5 Deliverables under a Call-Off Contract (the **“Purpose”**).
3. The Buyer has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least "any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure" (Regulation 24(2)). "Staff members" refers to staff members of the Buyer or of a procurement service provider acting on behalf of the Buyer who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. "Procurement service provider" refers to a public or private body which offers ancillary purchasing activities on the market.
4. Pursuant to Regulation 41 of the PCR, the Buyer is under an obligation to ensure that competition is not distorted by the participation of any Framework Contract supplier acting as a bidder in a further competition procedure. Accordingly, the Buyer has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this Further Competition Procedure, where it has also performed services for the Buyer under existing contractual arrangements or as a subcontractor under those same arrangements.
5. The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Supplier does not obtain an unfair competitive advantage over Other Bidders.

**It is agreed:**

### Definitions and interpretation

* 1. The following words and expressions shall have the following meanings in this agreement and its recitals:

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Affiliate** | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **Agreement** | means this ethical walls agreement duly executed by the Parties; |
| **Bid Team** | means any Supplier, Affiliate, connected to the preparation of an FCP Response; |
| **Central Government Body** | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:   1. Government Department; 2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); 3. Non-Ministerial Department; or 4. Executive Agency; |
| **Conflicted Personnel** | means any Supplier, Affiliate, staff or agents of the Supplier or an Affiliate who, because of the Supplier’s relationship with the Buyer under any Contract have or have had access to information which creates or may create a conflict of interest; |
| **Contract** | means the [contract for **[ ]] dated [ ]** between the Buyer and the Supplier and/or an Affiliate; |
| **Control** | means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly; |
| **Effective Date** | means the date of this Agreement as set out above; |
| **Further Competition Procedure or FCP** | means an invitation to submit tenders issued by the Buyer as part of an FCP Process; |
| **FCP Process** | means, with regard to the Purpose, the relevant procedure provided for in Framework Schedule 7 (Call-Off Award Procedure) of RM1043.7 Framework Contract which the Buyer has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Buyer as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract; |
| **FCP Response** | means the tender submitted or to be submitted by the Supplier or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an FCP; |
| **Other Affiliate** | any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder; |
| **Other Bidder** | means any other bidder or potential bidder that is not the Supplier or any Affiliate that has or is taking part in the FCP Process; |
| **Parties** | means the Buyer and the Supplier; |
| **Professional Advisor** | means a supplier, subcontractor, advisor or consultant engaged by the Supplier under the auspices of compiling its FCP Response; |
| **Purpose** | has the meaning given to it in recital B to this Agreement; |
| **Representative** | refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Supplier or any Affiliate in connection with the FCP Process and the representatives of such providers or potential providers of finance; and |
| **Third Party** | means any person who is not a Party and includes Other Affiliates and Other Bidders. |

* 1. Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
  2. Reference to the disclosure of information, or provision of access, by or to the Buyer or the Supplier includes disclosure, or provision of access, by or to the representatives of the Buyer or Representatives of the Supplier (as the case may be).
  3. Reference to persons includes legal and natural persons.
  4. Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
  5. Reference to clauses and recitals is to clauses of and recitals to this Agreement.
  6. Reference to any gender includes any other.
  7. Reference to writing includes email.
  8. The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
  9. The words “include” and “including” are to be construed without limitation.
  10. The singular includes the plural and vice versa.
  11. The headings contained in this Agreement shall not affect its construction or interpretation.

### Ethical walls

* 1. In consideration of the sum of £1 payable by the Buyer to the Supplier, receipt of which is hereby acknowledged, the Supplier:
     1. shall take all appropriate steps to ensure that neither the Supplier nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Buyer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or its Affiliates or Representatives and the duties owed to the Buyer under the Contract or pursuant to an fair and transparent FCP Process;
     2. acknowledges and agrees that a conflict of interest may arise in situations where the Supplier or an Affiliate intends to take part in the FCP Process and, because of the Supplier’s relationship with the Buyer under any Contract, the Supplier, its Affiliates and/or Representatives have or have had access to information which could provide the Supplier and/or its Affiliates with an advantage and render unfair an otherwise genuine and fair competitive FCP Process; and
     3. where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the FCP Process, shall comply with Clause 2.2.
  2. The Supplier shall:
     1. Not assign any of the Conflicted Personnel to the Bid Team at any time;
     2. Provide to the Buyer a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
     3. Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:

1. about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
2. which would or could in the opinion of the Buyer confer an unfair advantage on the Supplier in relation to its participation in the FCP Process becoming available to the Bid Team;
   * 1. Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the FCP Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
     2. Ensure that confidentiality agreements which flow down the Supplier’s obligations in this Agreement are entered into as necessary between the Buyer and the Supplier, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Buyer;
     3. physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
     4. provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
     5. monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
     6. ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
     7. comply with any other action as the Buyer, acting reasonably, may direct.
   1. In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Supplier shall:
      1. notify the Buyer immediately of all perceived, potential and/or actual conflicts of interest that arise;
      2. submit in writing to the Buyer full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Supplier’s plans to prevent future conflicts of interests from arising; and
      3. seek the Buyer’s approval thereto, which the Buyer shall have the right to grant, grant conditionally or deny (if the Buyer denies its approval the Supplier shall repeat the process set out in clause 2.3 until such time as the Buyer grants approval or the Supplier withdraws from the FCP Process).
   2. Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Buyer to exclude the Supplier or any Affiliate or Representative from the FCP Process, and the Buyer may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Buyer there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
   3. The Supplier will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Buyer.
   4. The Buyer reserves the right to require the Supplier to demonstrate the measures put in place by the Supplier under Clauses 2.1.3 and 2.2.
   5. The Supplier acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Buyer of the adequacy of such measures and does not discharge the Supplier of its obligations or liability under this Agreement.
   6. The actions of the Buyer pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Buyer.
   7. In no event shall the Buyer be liable for any bid costs incurred by:
      1. the Supplier or any Affiliate or Representative; or
      2. any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Supplier, Affiliate or Representative of this Agreement, including, without limitation, where the Supplier or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the FCP Process.

* 1. The Supplier acknowledges and agrees that:
     1. neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in Clause 2; and
     2. in the event of such breach by the Supplier of any of its obligations in Clause 2 which cannot be effectively remedied the Buyer shall have the right to terminate this Agreement and the Supplier’s participation in the FCP Process.

### Sole responsibility

* 1. It is the sole responsibility of the Supplier to comply with the terms of this Agreement. No approval by the Buyer of any procedures, agreements or arrangements provided by the Supplier or any Affiliate or Representative to the Buyer shall discharge the Supplier’s obligations.

### Waiver and invalidity

* 1. No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
  2. If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

### Assignment and novation

* 1. Subject to Clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Buyer.
  2. The Buyer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
     1. any Central Government Body; or
     2. to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
     3. the Supplier shall, at the Buyer’s request, enter into a novation agreement in such form as the Buyer reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 5.
  3. A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Buyer.

### Contracts (Rights of Third Parties) Act 1999

* 1. A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

### Transparency

* 1. The Parties acknowledge and agree that the Buyer is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Buyer may disclose the contents of this Agreement to potential bidders in the FCP Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

### Notices

* 1. Any notices sent under this Agreement must be in writing.
  2. The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| **Manner of Delivery** | **Deemed time of service** | **Proof of service** |
| Email | 9.00am on the first Working Day after sending | Dispatched as a pdf attachment to an email to the correct email address without any error message. |
| Personal delivery | On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day. | Properly addressed and delivered as evidenced by signature of a delivery receipt. |
| Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery. | At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm). | Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt. |

8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

**Supplier**

Contact:

Address:

Email:

**Buyer**

Contact:

Address:

Email:

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

### Waiver and cumulative remedies

9.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended and what is waived. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

### Term

10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of [ ] years from the Effective Date.

### Governing law and jurisdiction

11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

**Signed by the Buyer**

Name:

Signature:

Position in Buyer:

**Signed by the Supplier**

Name:

Signature:

Position in Supplier:

## Call-Off Schedule 26 (Cyber Essentials Scheme)

### Definitions

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

|  |  |
| --- | --- |
| **Term** | **Definition** |
| **Cyber Essentials Scheme** | the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme are at: <https://www.cyberessentials.ncsc.gov.uk/>; |
| **Cyber Essentials Basic Certificate** | the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance; |
| **Cyber Essentials Certificate** | Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Order Form; |
| **Cyber Essential Scheme Data** | sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and |
| **Cyber Essentials Plus Certificate** | the certification awarded on the basis of external testing by an independent certification body of the Supplier’s cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance. |

### What Certification do you need

* 1. Where the Order Form requires that the Supplier provide a Cyber Essentials Certificate or Cyber Essentials Plus Certificate prior to commencing the provision of Deliverables the Supplier shall provide a valid Cyber Essentials Certificate or Cyber Essentials Plus Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph it shall be prohibited from commencing the provision of Deliverables under the Call-Off Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
  2. Where the Supplier continues to process data during the Call-Off Contract Period the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate or Cyber Essentials Plus Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.
  3. In the event that the Supplier fails to comply with Paragraph 2.1 or 2.2, the Buyer reserves the right to terminate the Call-Off Contract for material Default.
  4. The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials Data contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under the Call-Off Contract in respect of the Cyber Essentials Scheme under Paragraph 2.1 of this Schedule.
  5. This Schedule shall survive termination of each and any Call-Off Contract.