



Crown  
Commercial  
Service

# **G-CLOUD 8 CALL-OFF CONTRACT**



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This Call-Off Contract for the G-Cloud 8 Framework Agreement (RM1557viii) includes:

Part A - Order Form

Part B - The Schedules

Schedule 1 - Deliverables

Schedule 2 - Call-Off Contract Charges

Schedule 3 - Deed of Guarantee

Part C – Terms and conditions

1. Contract start date, length and methodology
2. Overriding provisions
3. Transfer and sub-contracting
4. Supplier Staff
5. Due diligence
6. Warranties, representations and acceptance criteria
7. Business continuity and disaster recovery
8. Payment terms and VAT
9. Recovery of sums due and right of set-off
10. Insurance
11. Confidentiality
12. Conflict of Interest
13. Intellectual Property Rights
14. Data Protection and Disclosure
15. Buyer Data
16. Records and audit access
17. Records and audit access
18. Freedom of Information (FOI) requests
19. Security
20. Guarantee
21. Incorporation of Terms
22. Managing Disputes
23. Termination
24. Consequences of termination
25. Supplier's status
26. Notices
27. Exit plan
28. Handover to replacement Supplier
29. Force Majeure
30. Entire Agreement
31. Liability
32. Waiver and cumulative remedies
33. Fraud
34. Prevention of bribery and corruption
35. Legislative change
36. Publicity, branding, media and official enquiries
37. Non Discrimination
38. Premises

- [39. Equipment](#)
- [40. Contracts \(Rights of Third Parties\) Act](#)
- [41. Law and jurisdiction](#)
- [42. Environmental requirement](#)
- [43. Defined Terms](#)

## Part A - Order Form

<b>Buyer</b>	Care Quality Commission
<b>Service reference</b>	N/A
<b>Supplier</b>	Learning Pool
<b>Call-Off Contract ref.</b>	N/A
<b>Call-Off Contract title</b>	Put in Customer name & what they are buying
<b>G-Cloud Framework No.</b>	G Cloud 8
<b>Call-Off Contract description</b>	Learning Pool Health Catalogue and Core Skills Catalogue with Adapt
<b>Start date</b>	31 <sup>st</sup> March 2017
<b>End date</b>	30 <sup>th</sup> March 2018
<b>Call-Off Contract value</b>	£19,000.00
<b>Charging method</b>	Invoice annually
<b>Purchase order No.</b>	N/A

This Order Form is issued in accordance with the G-Cloud 8 Framework Agreement (RM1557viii).

This Order Form may be used by Buyers to specify their G-Cloud service requirements when placing an Order.

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The Order Form cannot be used to alter existing terms or add any supplementary terms that materially change the Deliverables offered by the Supplier and defined in the Tender documents, such as the Service Definition and the Supplier Terms.

There are terms within the Call-Off Contract that may be defined in the Order Form. These are identified in the contract with the use of square brackets e.g. "[this is a term you can alter]".

**Project reference:** Care Quality Commission Health Catalogue with Core Skills Catalogue & Adapt

**Buyer reference:** N/A

**Order date:** 31<sup>st</sup> March 2017

**Purchase order:** N/A

**From: the Buyer** Care Quality Commission,  
Citygate  
Gallowgate  
Newcastle Upon Tyne NE1 4PA

**To: the Supplier**

LEARNING POOL  
02871 277 884  
The Old City Factory,  
100 Patrick Street,  
Derry

BT48 7EL  
Northern Ireland  
Company number: NI 06 01 02

**Together: the "Parties"**

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**Principle contact details**

For the Buyer:	Name & title:	David Kenney
	Email:	david.kenney@cqc.org.uk
	Phone:	01429 835 102
For the supplier	Name & title:	Michael Bradley
	Email:	michael@learningpool.com
	Phone:	020 7101 9383

**Call-off contract term**

**Commencement date:** This Call-Off Contract commences on 31<sup>st</sup> March 2017 and is valid for two years

**Termination:** In accordance with Call-Off Contract clause 23 the notice period required for Termination is at least [180] working days from the date of written notice for disputed sums or at least [90] days from the date of written notice for termination without cause.

**Buyer contractual details**

This Order is for the G-Cloud Services outlined below. It is acknowledged by the Parties that the volume of the G-Cloud Services utilized by Buyer may vary from time to time during the course of this Call-Off Contract, subject always to the terms of the Call-Off Contract.

**G-Cloud 8 Lot** This Call-Off Contract is for the provision of Services under

**Lot 3**

Software as a service (SaaS)  
As defined by the U.S. Department of Commerce, National Institute of Standards and Technology ("NIST")

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*The capability provided to the consumer is to use the provider's applications running on a cloud infrastructure<sup>2</sup>. The applications are accessible from various Buyers devices through either a thin Buyer interface, such as a web browser (e.g., web-based email), or a program interface. The Consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.*

**G-Cloud 8 services required:**

The Services to be provided by the Supplier under the above Lot are listed in Schedule 1 and outlined below:

**Health catalogue (Health Modules and Core Skills)**

The Learning Pool Health Care Catalogue includes:

1. Access to an extensive catalogue of e-learning modules which are all fully editable, as well as access to any new modules added to the catalogue throughout the duration of the client's subscription.
2. Authoring and editing capability Adapt Content Builder -- enabling the client to easily repurpose modules.

The Catalogue contains modules on topics such as:

- Health commissioning
- Basic life support
- Care Act and Care Certificate
- COSHH
- Dementia
- Deprivation of Liberty Standards
- Dignity and Respect on the Ward Round
- Domestic Violence
- Drug and Alcohol Awareness
- Mental Capacity Act
- Leadership

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- Equality and diversity
  - Fire Safety
  - Infection control

With a subscription to our Health Catalogue, you will also get access to our Core Skills catalogue. This contains around 90 modules across Managing People, Health and Safety, Personal Skills, Health and Wellbeing, Recruitment and Selection, Equality and Diversity and many more.

**Additional Services:**

**Adapt Builder**

Adapt Builder is an online e-learning content builder available by logging into <http://adapt.learningpool.com>. Adapt Builder provides functionality to:

- Create e-learning content that can be viewed on a range of devices
- Customise and update content
- Create and apply branding to existing content
- Publish e-learning in a range of outputs

**Location:**

The Services will be delivered to: Care Quality Commission

**Standards:**

**Quality and Technical Standards**

Learning Pool Limited is ISO 27001 certified with processes in place to ensure technical security and quality standards are met at all times.

**On-boarding**

The services will be delivered in line with a mutually agreed project plan that will be reviewed on a regular basis by a dedicated project manager.

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**Insurance:****Minimum Insurance Period**

Six (6) Years following the expiration or earlier termination of this Call-Off Agreement

**To comply with its obligations under this Call-Off Agreement and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:**

**-professional indemnity insurance** is held by the Supplier and by any agent, Sub-Contractor or consultant involved in the supply of the G-Cloud Services and that such professional indemnity insurance has a minimum limit of indemnity of three million pounds sterling (£3,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;

**employers' liability insurance** with a minimum limit of ten million pounds sterling (£10,000,000) or such higher minimum limit as required by Law from time to time.

**Buyer's Responsibilities**

The Buyer is responsible for:

The Buyer shall only permit the Users to Use the Services and only in accordance with the express terms of this Agreement. The Buyer shall not permit any other persons to Use the Services unless the Buyer has obtained prior written consent from LP. All Users must be over sixteen years of age.

The Buyer shall not (and shall procure that the Users shall not):-

- permit any third party to Use the Services;
- Use the Services on behalf of or for the benefit of any third party in any way whatsoever;
- permit, facilitate or assist a third party to Use the Services;
- reverse engineer, decompile, amend, modify, vary, adapt, translate or perform any similar type of operation on the Software for any purpose or permit or allow any third party to do any of the foregoing;
- carry out itself, or request, permit or authorise any third party to provide any support or maintenance services in respect of

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the Software or Use of the Services unless it has obtained prior written consent from LP.

**Buyer's equipment**      The Buyer's equipment to be used in connection with this Call-Off Contract shall comply with LP'S system requirements as set out:

<https://www.learningpool.com/privacy-and-cookies-policy>

<https://www.learningpool.com/technical-requirements>

#### **Supplier's information**

**Commercially sensitive information:**      The following is a list of the Supplier's commercially sensitive information N/A

**Subcontractors / Partners:**      The following is a list of the Supplier's Subcontractors/Partners N/A

#### **Call-Off Contract Charges and payment**

The Call-Off Contract charges and payment details are below. See Schedule 2 for a full breakdown.

**Payment method (GPC or BACS):**      The method of payment for this Call-Off Contract is BACS

**Payment profile:**      The payment profile for this Call-Off Contract is: Annually

**Invoice details:**      Fee: £19,000.00 plus VAT. The sum of £19,000.00 plus VAT is payable on the commencement date the Buyer will pay the Supplier within 30 calendar days of receipt of a valid invoice.

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

Invoices shall be sent to:  
Care Quality Commission,  
Citygate  
Gallowgate  
Newcastle Upon Tyne NE1 4PA

**Invoice information required – eg PO, project ref, etc.**

All invoices must include [Enter text].

**Invoice frequency**

Invoice will be sent to the Buyer Annually

**Call-Off Contract value:**

The value of this Call-Off Contract is £19,000.00

**Call-Off**

**Contract Charges:**

### **Additional Buyer terms**

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**Performance of the service and deliverables**

This Call-Off Contract will include the following implementation plan and milestones:

1. Implementation Plan and Milestones (including dates for completion)
2. The Implementation Plan as at the Commencement Date is to be determined at the scoping session. From the scoping session a project plan will be determined which will be delivered within one week.
  - If so required by the Customer, the Supplier shall produce within one (1) Month of the Commencement Date a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to Customer's written approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation transition and/or transformation of the Services.
  - The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
  - The Supplier shall perform its obligations so as to achieve each milestone by the milestone date.
  - Changes to the milestones shall only be made in accordance with the Change Control Procedure and provided that the Supplier shall not attempt to postpone any of the milestones using the Change Control Procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a milestone by the relevant milestone date).

**Collaboration agreement**

The Buyer does not require the Supplier to enter into a Collaboration Agreement.

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**Warranties, representations**

In accordance with Call-Off Contract clause 6, the Supplier warrants and represents to the Buyer that:

- it has used and shall continue to use all reasonable endeavours to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems providing services to data, software or Authority Confidential Information held in electronic form (owned by or under the control of, or used by the Authority or any other Contracting Body); and
- in entering into this Framework Agreement and any Call-Off Agreement it has not committed any Fraud; and
- It will continue to pay all taxes due from it to HMRC and will not indulge in "disguised employment" practices when delivering services under this Framework; and
- it owns, has obtained, (or has made reasonable endeavours to do so) or shall obtain (or shall make reasonable endeavours to obtain) valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Framework Agreement and/or any Call-Off Agreement which may be entered into with the Authority or Other Contracting Bodies and shall maintain the same in full force and effect for the duration of the Term and the duration of any and all Call-Off Agreements entered into by it under the Framework.

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

In accordance with Call-Off Contract clauses, the Supplier will Notwithstanding the service of a notice to terminate this Call-Off Agreement or any part thereof, the Supplier shall continue to provide the Ordered G-Cloud Services until the date of expiry or termination (howsoever arising) of this Call-Off Agreement (or any part thereof) or such other date as required.

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

In accordance with Call-Off Contract clauses, the Supplier will:

**Public Services Network (PSN)**

The Public Services Network (PSN) is the Government's high-performance network which helps public sector organisations work together, reduce duplication and share resources.

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If the required G-Cloud Services are to be delivered over the Public Services Network this should be detailed in the Call-Off Contract Order Form.

#### **Delivery of PSN Compliant Services**

If requested to do so by the Buyer, the Supplier shall ensure that the G-Cloud Services adhere to the conditions and obligations identified in the PSN Code of Practice at the Supplier's cost.

If any PSN Services are Sub-Contracted by the Supplier, the Supplier must ensure that services have the relevant PSN compliance certification, which includes:

- Buyer environments
- communications components
- compliant and certified

#### **Role of the PSN authority**

The Supplier will immediately disconnect its G-Cloud Services from the PSN if instructed to do so by the PSN Authority following an event affecting national security, or the security of the PSN. The Supplier agrees that the PSN Authority shall not be liable for any actions, damages, costs, and any other liabilities which may arise as a consequence.

- This clause may be enforced by the PSN Authority, notwithstanding the fact that the PSN Authority is not a party to this Call-Off Contract.

### **Formation of Contract**

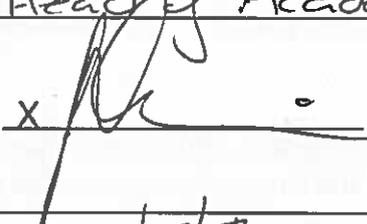
- 1.1 By signing and returning this Order Form (Part A), the Supplier agrees to enter into a Call-Off Contract with the Buyer.
- 1.2 The parties agree that they have read the Order Form (Part A) and the Call-Off Contract terms and by signing below agree to be bound by this Call-Off Contract.
- 1.3 In accordance with the Buying process set out in the Framework Agreement, this Call-Off Contract will be formed when the Buyer acknowledges the receipt of the signed copy of the Order Form from the Supplier.
- 1.4 The terms and conditions of the Call-Off Contract and Order Form will supersede those of the Supplier Terms and Conditions.

## **2. Background to the agreement**

(A) The Supplier is a provider of G-Cloud Services and undertook to provide such Services under the terms set out in Framework Agreement number RM1557viii (the "Framework Agreement").

(B) The Buyer served an Order Form for Services to the Supplier.

**SIGNED:**

	<b>Supplier:</b>	<b>Buyer:</b>
Name:	Louise McElvaney	D Cutting
Title:	Company Secretary	Head of Academy.
Signature:	X _____	X 
Date:		11/5/17

**Part B - The Schedules**

**Schedule 1 - Deliverable**

Learning Pool Health and Core Skills with Adapt Builder

**Schedule 2 - Call-Off Contract Charges**

For each individual Service, the applicable Call-Off Contract Charges (in accordance with the Supplier's Digital Marketplace pricing document) cannot be amended during the term of the Call-Off Contract. The detailed breakdown for the provision of Services during the term of will include (but will not be limited to):

- Learning Pool Health & Core Skills with Adapt Builder for 3,500 users

Year 1 Total - £19,000.00 plus VAT

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### Schedule 3 - Deed of guarantee

**This deed of guarantee is made on 31<sup>st</sup> March 2017 between:**

(1) Learning Pool Limited a company incorporated in Northern Ireland with number NI 06 01 02 whose registered office is at The Old City Factory, 100 Patrick Street, Derry, BT 48 7EL [OR] [a company incorporated under the Laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ('**guarantor**'); in favour of

**and**

(2) THE BUYER whose offices are Care Quality Commission, Citygate, Gallowgate, Newcastle Upon Tyne NE1 4PA ('**Beneficiary**')

#### **Whereas:**

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

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

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

#### **SCH 3.1 DEFINITIONS AND INTERPRETATION**

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

<b>'Call-Off Contract'</b>	means [the Guaranteed Agreement] made between the Buyer and the Supplier on 31 <sup>st</sup> March 2017
<b>'Guaranteed Obligations'</b>	means all obligations and liabilities of the Supplier to the Buyer under the Call-Off Contract together with all obligations owed by the Supplier to the Buyer that are supplemental to, incurred under, ancillary to or calculated by reference to the Call-Off Contract
<b>'Guarantee'</b>	Means the deed of guarantee described in the Order Form (Parent Company Guarantee);

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

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

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

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

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

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

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

References to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee.

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

### **SCH 3.2 Guarantee and indemnity**

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

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

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

As a separate and independent obligation and liability, the Guarantor irrevocably and unconditionally undertakes to compensate and keep the Buyer compensated on demand against all losses and expenses of whatever nature, whether arising under statute, contract or at common Law, if any obligation guaranteed by the guarantor is or becomes

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unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the guarantor's liability will be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **SCH 3.3 Obligation to enter into a new Contract**

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

### **SCH 3.4 Demands and notices**

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

Learning Pool Limited, The Old City Factory, 100 Patrick Street, Derry, BT48 7EL  
ashley@learningpool.com

For the Attention of Ashley McGavigan-

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

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

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

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

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

### **SCH 3.5 BENEFICIARY'S PROTECTIONS**

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The Guarantor will not be discharged or released from this Deed of Guarantee by:

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

This Deed of Guarantee will be a continuing security for the Guaranteed Obligations and accordingly:

- it will not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Buyer in exercising its rights under this Deed of Guarantee
- it will not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Buyer, the Guarantor or any other person
- if, for any reason, any of the Guaranteed Obligations is void or unenforceable against the Supplier, the Guarantor will be liable for that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor
- the rights of the Buyer against the Guarantor under this Deed of Guarantee are in addition to, will not be affected by and will not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Buyer

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

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

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

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

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

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

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

### **SCH 3.6 REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Buyer that:

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

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

### **SCH 3.7 PAYMENTS AND SET-OFF**

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

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

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

### **SCH 3.8 GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Buyer that it has not entered into this Deed of Guarantee in reliance upon the Buyer nor been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by, or on behalf of the Buyer, (whether express or implied and whether following statute or otherwise) which is not in this Deed of Guarantee

### **SCH 3.9 ASSIGNMENT**

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

The Guarantor may not assign or transfer any of its rights or obligations under this Deed of Guarantee.

### **SCH 3.10 SEVERANCE**

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

### **SCH 3.11 THIRD-PARTY RIGHTS**

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

### **SCH 3.12 GOVERNING LAW**

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

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

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

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

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

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

EXECUTED as a DEED by

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

Director

Director/Secretary

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## **Schedule 4 - Alternative Clauses**

### **SCH 4-1 Introduction**

4-1.1 This Schedule specifies the alternative Clauses applying to Scottish Contracting Bodies that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call-Off Contract.

### **SCH 4-2 Clauses selected**

4-2.1 The Buyer may, in the Order Form, request the following alternative Clauses:

4-2.1.1 Scots Law (see paragraph 4-2.1.2 of this Schedule);

4-2.1.2 SCOTS LAW

Law and Jurisdiction (Clause 41.1)

References to England and Wales in the original Clause 41.1 (Law and Jurisdiction) of this Call-Off Contract shall be replaced with Scotland and reference to the courts of England and Wales shall be replaced with the courts of Scotland and the wording of the Framework Agreement and Call-Off Contract will be interpreted as closely as possible to the original English and Welsh Law intention despite Scots Law applying.

Reference to England and Wales in Working Days definition within Clause 42 shall be replaced with Scotland.

References to the Contracts (Rights of Third Parties) Act 1999 shall be removed in Clause 40.

Reference to the Freedom of Information Act 2000 within definition for FOIA in Clause 43 – Definitions to be replaced with Freedom of Information (Scotland) Act 2002.

Reference to the Supply of Goods and Services Act 1982 shall be removed in Clause 31.1.

References to "tort" shall be replaced with "delict" throughout.

4-2.2 The Buyer may, in the Order Form, request the following alternative Clauses:

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4-2.2.1 Northern Ireland Law (see paragraph 4-2.4, 4-2.5, 4-2.6 and 4-2.7 of this Schedule);

4-2.3 Discrimination.

4-2.3.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland) Order 1996 Employment Equality (Age) Regulations (Northern Ireland) 2006; Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Disability Discrimination (Northern Ireland) Order 2006, The Employment Relations (Northern Ireland) Order 2004, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, The Employment Relations (Northern Ireland) Order 2004 and The Work and Families (Northern Ireland) Order 2006; and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Contract he has due regard to the need to promote equality of treatment and opportunity between:

- a. persons of different religious beliefs or political opinions;
- b. men and women or married and unmarried persons;
- c. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);

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- e. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
  - f. persons of different ages; and
  - g. persons of differing sexual orientation

4-2.3.2 The Supplier shall take all reasonable steps to secure the observance of Clause 4-2.3.1 by all Supplier Staff.

#### 4-2.4 Equality Policies and Practices

4-2.4.1 The Supplier shall introduce and shall procure that any Sub-Contractor shall also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier shall review such policies on a regular basis (and shall procure that its Sub-Contractors do likewise) and the Buyer shall be entitled to receive upon request by it a copy of any such policy.

4-2.4.2 The Supplier shall take all reasonable steps to ensure that all of the Supplier Staff comply with its equal opportunities policies (referred to in Clause 4-2.3 above). These steps shall include:

(a) the issue of written instructions to staff and other relevant persons;

(b) the appointment or designation of a senior manager with responsibility for equal opportunities;

(c) training of all staff and other relevant persons in equal opportunities and harassment matters; and

(d) the inclusion of the topic of equality as an agenda item at team, management and staff meetings,

and the Supplier shall procure that its Sub-Contractors do likewise (in relation to their equal opportunities policies).

4-2.4.3 In the event of:

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(a) the Equality Commission notifying the Supplier of an alleged breach by it or any Sub-Contractor (or any of their shareholders and/or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998; and/or

(b) any finding of unlawful discrimination (or any offence under the Legislation mentioned in Clause 4-2.3 above) being made against the Supplier or its Sub-Contractors during the Call-Off Contract by any Industrial or Fair Employment Tribunal or Court,

the Supplier shall inform the Buyer as soon as reasonably practicable and shall take such steps (including the dismissal or replacement of any relevant staff or Sub-Contractor(s)) as the Buyer directs and shall seek the advice of the Equality Commission in order to prevent any such offence or repetition of the unlawful discrimination as the case may be.

4-2.4.4 The Supplier shall monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and shall provide an annual report on the composition of such workforce and applicants to the Buyer. If such monitoring reveals under-representation or lack of fair participation of particular groups, the Supplier shall review the operation of its relevant policies and take affirmative/positive action where appropriate. The Supplier shall impose on its Sub-Contractors obligations similar to those undertaken by it in this clause 4-2.4 and shall procure that those Sub-Contractors comply with such obligations.

4-2.4.5 The Supplier shall provide such information as the Buyer may from time to time request (including information requested to be provided by any Sub-Contractors) for the purpose of assessing the Supplier's compliance with its obligations under clauses 4-2.4.1 to 4-2.4.5 of this Call-Off Contract.

#### 4-2.5 Equality

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4-2.5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, in performing its/their obligations under this Call-Off Contract (and other relevant agreements), comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.

4-2.5.2 The Supplier further acknowledges that the Buyer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier shall use all reasonable endeavours to assist (and to ensure that relevant Sub-Contractor assists) the Buyer in relation to same.

#### 4-2.6 Health and Safety

4-2.6.1 The Supplier shall promptly notify the Buyer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Buyer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Buyer premises and which may affect the Supplier in the performance of its obligations under the Call-Off Contract.

4-2.6.2 While on the Buyer premises, the Supplier shall comply with any health and safety measures implemented by the Buyer in respect of Supplier Staff and other persons working there.

4-2.6.3 The Supplier shall notify the Buyer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Buyer premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

4-2.6.4 The Supplier shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Staff and other persons working on the Buyer premises in the performance of its obligations under the Call-Off Contract.

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- 4-2.6.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Buyer on request.

#### 4-2.7 Criminal Damage

- 4-2.7.1 The Supplier shall maintain such standards of vigilance and will take all such precautions as are advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 ("Compensation Order") or as may from time to time be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Buyer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Buyer under any insurance policy).
- 4-2.7.2 If during the term of this Call-Off Contract any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation pursuant to the provisions of the Compensation Order ("CDO Event") the following provisions of this clause 4-2.7 shall apply.
- 4-2.7.3 The Supplier shall make (or shall procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as practicable after the CDO Event and shall pursue any such claim diligently and at its cost. If appropriate, the Buyer shall also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the cost of the Buyer and the Supplier shall (at no additional cost to the Buyer) provide such assistance as the Buyer reasonably requires with such appeal.
- 4-2.7.4 The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.

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## **Part C – Terms and conditions**

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

- 1.1 The Supplier will start providing the Services on the date specified in the Order Form.
- 1.2 This Call-Off Contract will terminate on the End Date specified in the Order Form unless terminated earlier in accordance with Clause 23 and will be a maximum of 24 months from the Commencement Date.

### **2. Overriding provisions**

- 2.1 The Supplier agrees to supply the G-Cloud Services [and any Additional Services (Lot 4 only)] in accordance with this Call-Off Contract and the Supplier's Terms as identified in the Framework Agreement (G-Cloud Services) and incorporated into this Call-Off Contract.
- 2.2 In the event of and only to the extent of any conflict or ambiguity between the Clauses of this Call-Off Contract, the provisions of the Schedules, any document referred to in the Clauses of this Call-Off Contract (including Supplier's Terms) and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - the Framework Agreement
  - the Clauses of this Call-Off Contract (excluding Supplier Terms)
  - the completed Order Form
  - the Supplier's Terms and Conditions, and
  - any other document referred to in the Clauses of this Call-Off Contract.

The Supplier accepts this is the order of prevailing provisions in this Call-Off Contract.

### **3. Transfer and sub-contracting**

- 3.1 The Supplier will not assign, novate or sub-contract any part of this Call-Off Contract without the Buyer's prior written approval which shall not be unreasonably withheld or delayed.
- 3.2 The Supplier will be responsible for the performance of any Sub-Contractors.

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3.3 The Buyer may assign, novate or otherwise dispose of its rights and obligations under this Call-Off Contract or any part thereof to:

- any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Buyer, or
- any private sector body which substantially performs the functions of the Buyer

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under this Call-Off Contract.

#### 4. **Supplier Staff**

4.1 The Supplier Staff will:

- fulfil all reasonable requests of the Buyer
- apply all due skill, care and diligence to the provisions of the Services
- be appropriately experienced, qualified and trained to supply the Services
- respond to any enquiries about the Services as soon as reasonably possible
- complete any necessary vetting procedures specified by the Buyer
- Comply with the provisions of the Official Secrets Act 1911 to 1989; and
- Section 182 of the Finance Act 1989.

#### 5. **Due diligence**

5.1 Both Parties agree that when entering into a Call-Off Contract, they:

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

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

5.2.3 have entered into this Call-Off Contract relying on their own due diligence

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

6.1 The Supplier will perform its obligations under this Call-Off Contract with all reasonable care, skill and diligence, according to Good Industry Practice.

6.2 The Supplier will use all reasonable endeavours to prevent the introduction, creation or propagation of any disruptive elements into systems providing services to data, software or Authority Confidential Information held in electronic form.

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

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- 6.4 The Supplier warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions and Intellectual Property Rights to perform this Call-Off Contract.
- 6.5 The Supplier represents that, in entering into this Call-Off Contract it has not committed any Fraud.
- 6.6 The Supplier undertakes to pay all taxes due from it to HMRC and will not indulge in "disguised employment" practices when delivering services under this Call-Off Contract, and
- 6.7 For the avoidance of doubt, the fact that any provision within this Call-Off Contract is expressed as a warranty shall not preclude any right of termination the Buyer may have in respect of breach of that provision by the Supplier.
- 7. Business continuity and disaster recovery**
- 7.1 The Supplier will ensure a disaster recovery approach is captured in a clear disaster recovery plan contained within their service descriptions where appropriate and required by the Buyer.
- 8. Payment terms and VAT**
- 8.1 The Buyer will pay the Supplier within 30 days of receipt of a valid invoice submitted by the Supplier in accordance with this Call-Off Contract.
- 8.2 The Call-Off Contract Charges are deemed to include all Charges for payment processing. All Invoices submitted to the Buyer for the Services shall be exclusive of any Management Charge.
- 8.3 All charges payable by the Buyer to the Supplier shall include VAT at the appropriate rate.
- 8.4 The Supplier will add VAT to the charges at the appropriate rate.
- 8.5 Where specified within the Order Form, the Supplier will accept payment for G-Cloud Services by the Government Procurement Card (GPC). The Supplier will be liable to pay any merchant fee levied for using the GPC and shall not recover this charge from the Buyer.
- 8.6 The Supplier will ensure that each invoice contains all appropriate references and a detailed breakdown of the G-Cloud Services supplied. The Buyer may request the Supplier provides further documentation to substantiate the invoice.
- 8.7 Supplier Sub-Contracts must oblige the Supplier to make payments to its Sub-Contractor within 30 calendar days from the receipt of a valid invoice.

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- 8.8 The Supplier shall indemnify the Buyer on demand against any liability arising from the Supplier's failure to account for or to pay any VAT on payments made to the Supplier under this Call-Off Contract. The Supplier shall pay all monies pursuant to this indemnity to the Buyer not less than 5 UK working days before the date upon which the tax or other liability is payable by the Buyer.
- 8.9 The Supplier shall not suspend the supply of the G-Cloud Services for Buyer's failure to pay undisputed sums of money unless the Supplier is entitled to suspend or terminate this Call-Off Contract. Interest shall be payable by the Buyer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- 8.10 In the event of a disputed invoice, the Buyer shall make payment in respect of any undisputed amount in accordance with the provisions of this Call-Off Contract and return the invoice to the Supplier within 10 UK working days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The Supplier shall respond within 10 UK working days of receipt of the returned invoice stating whether or not the Supplier accepts the Buyer's proposed amendments. If it does then the Supplier shall supply with the response a replacement valid invoice.
- 9. Recovery of sums due and right of set-off**
- 9.1 If a Supplier owes money to the Buyer, the Buyer may deduct that sum from the Call-Off Contract Charges due.
- 10. Insurance**
- The Supplier will maintain the insurances required by the Buyer including those set out in this clause.
- 10.1 Subcontractors
- 10.1.1 The Supplier will ensure that, during this Call-Off Contract, Subcontractors hold third-party public and products liability insurance of the same amounts that the Supplier would be legally liable to pay as damages, including claimant's costs and expenses, for accidental death or bodily injury and loss of or damage to Property, to a minimum of £1,000,000.
- 10.2 Agents and professional consultants
- 10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-

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Off Contract, and for 6 years after the termination or expiry date to this Call-Off Contract to which the insurance relates.

10.2.2 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold employers liability insurance to a minimum indemnity of £5,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to this Call-Off Contract to which the insurance relates.

### 10.3 Additional or extended insurance

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

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

- a broker's verification of insurance; or
- receipts in respect of the insurance premium; or
- other evidence of payment of the latest premiums due.

### 10.4 Supplier liabilities

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

10.4.2 The Supplier will:

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

10.4.3 The Supplier will not do or omit to do anything, which would vitiate any of the insurances.

### 10.5 Indemnity to principals

10.5.1 Where specifically outlined in this Call-Off Contract, the Supplier will ensure that the third-party public and products liability policy will contain an 'indemnity to

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principals' clause under which the Buyer will be compensated for both of the following claims against the Buyer:

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

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

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

#### 10.7 Premium, excess and deductible payments

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

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

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

### 11. Confidentiality

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

11.2 Disclosure of Confidential Information is permitted where information:

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

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

- to any central government body on the basis that the information may only be further disclosed to central government bodies;

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- to the UK Parliament, Scottish Parliament or Welsh or Northern Ireland Assemblies, including their committees;
  - if the Buyer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
  - on a confidential basis to exercise its rights or comply with its obligations under this Call-Off Contract; or
  - On a confidential basis to a proposed transferee, assignee or novatee of, or successor in title to, the Buyer.
- 11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Buyer under this clause.
- 11.5 The Supplier may only disclose the Buyer's Confidential Information to Supplier Staff who are directly involved in the provision of the Services and who need to know the information to provide the Services. The Supplier will ensure that its Supplier Staff will comply with these obligations.
- 11.6 Either Party may use techniques, ideas or knowledge gained during this Call-Off Contract unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Framework Agreement, or is an infringement of Intellectual Property Rights.
- 11.7 Information about orders placed by a Buyer (including pricing information and the terms of any Call-Off Contract) may be published by CCS and may be shared with other Buyers. Where Confidential Information is shared with other Buyers, CCS will notify the recipient of the information that its contents are confidential.
- 12. Conflict of Interest**
- 12.1 The Supplier will take all appropriate steps to ensure that Supplier Staff are not in a position where there is or may be an actual conflict between the financial or personal interests of the Supplier Staff and another Supplier where both are providing the Services to the Buyer under any Call-Off Contract in accordance with the Framework Agreement.
- 12.2 Any breach of this clause will be deemed to be a Material Breach.
- 12.3 A conflict of interest may arise in situations including where a member of the Supplier Staff:
- is related to someone in another Supplier team who both form part of the same team performing the Services under the Framework Agreement
  - has a business interest in another Supplier who is part of the same team performing the Services under the Framework Agreement

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- has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in the Tender process.
- 12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under this Call-Off Contract, unless otherwise agreed with the Buyer ) inform the Buyer of such conflicts of interest and how they plan to mitigate the risk. Details of such mitigation arrangements are to be sent to the Buyer as soon as possible. On receiving this notification, the Buyer will, at its sole discretion, notify the Supplier if the mitigation arrangements are acceptable or whether the risk or conflict remains a Material Breach.
- 13. Intellectual Property Rights**
- 13.1 The Supplier will have no rights to use any of the Buyer's names, logos or trademarks without the Buyer's prior written approval.
- 14. Data Protection and Disclosure**
- 14.1 The Supplier shall comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Framework Agreement or under this Call-Off Contract.
- 14.2 Where the Supplier is processing Buyer Data or Other Contracting Bodies' Personal Data, the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Authority and Other Contracting Bodies' Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Buyer Data and the Other Contracting Bodies' Personal Data).
- 14.3 The Supplier shall provide the Buyer and/or Other Contracting Body with such information as the Buyer and/or Other Contracting Body may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA including;
- to promptly notify the Buyer and/or Other Contracting Body of any breach of the security measures to be put in place pursuant to this Clause; and
  - to ensure that it does not knowingly or negligently do or omit to do anything which places the Buyer and/or Other Contracting Body in breach of its obligations under the DPA and
  - not to cause or permit to be processed, stored, accessed or otherwise transferred outside the European Economic Area any Buyer Data or Other Contracting Body Personal Data supplied to it by the Buyer or Other Contracting Body without approval.
- 15. Buyer Data**
- 15.1 The Supplier will not remove any proprietary notices relating to the Buyer Data.

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- 15.2 The Supplier will not store or use Buyer Data except where necessary to fulfill its obligations.
- 15.3 If Buyer Data is processed by the Supplier, the Supplier will supply the data to the Buyer as requested and in the format specified by the Buyer.
- 15.4 The Supplier will preserve the integrity of Buyer Data processed by the Supplier and prevent its corruption and loss.
- 15.5 The Supplier will ensure that any system which holds any Buyer Data complies with the security requirements prescribed by the Buyer.
- 15.6 The Supplier will ensure that any system on which the Supplier holds any protectively marked Buyer Data will be accredited as specific to the Buyer and will comply with:
- the government security policy framework and information assurance policy;
  - guidance issued by the Centre for Protection of National Infrastructure on Risk Management and Accreditation of Information Systems; and
  - the relevant government information assurance standard(s).
- 15.7 Where the duration of this Call-Off Contract exceeds one year, the Supplier will review the accreditation status at least once a year to assess whether material changes have occurred which could alter the original accreditation decision in relation to Buyer Data. If any changes have occurred then the Supplier will re-submit such system for accreditation.
- 15.8 If at any time the Supplier suspects that the Buyer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then the Supplier will notify the Buyer immediately and will (at its own cost where such corruption, loss, breach or degradation of the Buyer Data was caused by the action or omission of the Supplier or its representatives) comply with any remedial action proposed by the Buyer.
- 15.9 The Supplier will provide at the request of CCS or the Buyer, any information relating to the Supplier's compliance with its obligations under the Data Protection Act (to the extent arising under and/or in connection with the Framework Agreement and this Call-Off Contract). The Supplier will also ensure that it does not knowingly or negligently fail to do something that places CCS or any Buyer in breach of its obligations of the Data Protection Act. This is an absolute obligation and is not qualified by any other provision of this Call-Off Contract.

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- 15.10 The Supplier agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Buyer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 15.11 The provisions of this Clause 15 shall apply during the term of this Call-Off Contract and for such time as the Supplier holds the Buyer's Data.
- 16. Records and audit access**
- 16.1 The Supplier will allow CCS (and CCS's external auditor) to access its information and conduct audits of the Services provided under this Call-Off Contract and the provision of Management Information.
- 17. Freedom of Information (FOI) requests**
- 17.1 The Supplier will transfer any Request for Information to the Buyer within 2 UK working days of receipt.
- 17.2 The Supplier will provide all necessary help reasonably requested by the Buyer to enable the Buyer to respond to the Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations.
- 17.3 To the extent it is permissible and reasonably practical for it to do so, CCS will make reasonable efforts to notify the Supplier when it receives a relevant FOIA or EIR request so that the Supplier may make appropriate representations.
- 18. Standards and quality**
- 18.1 The Supplier will comply with any standards in this Call-Off Contract and Section 4 (How Services will be delivered) of the Framework Agreement.
- 19. Security**
- 19.1 The Supplier will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.
- 19.2 If Malicious Software causes loss of operational efficiency or loss or corruption of Buyer Data, the Supplier will help the Buyer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.
- 19.3 Any costs arising from the actions of the Buyer or Supplier taken in compliance with the provisions of the above clause, will be dealt with by the Buyer and the Supplier as follows:

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- by the Supplier, where the Malicious Software originates from the Supplier software or the Buyer Data while the Buyer Data was under the control of the Supplier, unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier.
  - by the Buyer if the Malicious Software originates from the Buyer software or the Buyer Data, while the Buyer Data was under the control of the Buyer.
- 19.4 The Supplier will immediately notify CCS of any breach of security in relation to CCS's Confidential Information (and the Buyer in relation to any breach regarding Buyer Confidential Information). The Supplier will recover such CCS and Buyer Confidential Information however it may be recorded.
- 19.5 Any system development by the Supplier must also comply with the government's '10 Steps to Cyber Security' guidance, available at:  
<https://www.gov.uk/government/publications/cyber-risk-management-a-board-level-responsibility/10-steps-summary>
- 20. Guarantee**
- 20.1 Where the Buyer has specified in the Order Form that this Call-Off Contract shall be conditional upon receipt of a Guarantee from the guarantor, the Supplier shall deliver to the Buyer a completed Guarantee in the form attached, on or prior to the Commencement Date; and deliver to the Buyer a certified copy of the passed resolution and/or board minutes of its guarantor approving the execution of the Guarantee.
- 21. Incorporation of terms**
- 21.1 Upon the execution of an Order, the terms and conditions agreed in the Order Form will be incorporated into this Call-Off Contract.
- 22. Managing disputes**
- 22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.
- 22.2 Nothing in this procedure will prevent a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 22.3 If the dispute cannot be resolved, either Party will be entitled to refer it to mediation in accordance with the procedures below, unless:
- the Buyer considers that the dispute is not suitable for resolution by mediation,
  - the Supplier does not agree to mediation.

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22.4 The procedure for mediation is as follows:

- A neutral adviser or mediator will be chosen by agreement between the Parties. If the Parties cannot agree on a mediator within 10 UK working days after a request by one Party to the other, either Party will as soon as possible, apply to the mediation provider or to the Centre for Effective Dispute Resolution (CEDR) to appoint a mediator. This application to CEDR must take place within 12 UK working days from the date of the proposal to appoint a mediator, or within 3 UK working days of notice from the mediator to either Party that they are unable or unwilling to act.
- The Parties will meet with the mediator within 10 UK working days of the mediator's appointment to agree a programme for the exchange of all relevant information and the structure for negotiations to be held. The Parties may at any stage seek help from the mediation provider specified in this clause to provide guidance on a suitable procedure.
- Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- If the Parties reach agreement on the resolution of the dispute, the agreement will be reduced to writing and will be binding on the Parties once it is signed by their duly authorised representatives.
- Failing agreement, either Party may invite the mediator to provide a non-binding but informative opinion in writing. Such an opinion will be provided without prejudice and will not be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
- If the Parties fail to reach agreement in the structured negotiations within 60 UK working days of the mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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

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

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

22.7 The expert will act on the following basis:

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

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

### **23. Termination**

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

23.2 The Parties acknowledge and agree that:

- the Buyer's right to terminate under this clause is reasonable in view of the subject matter of this Call-Off Contract and the nature of the Service being provided.
- the Call-Off Contract Charges paid during the notice period given by the Buyer in accordance with this clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or losses incurred by the Supplier which may arise either directly or indirectly as a result of the Buyer exercising the right to terminate under this clause without cause.
- Subject to clause 31 (Liability), if the Buyer terminates this Call-Off Contract without cause, they will indemnify the Supplier against any commitments, liabilities or expenditure which result in any unavoidable Loss by the Supplier, provided that the Supplier takes all reasonable steps to mitigate such Loss. If the Supplier holds insurance, the Supplier will reduce its unavoidable costs by any insurance sums available. The Supplier will submit a fully itemised

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and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by the Supplier as a result of termination.

- Either Party will have the right to terminate this Call-Off Contract where clause 29.2 applies.

- 23.3 The Buyer will have the right to terminate this Call-Off Contract at any time with immediate effect by written notice to the Supplier if:
- the Supplier commits a Supplier Default and if the Supplier Default cannot, in the reasonable opinion of the Buyer, be remedied, or
  - the Supplier commits any fraud.

- 23.4 Either Party may terminate this Call-Off Contract at any time with immediate effect by written notice (of not more than 30 UK working days) if the other Party commits a Material Breach of any term of this Call-Off Contract (other than failure to pay any amounts due under this Call-Off Contract) and, if such breach is remediable, fails to remedy that breach within a period of 15 UK working days of being notified in writing to do so.

- 23.5 If an Insolvency Event of either Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business, the other Party is entitled to terminate this Call-Off Contract with immediate effect.

- 23.5 If the Buyer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Buyer in writing of such failure to pay and allow the Buyer five (5) calendar days to settle the undisputed invoice. If the Buyer fails to pay such undisputed sums within the allotted additional 5 calendar days, the Supplier may terminate this Call-Off Contract subject to giving the length of notice specified in the Order Form (Termination)

## **24. Consequences of termination and expiry**

- 24.1 Where the Buyer has the right to terminate this Call-Off Contract it may elect to suspend this Call-Off Contract and its performance.
- 24.2 If the Buyer contracts with another Supplier for the Deliverables under this Call-Off Contract, the Supplier will comply with clause 28.
- 24.3 The rights and obligations of the Parties in respect of this Call-Off Contract will automatically terminate upon the expiry or termination of this Call-Off Contract, except those rights and obligations set out in clause 24.7.
- 24.4 At the end of the Call-Off Contract period (howsoever arising), the Supplier must:
- promptly return to the Buyer:

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- all Buyer Data including all copies of Buyer software, code and any other software licensed by the Buyer to the Supplier under this Call-Off Contract;
  - any materials created by the Supplier under this Call-Off Contract where the IPRs are owned by the Buyer;
  - cease to use the Buyer Data and, at the direction of the Buyer, provide the Buyer and the replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form in the formats and on media agreed with the Buyer and the replacement Supplier;
  - destroy all copies of the Buyer Data when they receive the Buyer's written instructions to do so or 12 months after the date of expiry or termination, and provide written confirmation to the Buyer that the data has been securely destroyed, except where the retention of Buyer Data is required by Law;
  - work with the Buyer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
  - return any sums prepaid for Services which have not been delivered to the Buyer by the date of expiry or termination;
  - provide all information requested by the Buyer on the provision of the Services so that:
    - the Buyer is able to understand how the Services have been provided; and
    - the Buyer and the replacement supplier can conduct due diligence.
- 24.5 Each Party will return all of the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where this Call-Off Contract states otherwise.
- 24.6 All licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Services will be terminated at the end of the Call-Off Contract period (howsoever arising) without the need for the Buyer to serve notice except where this Call-Off Contract states otherwise.
- 24.7 Termination or expiry of this Call-Off Contract will not affect:
- any rights, remedies or obligations accrued under this Call-Off Contract prior to termination or expiration;
  - the right of either Party to recover any amount outstanding at the time of such termination or expiry;
  - the continuing rights, remedies or obligations of the Buyer or the Supplier under clauses:
    - 8 - Payment Terms and VAT
    - 9 - Recovery of Sums Due and Right of Set-Off
    - 10 - Insurance
    - 11 - Confidentiality
    - 12 - Conflict of Interest

- 13 - Intellectual Property Rights
- 15 - Buyer Data
- 24 - Consequences of Expiry or Termination
- 31 - Liability
- 32 - Waiver and cumulative remedies
- any other provision of the Framework Agreement or this Call-Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry will survive the termination or expiry of this Call-Off Contract.

**25. Supplier's status**

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

**26. Notices**

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

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

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

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

**27. Exit plan**

27.1 The Supplier has provided details of their exit plan within the service description specified in the Order Form and the Buyer and Supplier will follow these arrangements as per Supplier Terms.

**28. Handover to replacement supplier**

28.1 Within 10 UK Working Days of the expiry or termination of this Call-Off Contract , the Supplier will make available to the Buyer:

- any data (including Buyer Data), Buyer Personal Data and Buyer Confidential Information in the Supplier's possession, power or control.
- any sums prepaid to the Supplier in respect of Ordered Deliverables not provided by the date of expiry or termination of this Call-Off Contract.

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28.2 When requested, the Supplier will (at its own expense where the Call-Off Contract has been terminated before end of term due to Supplier cause) help the Buyer to migrate the Services to a replacement Supplier in line with the exit plan (clause 27) to ensure continuity of the Services.

**29. Force Majeure**

29.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Call-Off Contract (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure event. Each Party will use all reasonable endeavours to continue to perform its obligations under this Call-Off Contract for the length of a Force Majeure event.

29.2 If a Force Majeure event prevents a Party from performing its obligations under this Call-Off Contract for more than 15 consecutive calendar days, the other Party may terminate this Call-Off Contract with immediate effect by notice in writing.

**30. Entire agreement**

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

30.2 Each Party agrees that in entering into this Call-Off Contract it does not rely on, and will have no remedy relating to, any agreement or representation (whether negligently or innocently made) other than as expressly described in this Call-Off Contract.

30.3 Nothing in this clause will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.

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

**31. Liability**

31.1 Neither Party excludes or limits its liability for:

- death or personal injury;
- bribery or fraud by it or its employees;
- breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
- any liability to the extent it cannot be excluded or limited by Law.

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- 31.2 Subject to Clauses 31.1 and 31.10 and any lower limits specified in the Order Form, and notwithstanding Clause 31.4, each Party's total aggregate liability relating to all Losses due to a Default in connection with this Call-Off Contract::
- resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in each Call-Off Contract year in which the Default occurs
  - subject to the first bullet point in this clause 31.2 which occur in the first 6 months, will be limited to the greater of the sum of £500,000 or a sum equal to 200% of the estimated Call-Off Contract Charges for the first six months
  - subject to the first bullet point in this clause 31.2 which occur during the remainder of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately preceding the event giving rise to the liability
  - subject to the first bullet point in this clause 31.2 which occur after the end of the Call-Off Contract period, will be limited to the greater of the sum of £500,000 or an amount equal to 125% of the Call-Off Contract Charges paid, due or which would have been payable under this Call-Off Contract in the 6 months immediately before the end of the Call-Off Contract period.
- 31.3 Subject to clause 31.1, 31.4, in no event will either Party be liable to the other for any:
- loss of profits;
  - loss of business;
  - loss of revenue;
  - loss of or damage to goodwill;
  - loss of savings (whether anticipated or otherwise); or
  - any indirect, special or consequential loss or damage.
- 31.4 Subject to Clause 31.2 the Supplier will be liable for the following types of loss which will be regarded as direct and will be recoverable by the Buyer:
- the additional operational or administrative costs and expenses arising from any Supplier Default; and
  - any wasted expenditure or charges rendered unnecessary and/or incurred by the Buyer arising from the Supplier's Default; and any losses, costs, damages, expenses or other liabilities suffered or incurred by the Buyer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Buyer Data by the Supplier; and
  - any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Law.
- 31.5 The annual aggregate liability for all defaults resulting in direct loss, destruction, corruption, degradation or damage to the Buyer Data or the Buyer Personal Data or

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any copy of such Buyer Data, caused by the Supplier's default under or in connection with a Call-Off Contract shall be subject to the financial limits set out in the Order Form.

- 31.6 No enquiry, inspection, approval, sanction, comment, consent, or decision at any time made or given by, or on behalf of, the Buyer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Buyer to discern any defect in, or omission from, any such document or information will exclude or limit the obligation of the Supplier to carry out all the obligations of a professional Supplier employed in a Buyer and Supplier relationship.
- 31.7 Unless otherwise expressly provided, the obligations of the Buyer under this Call-Off Contract are obligations of the Buyer in its capacity as a Contracting counterparty and nothing in this Call-Off Contract will be an obligation on, or in any other way constrain the Buyer in any other capacity, nor will the exercise by the Buyer of its duties and powers in any other capacity lead to any liability under this Call-Off Contract on the part of the Buyer to the Supplier.
- 31.8 Any liabilities which are unlimited will not be taken into account for the purposes of establishing whether any limits relating to direct loss or damage to physical Property within this clause have been reached.
- 31.9 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Buyer or by breach by the Buyer of its Call-Off Contract obligations.
- 31.10 The Supplier's liability to pay any Management Charges which are payable to the Authority shall not be limited.

## **32. Waiver and cumulative remedies**

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

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

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### **33. Fraud**

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

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

- the Buyer may terminate the Call-Off Contract
- CCS may terminate the Framework Agreement
- CCS and/or the Buyer may recover in full from the Supplier whether under Clause 33.3 below or by any other remedy available in law.

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

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

34.1 The Supplier will not commit any Prohibited Act.

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

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

### **35. Legislative change**

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

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

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

### **37. Non Discrimination**

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

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### **38. Premises**

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

38.2 The Supplier will use the Buyer's premises solely for the performance of its obligations under this Call-Off Contract.

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

38.4 This clause does not create a tenancy or exclusive right of occupation.

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

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

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

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

### **39. Equipment**

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

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

### **40. The Contracts (Rights of Third Parties) Act 1999**

40.1 A person who is not party to this Call-Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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#### 41. Law and jurisdiction

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

#### 42. Environmental requirements

42.1 The Buyer will provide a copy of its environmental policy to the Supplier on request, which the Supplier will comply with.

42.2 The Supplier must support Buyers in their efforts to work in an environmentally-friendly way, eg by helping them engage in practices like recycling or lowering their carbon footprint.

#### 43. Defined Terms

In this Call-Off Contract, the following expressions and defined terms have the following interpreted meaning:

<b>'Additional Services'</b>	The services in addition to the G-Cloud Services which are within the scope of the Framework Agreement which the Buyer may request from time to time.
<b>'Application'</b>	The response submitted by the Supplier to the Invitation to Tender (ITT).
<b>'Assurance'</b>	The verification process undertaken by CCS as described in this Framework Agreement.
<b>'Background IPRs'</b>	For each Party: <ul style="list-style-type: none"><li>• IPRs owned by that Party before the date of this Call-Out Contract, including IPRs contained in any of the Party's know-how, documentation, processes and procedures,</li><li>• IPRs created by the Party independently of this Call-Out Contract, and/or</li><li>• For the Buyer, Crown Copyright which is not available to the Supplier otherwise than under this Call-Out Contract, but excluding IPRs owned by that Party subsisting in Buyer software or Supplier software.</li></ul>
<b>'Buyer'</b>	A UK public sector body, or Contracting Body, as described in the OJEU Contract Notice, that can execute a competition and a Call-Off Contract within this Framework Agreement and is identified in the Call-Off Order Form.
<b>'Buyer's Confidential'</b>	All Buyer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and

<b>Information'</b>	Suppliers of the Buyer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above  Any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential').
<b>'Buyer Data'</b>	Data that is owned or managed by the Buyers.
<b>'Buyer Software'</b>	Software owned by or licensed to the Buyer (other than under or pursuant to this Agreement), which is or will be used by the Supplier for the purposes of providing the Services.
<b>'Call-Off Contract'</b>	The legally binding agreement (entered into following the provisions of this Framework Agreement) for the provision of Services made between a Buyer and the Supplier.  This may include the Order Form detailing service requirements, term of Call-Off Order, start date and pricing.
<b>'Charges'</b>	The prices (excluding any applicable VAT), payable to the Supplier by the Buyer under the Call-Off Contract.
<b>'PSN Code of Practice'</b>	Those obligations and requirements for PSN Service Providers wanting to participate in the PSN together with all documents annexed to it and referenced within it, as set out in the code template.
<b>'Collaboration Agreement'</b>	An agreement between the Buyer and any combination of the Supplier and contractors, to ensure collaborative working in their delivery of the Buyer's Services and to ensure that the Buyer receives an efficient end-to-end G-Cloud Services.
<b>'Commencement Date'</b>	For the purposes of the Framework Agreement, commencement date shall be as outlined in Section 1 - The Appointment within this Framework Agreement.  For the purposes of the Call-Off Contract, commencement date shall be as set in the Order Form.
<b>'Commercially Sensitive Information'</b>	Information, which CCS has been notified about, (before the start date of the Framework Agreement) or the Buyer (before the Call-Off Contract start date) with full details of why the Information is deemed to be commercially sensitive.
<b>'Comparable Supply'</b>	The supply of services to another Buyer of the Supplier that are the same or similar to any of the Services
<b>'Confidential Information'</b>	CCS's Confidential Information or the Supplier's Confidential Information, which may include (but is not limited to):

	<ul style="list-style-type: none"> <li>any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above</li> <li>any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked 'confidential')</li> </ul>
<b>'Contracting Bodies'</b>	The Buyer and any other person as listed in the OJEU Notice or Regulation 2 of the Public Contracts Regulations 2015, as amended from time to time, including CCS
<b>'Control'</b>	Control as defined in section 1124 and 450 of the Corporation Tax Act 2010. 'Controls' and 'Controlled' will be interpreted accordingly
<b>'Crown'</b>	The government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>'Data Protection Legislation or DPA'</b>	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable legally binding guidance and codes of practice issued by the Information Commissioner.
<b>'Data Subject'</b>	Shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time.
<b>'Default'</b>	<ul style="list-style-type: none"> <li>any breach of the obligations of the Supplier (including any fundamental breach or breach of a fundamental term)</li> <li>any other default, act, omission, negligence or negligent statement of the Supplier, of its Subcontractors or any Supplier Staff in connection with or in relation to this Framework Agreement or this Call-Off Contract</li> </ul>

	Unless otherwise specified in this Call-Off Contract the Supplier is liable to CCS for a Default of the Framework Agreement and in relation to a Default of the Call-Off Contract, the Supplier is liable to the Buyer.
<b>'Deliverable'</b>	Those G-Cloud Services which the Buyer contracts the Supplier to provide under the Call Off Contract.
<b>'Digital Marketplace'</b>	The government marketplace where Services will be made available to Buyers to enable them to be bought ( <a href="https://www.digitalmarketplace.service.gov.uk/">https://www.digitalmarketplace.service.gov.uk/</a> )
<b>'Equipment'</b>	The Supplier's hardware, computer and telecoms devices, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from CCS or the Buyer) in the performance of its obligations under the Call-Off Contract.
<b>'Direct Award Criteria'</b>	The award criteria to be applied for the award of Call-Off Contracts for G-Cloud Services set out in Section 3 'Buying Process'.
<b>'Direct Ordering Procedure'</b>	The ordering procedure set out in Framework Agreement.
<b>'Effective Date'</b>	The date on which the Call-Off Contract is signed and as set out in the Order Form.
<b>'FoIA'</b>	The Freedom of Information Act 2000 and any subordinate legislation made under the Act occasionally together with any guidance or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.
<b>'Framework Agreement'</b>	This contractually-binding document.
<b>'Framework Suppliers'</b>	The suppliers (including the Supplier) appointed under this G-Cloud 8 Framework Agreement.
<b>'Fraud'</b>	Any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown.
<b>'G-Cloud Services'</b>	The cloud services described in Framework Section 2 (G-Cloud Services) as defined by the Service Definition, the Supplier

	Terms and any related tender documentation, which the Supplier shall make available to the Authority and Other Contracting Bodies and those services which are deliverable by the Supplier under the Collaboration Agreement.
<b>'Good Industry Practice'</b>	Standards and procedures conforming to the Law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances. The person or body must adhere to the technology code of practice ( <a href="https://www.gov.uk/service-manual/technology/code-of-practice.html">https://www.gov.uk/service-manual/technology/code-of-practice.html</a> ) and the government service design manual ( <a href="https://www.gov.uk/service-manual">https://www.gov.uk/service-manual</a> ).
<b>'Group'</b>	A company plus any subsidiary or Holding Company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006.
<b>'Group of Economic Operator'</b>	A partnership or consortium not (yet) operating through a separate legal entity.
<b>'Guarantee'</b>	The deed of guarantee described in the Order Form (Parent Company Guarantee).
<b>'Guidance'</b>	Any current UK Government Guidance on the Public Contracts Regulations. In the event of a conflict between any current UK Government Guidance and the Crown Commercial Service Guidance, current UK Government Guidance shall take precedence.
<b>'Holding Company'</b>	As described in section 1159 and Schedule 6 of the Companies Act 2006.
<b>'Information'</b>	As described under section 84 of the Freedom of Information Act 2000, as amended from time to time.
<b>'Insolvency Event'</b>	Can be: <ul style="list-style-type: none"> <li>• a voluntary arrangement</li> <li>• a winding-up petition</li> <li>• the appointment of a receiver or administrator</li> <li>• an unresolved statutory demand</li> <li>• a Schedule A1 moratorium.</li> </ul>
<b>'Intellectual Property Rights' or 'IPR'</b>	means: <p>a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos,</p>

	<p>database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), know-how, trade secrets and moral rights and other similar rights or obligations whether registerable or not;</p> <p>b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
<b>'Invitation to Tender or ITT'</b>	The invitation to tender for this Framework.
<b>'Law'</b>	Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, judgment of a relevant court of Law, or directives or requirements of any Regulatory Body.
<b>'Loss'</b>	All losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly.
<b>'Lot'</b>	A subdivision of the Services which are the subject of this procurement as described in the OJEU Contract Notice.
<b>'Management Charge'</b>	The sum paid by the Supplier to CCS being an amount of up to 1% but currently set at 0.5% of all Charges for the Services invoiced to Buyers (net of VAT) in each month throughout the duration of the Framework Agreement and thereafter, until the expiry or termination of any Call-Off Contract.
<b>'Management Information'</b>	The management information (MI) specified in section 6 (What you report to CCS) of this Framework Agreement.
<b>'Management Information (MI) Failure'</b>	<p>If any of the below instances occur, CCS may treat this as an 'MI Failure':</p> <ul style="list-style-type: none"> <li>• there are omissions or errors in the Supplier's submission</li> <li>• the Supplier uses the wrong template</li> </ul>

	<ul style="list-style-type: none"> <li>● the Supplier's report is late</li> <li>● the Supplier fails to submit a report</li> </ul>
<b>'Material Breach (Framework Agreement)'</b>	<p>A breach by the Supplier of the following Clauses in this Framework Agreement:</p> <ul style="list-style-type: none"> <li>● Subcontracting</li> <li>● Non-Discrimination</li> <li>● Conflicts of Interest and Ethical Walls</li> <li>● Warranties and Representations</li> <li>● Provision of Management Information</li> <li>● Management Charge</li> <li>● Prevention of Bribery and Corruption</li> <li>● Safeguarding against Fraud</li> <li>● Data Protection and Disclosure</li> <li>● Intellectual Property Rights and Indemnity</li> <li>● Confidentiality</li> <li>● Official Secrets Act</li> <li>● Audit</li> </ul>
<b>'Material Breach (Call-Off Contract)'</b>	A single serious breach of or persistent failure to perform as required in the Call-Off Contract.
<b>'OJEU Contract Notice'</b>	The advertisement for this procurement issued in the Official Journal of the European Union.
<b>'Order Form'</b>	An order set out in the Call-Off Contract for G-Cloud Services placed by a Buyer with the Supplier.
<b>'Other Contracting Bodies'</b>	All Contracting Bodies, or Buyers, except CCS.
<b>'Parent Company'</b>	Any company which is the ultimate Holding Company of the Supplier.
<b>'Party'</b>	<ul style="list-style-type: none"> <li>● for the purposes of the Framework Agreement, CCS or the Supplier</li> <li>● for the purposes of the Call-Off Contract, the Supplier or the Buyer and 'Parties' will be interpreted accordingly.</li> </ul>
<b>'Personal Data'</b>	As described in the Data Protection Act 1998 ( <a href="http://www.legislation.gov.uk/ukpga/1998/29/contents">http://www.legislation.gov.uk/ukpga/1998/29/contents</a> )
<b>'Prohibited Act'</b>	<p>To directly or indirectly offer, promise or give any person working for or engaged by a Buyer or CCS a financial or other advantage to:</p> <ul style="list-style-type: none"> <li>● induce that person to perform improperly a relevant function or activity</li> <li>● reward that person for improper performance of a relevant function or activity</li> <li>● commit any offence:</li> </ul>

	<ul style="list-style-type: none"> <li>○ under the Bribery Act 2010</li> <li>○ under legislation creating offences concerning Fraud</li> <li>○ at common Law concerning Fraud</li> <li>○ committing or attempting or conspiring to commit Fraud</li> </ul>
<b>'PSN'</b>	The Public Services Network (PSN) is the Government's high-performance network which helps public sector organisations work together, reduce duplication and share resources.
<b>'Regulations'</b>	The Public Contracts Regulations 2015 (at <a href="http://www.legislation.gov.uk/ukxi/2015/102/contents/made">http://www.legislation.gov.uk/ukxi/2015/102/contents/made</a> ) and the Public Contracts (Scotland) Regulations 2012 (at <a href="http://www.legislation.gov.uk/ssi/2012/88/made">http://www.legislation.gov.uk/ssi/2012/88/made</a> ).
<b>'Regulatory Bodies'</b>	Government departments and other bodies which, whether under statute, codes of practice or otherwise, are entitled to investigate or influence the matters dealt with in this Framework Agreement.
<b>'Reporting Date'</b>	The seventh day of each month following the month to which the relevant MI relates. A different date can be chosen if agreed between the Parties.
<b>'Request for Information'</b>	A request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>'Self Audit Certificate'</b>	The certificate in the form as set out in Framework Schedule 1 - Self Audit Certificate, to be provided to CCS by the Supplier.
<b>'Services'</b>	Means G-Cloud Services and any/or Additional Services.
<b>'Service Definition'</b>	The definition of the Supplier's G-Cloud Services provided as part of their Tender that includes, but is not limited to, those items listed in Section 2 (G-Cloud Services) of this Framework Agreement.
<b>'Service Description'</b>	The description of the Supplier service offering as published on the Digital Marketplace.
<b>'Standstill Period'</b>	The term Standstill Period is set out in Regulation 87 (2). In summary, it is the 10 calendar days after CCS (in this instance by electronic means) sends its decision to conclude the Framework Agreement tendered via the Official Journal of the European Union, during which CCS must not conclude the Framework Agreement with the successful Supplier(s). Unsuccessful Applicants can raise any questions with CCS that relate to the decision to award before the Framework Agreement is concluded. CCS cannot advise unsuccessful

	Applicants on the steps they should take. Applicants should always seek independent legal advice, where appropriate.
<b>'Specific Change in Law'</b>	A change in the Law that relates specifically to the business of CCS and which would not affect a Comparable Supply.
<b>'Subcontractor'</b>	Each of the Supplier's Subcontractors or any person engaged by the Supplier in connection with the provision of the digital services as may be permitted by this Framework Agreement.
<b>'Supplier'</b>	A Supplier of G-Cloud Services who can bid for Call-Off Contracts as outlined in the Contract Notice within the Official Journal of the European Union (OJEU Contract Notice).
<b>'Supplier Background IPRs'</b>	Background IPRs of the Supplier.
<b>'Supplier Insolvency Event'</b>	Means the Supplier is unable to pay debts in Section 268 of Insolvency Act 1986.
<b>'Supplier Staff'</b>	All persons employed by the Supplier including the Supplier's agents and consultants used in the performance of its obligations under this Framework Agreement or any Call-Off Contracts.
<b>'Supplier Terms'</b>	means the terms and conditions pertaining to the G-Cloud Services and as set out in the Terms and Conditions document supplied as part of the Supplier's Tender.
<b>'Tender'</b>	The response submitted by the Supplier to the Invitation to Tender.
<b>'Working Day'</b>	Any day other than a Saturday, Sunday or public holiday in England and Wales , from 9am to 5pm unless otherwise agreed with the Buyer and the Supplier in the Call-Off Contract.

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### **SCH 3.1 DEFINITIONS AND INTERPRETATION**

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

<b>'Call-Off Contract'</b>	means [the Guaranteed Agreement] made between the Buyer and the Supplier on 31 <sup>st</sup> March 2017
<b>'Guaranteed Obligations'</b>	means all obligations and liabilities of the Supplier to the Buyer under the Call-Off Contract together with all obligations owed by the Supplier to the Buyer that are supplemental to, incurred under, ancillary to or calculated by reference to the Call-Off Contract
<b>'Guarantee'</b>	Means the deed of guarantee described in the Order Form (Parent Company Guarantee);

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

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

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

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

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

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

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

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References to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee.

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

### **SCH 3.2 Guarantee and indemnity**

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

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

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

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

### **SCH 3.3 Obligation to enter into a new Contract**

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

### **SCH 3.4 Demands and notices**

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

[Email address of the Guarantor representative]-ashley@learningpool.com

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For the Attention of Ashley McGavigan

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

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

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

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

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

### **SCH 3.5 BENEFICIARY'S PROTECTIONS**

The Guarantor will not be discharged or released from this Deed of Guarantee by:

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

This Deed of Guarantee will be a continuing security for the Guaranteed Obligations and accordingly:

- it will not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Buyer in exercising its rights under this Deed of Guarantee
- it will not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Buyer, the Guarantor or any other person
- if, for any reason, any of the Guaranteed Obligations is void or unenforceable against the Supplier, the Guarantor will be liable for that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor

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- the rights of the Buyer against the Guarantor under this Deed of Guarantee are in addition to, will not be affected by and will not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Buyer

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

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

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

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

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

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

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

### **SCH 3.6 REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Buyer that:

- the Guarantor is duly incorporated and is a validly existing company under the Laws of its place of incorporation
- has the capacity to sue or be sued in its own name

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

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

### **SCH 3.7 PAYMENTS AND SET-OFF**

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

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

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

### **SCH 3.8 GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Buyer that it has not entered into this Deed of Guarantee in reliance upon the Buyer nor been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by, or on behalf of the Buyer, (whether express or implied and whether following statute or otherwise) which is not in this Deed of Guarantee

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### **SCH 3.9 ASSIGNMENT**

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

The Guarantor may not assign or transfer any of its rights or obligations under this Deed of Guarantee.

### **SCH 3.10 SEVERANCE**

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

### **SCH 3.11 THIRD-PARTY RIGHTS**

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

### **SCH 3.12 GOVERNING LAW**

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

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

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

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

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

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legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Buyer in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the Service of notices and demands, Service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by

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

Director

Director/Secretary

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## **Annex B - Alternative Clauses**

### **SCH 4-1 Introduction**

4-1.1 This Schedule specifies the alternative Clauses applying to Scottish Contracting Bodies that may be requested in the Order Form and, if requested in the Order Form, shall apply to this Call-Off Contract.

### **SCH 4-2 Clauses selected**

4-2.1 The Buyer may, in the Order Form, request the following alternative Clauses:

4-2.1.1 Scots Law (see paragraph 4-2.1.2 of this Schedule);

4-2.1.2 SCOTS LAW

Law and Jurisdiction (Clause 41.1)

References to England and Wales in the original Clause 41.1 (Law and Jurisdiction) of this Call-Off Contract shall be replaced with Scotland and reference to the courts of England and Wales shall be replaced with the courts of Scotland and the wording of the Framework Agreement and Call-Off Contract will be interpreted as closely as possible to the original English and Welsh Law intention despite Scots Law applying.

Reference to England and Wales in Working Days definition within Clause 42 shall be replaced with Scotland.

References to the Contracts (Rights of Third Parties) Act 1999 shall be removed in Clause 40.

Reference to the Freedom of Information Act 2000 within definition for FOIA in Clause 43 – Definitions to be replaced with Freedom of Information (Scotland) Act 2002.

Reference to the Supply of Goods and Services Act 1982 shall be removed in Clause 31.1.

References to "tort" shall be replaced with "delict" throughout.

4-2.2 The Buyer may, in the Order Form, request the following alternative Clauses:

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4-2.2.1 Northern Ireland Law (see paragraph 4-2.4, 4-2.5, 4-2.6 and 4-2.7 of this Schedule);

4-2.3 Discrimination.

4-2.3.1 The Supplier shall comply with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular, the Employment (Northern Ireland) Order 2002, the Fair Employment and Treatment (Northern Ireland) Order 1998, the Sex Discrimination (Northern Ireland) Order 1976 and 1988, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Equal Pay Act (Northern Ireland) 1970, the Disability Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and Employment Rights (Northern Ireland) Order 1996 Employment Equality (Age) Regulations (Northern Ireland) 2006; Part-time Workers (Prevention of less Favourable Treatment) Regulation 2000; Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Disability Discrimination (Northern Ireland) Order 2006, The Employment Relations (Northern Ireland) Order 2004, The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, The Employment Relations (Northern Ireland) Order 2004 and The Work and Families (Northern Ireland) Order 2006; and shall use his best endeavours to ensure that in his employment policies and practices and in the delivery of the services required of the Supplier under this Call-Off Contract he has due regard to the need to promote equality of treatment and opportunity between:

- a. persons of different religious beliefs or political opinions;
- b. men and women or married and unmarried persons;
- c. persons with and without dependants (including women who are pregnant or on maternity leave and men on paternity leave)
- d. persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997);

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- e. persons with and without a disability (within the meaning of the Disability Discrimination Act 1995);
  - f. persons of different ages; and
  - g. persons of differing sexual orientation

4-2.3.2 The Supplier shall take all reasonable steps to secure the observance of Clause 4-2.3.1 by all Supplier Staff.

#### 4-2.4 Equality Policies and Practices

4-2.4.1 The Supplier shall introduce and shall procure that any Sub-Contractor shall also introduce and implement an equal opportunities policy in accordance with guidance from and to the satisfaction of the Equality Commission. The Supplier shall review such policies on a regular basis (and shall procure that its Sub-Contractors do likewise) and the Buyer shall be entitled to receive upon request by it a copy of any such policy.

4-2.4.2 The Supplier shall take all reasonable steps to ensure that all of the Supplier Staff comply with its equal opportunities policies (referred to in Clause 4-2.3 above). These steps shall include:

(a) the issue of written instructions to staff and other relevant persons;

(b) the appointment or designation of a senior manager with responsibility for equal opportunities;

(c) training of all staff and other relevant persons in equal opportunities and harassment matters; and

(d) the inclusion of the topic of equality as an agenda item at team, management and staff meetings,

and the Supplier shall procure that its Sub-Contractors do likewise (in relation to their equal opportunities policies).

4-2.4.3 In the event of:

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(a) the Equality Commission notifying the Supplier of an alleged breach by it or any Sub-Contractor (or any of their shareholders and/or directors) of the Fair Employment and Treatment (Northern Ireland) Order 1998; and/or

(b) any finding of unlawful discrimination (or any offence under the Legislation mentioned in Clause 4-2.3 above) being made against the Supplier or its Sub-Contractors during the Call-Off Contract by any Industrial or Fair Employment Tribunal or Court,

the Supplier shall inform the Buyer as soon as reasonably practicable and shall take such steps (including the dismissal or replacement of any relevant staff or Sub-Contractor(s)) as the Buyer directs and shall seek the advice of the Equality Commission in order to prevent any such offence or repetition of the unlawful discrimination as the case may be.

4-2.4.4 The Supplier shall monitor (in accordance with guidance issued by the Equality Commission) the composition of its workforce and applicants for employment and shall provide an annual report on the composition of such workforce and applicants to the Buyer. If such monitoring reveals under-representation or lack of fair participation of particular groups, the Supplier shall review the operation of its relevant policies and take affirmative/positive action where appropriate. The Supplier shall impose on its Sub-Contractors obligations similar to those undertaken by it in this clause 4-2.4 and shall procure that those Sub-Contractors comply with such obligations.

4-2.4.5 The Supplier shall provide such information as the Buyer may from time to time request (including information requested to be provided by any Sub-Contractors) for the purpose of assessing the Supplier's compliance with its obligations under clauses 4-2.4.1 to 4-2.4.5 of this Call-Off Contract.

#### 4-2.5 Equality

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4-2.5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, in performing its/their obligations under this Call-Off Contract (and other relevant agreements), comply with the provisions of Section 75 of the Northern Ireland Act 1998, as if they were a public authority within the meaning of that section.

4-2.5.2 The Supplier further acknowledges that the Buyer must, in carrying out its functions, have due regard to the need to promote equality of opportunity as contemplated by the Northern Ireland Act 1998 and the Supplier shall use all reasonable endeavours to assist (and to ensure that relevant Sub-Contractor assists) the Buyer in relation to same.

#### 4-2.6 Health and Safety

4-2.6.1 The Supplier shall promptly notify the Buyer of any health and safety hazards which may arise in connection with the performance of its obligations under the Call-Off Contract. The Buyer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Buyer premises and which may affect the Supplier in the performance of its obligations under the Call-Off Contract.

4-2.6.2 While on the Buyer premises, the Supplier shall comply with any health and safety measures implemented by the Buyer in respect of Supplier Staff and other persons working there.

4-2.6.3 The Supplier shall notify the Buyer immediately in the event of any incident occurring in the performance of its obligations under the Call-Off Contract on the Buyer premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

4-2.6.4 The Supplier shall comply with the requirements of the Health and Safety at Work (Northern Ireland) Order 1978 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Staff and other persons working on the Buyer premises in the performance of its obligations under the Call-Off Contract.

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4-2.6.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work (Northern Ireland) Order 1978) is made available to the Buyer on request.

#### 4-2.7 Criminal Damage

4-2.7.1 The Supplier shall maintain such standards of vigilance and will take all such precautions as are advised by the Criminal Damage (Compensation) (Northern Ireland) Order 1977 ("Compensation Order") or as may from time to time be recommended by the police or the Northern Ireland Office (or, if replaced, their successors) and will compensate the Buyer for any loss arising directly from a breach of this obligation (including any diminution of monies received by the Buyer under any insurance policy).

4-2.7.2 If during the term of this Call-Off Contract any assets (or any part thereof) is or are damaged or destroyed by any circumstance giving rise to a claim for compensation pursuant to the provisions of the Compensation Order ("CDO Event") the following provisions of this clause 4-2.7 shall apply.

4-2.7.3 The Supplier shall make (or shall procure that the appropriate organisation make) all appropriate claims under the Compensation Order as soon as practicable after the CDO Event and shall pursue any such claim diligently and at its cost. If appropriate, the Buyer shall also make and pursue a claim diligently under the Compensation Order. Any appeal against a refusal to meet any claim or against the amount of the award will be at the cost of the Buyer and the Supplier shall (at no additional cost to the Buyer) provide such assistance as the Buyer reasonably requires with such appeal.

4-2.7.4 The Supplier will apply any compensation paid under the Compensation Order in respect of damage to the relevant assets towards the repair, reinstatement or replacement of the assets affected.

