

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

DEFERRAL OF RIGHTS

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

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

If the Guarantor receives any payment or other benefit or exercises any set-off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom will be held on trust for the Buyer and applied in or towards discharge of its obligations to the Buyer under this Deed of Guarantee.

REPRESENTATIONS AND WARRANTIES

The Guarantor hereby represents and warrants to the Buyer that:

- _____ the Guarantor is duly incorporated and is a validly existing company under the Laws of its place of incorporation
- _____ has the capacity to sue or be sued in its own name
- _____ the Guarantor has power to carry on its business as now being conducted and to own its Property and other assets
- _____ the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee

• ~~the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a Call-Off Contract following Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:~~

- ~~○ the Guarantor's memorandum and articles of association or other equivalent constitutional documents, any existing Law, statute, rule or Regulation or any judgment, decree or permit to which the Guarantor is subject~~
- ~~○ the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets~~
- ~~○ all governmental and other authorisations, approvals, licences and consents, required or desirable~~

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

~~PAYMENTS AND SET-OFF~~

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

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

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

~~GUARANTOR'S ACKNOWLEDGEMENT~~

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

ASSIGNMENT

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

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

SEVERANCE

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

THIRD-PARTY RIGHTS

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

GOVERNING LAW

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

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

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

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

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

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

~~EXECUTED as a DEED by _____~~

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

~~Director~~

~~Director/Secretary~~

Part C – Terms and conditions

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

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

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

1.3 The term of this Call-Off Contract will end on the Call-Off Contract period end date listed in the Order Form, or the latest completion date for a Deliverable specified in the final SOW (unless terminated earlier), whichever is the soonest.

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

2. Supplier Staff

2.1 The Supplier Staff will:

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

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

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

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

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

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

3. Swap-out

3.1 Supplier Staff providing the Services may only be swapped out with the prior approval of the Buyer (such approval process to be agreed between the Parties).

4. Staff vetting procedures

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

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

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

5. Due diligence

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

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

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

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

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

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

6. Warranties, representations and acceptance criteria

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

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

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

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

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

7. Business continuity and disaster recovery

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

8. Payment terms and VAT

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

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

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

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

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

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

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 £5,000,000.

10.2 Agents and professional consultants

10.2.1 The Supplier will also ensure that all agents and professional consultants involved in the supply of Services hold professional indemnity insurance to a minimum indemnity of £1,000,000 for each individual claim during the Call-Off Contract, and for 6 years after the termination or expiry date to 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, 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 Without limiting the other provisions of the Call-Off Contract, the Supplier will:

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

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

10.5 Indemnity to principals

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

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

10.6 Cancelled, suspended, terminated or unrenewed policies

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

10.7 Premium, excess and deductible payments

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

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

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

11. Confidentiality

11.1 Except where disclosure is clearly permitted by 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:

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- 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;
- 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
- 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;
- is providing, or has provided, Services to the Buyer for the discovery phase; or
- has been provided with, or had access to, information which would give the Supplier or an affiliated company an unfair advantage in a Further Competition procedure.

12.4 Where the Supplier identifies a risk of a conflict or potential conflict, they will (before starting work under 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 Unless otherwise specified in this Call-Off Contract:

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

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

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

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

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

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

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- to use any Deliverables.

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

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

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

13.8 At the end of the term of this Call-Off Contract, the Buyer grants to the Supplier a licence to use the Project-Specific IPRs (excluding any information which is the Buyer's Confidential Information or which is subject to the Data Protection Act (DPA)) on the terms of the Open Government Licence v3.0.

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

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

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

13.12 If the third-party IPR is made available on terms equivalent to the Open Government Licence v3.0, the request for approval will be agreed and the Supplier will buy licences under these terms. If not, and the Buyer rejects the Request for Approval, then

this Call-Off Contract will need to be varied in accordance with clause 29 'Changes to Services'.

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

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

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

13.15 The indemnity given in Clause 13.13 will be uncapped.

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

- consults the Buyer on all substantive issues which arise during the conduct of such litigation and negotiations;
- takes due and proper account of the interests of the Buyer;
- considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Buyer into disrepute; and
- does not settle or compromise the IPR Claim without the prior approval of the Buyer (such decision not to be unreasonably withheld or delayed).

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