



Crown
Commercial
Service



Government
Communication
Service

CALL OFF CONTRACT

COMMUNICATION SERVICES

REFERENCE NUMBER: RM3796

FRAMEWORK ATTACHMENT 5

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Call-Off Contract –Call-Off Terms

This Call-Off Contract is made on the 14th day of November 2017 between:

The Home Office with offices at REDACTED (“the **Client**”);

and

Mediaedge:CIA UK Limited REDACTED (“the **Agency**”),

Both the Client and the Agency can be referred to as a “**Party**” or together the “**Parties**”.

INTRODUCTION

- (1) The Agency is one of a number of agencies appointed by the Crown Commercial Service (**CCS**) to the Framework Agreement and is therefore able to enter into this Call-Off Contract to provide the Services to the Client.
- (2) This Call-Off Contract, made between the Client and the Agency, sets out the terms of the Agency’s appointment as a provider of the Services to the Client. The Services will be delivered according to the terms of this Call-Off Contract, any agreed Statement of Work, and the Framework Agreement.
- (3) The Agency’s appointment has been confirmed in the Letter of Appointment.
- (4) The Parties agree that the Services and associated Deliverables shall be supplied in accordance with the terms of the Framework Agreement and this Call-Off Contract.
- (5) Following the successful completion of a Further Competition Procedure, the Letter of Appointment, these Call-Off Terms and any Statement of Work will become binding.

IT IS AGREED:

1 APPOINTMENT & STATEMENTS OF WORK

- 1.1 Throughout the Term of this Call-Off Contract, the Agency will perform the Services and (where relevant) supply the Deliverables to the Client in accordance with this Call-Off Contract and any one or more agreed Statements of Work.
- 1.2 Subject to the terms of the Letter of Appointment and Clause 1.4 the Parties may agree new Projects to be delivered under this Call-Off Contract by agreeing a new Statement of Work. This must be done in writing and using the form set out at Schedule 2. Once both Parties have signed a Statement of Work, it automatically forms part of this Call-Off Contract.
- 1.3 Any schedule attached to a Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. Where the Parties agree in the Letter of Appointment that there may be more than one Statement of Work, a schedule attached to a Statement of Work only applies to the relevant Project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Services as a whole.
- 1.4 Where a Statement of Work would result in:
 - (a) a variation of the Services procured under this Call-Off Contract;

- (b) an increase in the Charges agreed under this Call-Off Contract; or
- (c) a change in the economic balance between the Parties to the detriment of the Client that is not provided for in this Call-Off Contract,

the relevant term(s) will be dealt with as a proposed Variation to this Call-Off Contract in accordance with the Variation procedure set out in Clause 9.

2 TERM

- 2.1 This Call-Off Contract starts on the **Effective Date** and ends on the **Expiry Date**, as stated in the Letter of Appointment. The Expiry Date may be changed in accordance with Clause 2.2 or Clause 23.
- 2.2 The Client may extend this Call-Off Contract for any period up to the Extension Expiry Date by giving the Agency notice in writing before the Expiry Date. The minimum notice which must be given in order to amend the Expiry Date is specified in the Letter of Appointment.
- 2.3 The revised date the contract will end (the **New Expiry Date**) will be set out in the notice given under Clause 2.2 above.
- 2.4 The terms and conditions of this Call-Off Contract will apply throughout any extended period.
- 2.5 Each Project starts on the Project Commencement Date and ends on the Project Completion Date, unless it is terminated earlier in accordance with Clause 23.

3 CALL OFF GUARANTEE

- 3.1 Where the Client has stated in the Letter of Appointment that this Call-Off Contract is conditional on receipt of a Guarantee, then, on or prior to the Effective Date (or on any other date specified by the Client), the Agency must provide:
 - an executed Guarantee from a Guarantor; and
 - a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.
- 3.2 The Client may at any time agree to waive compliance with the requirement in Clause 3.1 by giving the Agency notice in writing.

4 CLIENT'S OBLIGATIONS

- 4.1 The Client will give the Agency instructions as to its requirements for the Services and Deliverables. These will be included in a Statement of Work and may include start and end dates for each stage of the proposed Services and Deliverables.

5 SERVICE DELIVERY, DELAY AND RECTIFICATION

Service Delivery

- 5.1 The Agency will give the Client full and clear instructions as to any Client Materials it reasonably requires to perform the Services and provide the Deliverables.
- 5.2 The Agency will:
 - comply with all Law;

- use all reasonable and proper skill and care in its performance of the Services and provision of the Deliverables;
- comply with all reasonable Client instructions regarding the Services and Deliverables, as long as these instructions do not materially amend the Statement of Work (unless the amendment has been agreed in accordance with Clause 9.1);
- keep Client Materials under its control safe and secure and in accordance with any security policy provided by the Client; and
- provide all Deliverables by any dates set out in the applicable Statement of Work or any other date(s) agreed by the parties in writing.

Delay

- 5.3 If the Client materially breaches its obligations in connection with this Call-Off Contract (including its payment obligations), and consequently delays or prevents the Agency from performing any of the agreed Services or providing any of the agreed Deliverables this will be a “**Client Cause**”. In the event of a Client Cause, without prejudice to any other rights or remedies the Agency may have the Agency will be granted an appropriate extension of time (to be approved by the Client, acting reasonably) to perform the agreed Services or provide the agreed Deliverables. The Agency will not be liable for any Losses incurred by the Client as a result of Client Cause, provided the Agency complies with its obligations set out at Clause 5.4.
- 5.4 The Agency must notify the Client within 2 Working Days of the Agency becoming aware that the Client has breached, or is likely to breach, its obligations in connection with this Call-Off Contract. This notice must detail:
- (a) the Client Cause and its actual or potential effect on the Agency’s ability to meet its obligations under this Call-Off Contract, and
 - (b) any steps which the Client can take to eliminate or mitigate the consequences and impact of such Client Cause.
- 5.5 The Agency must use reasonable endeavours to eliminate or mitigate the consequences and impact of a Client Cause. The Agency must try to mitigate against any Losses that the Client or the Agency may incur, and the duration and consequences of any delay or anticipated delay.
- 5.6 If at any time the Agency becomes aware that it may not be able to perform the Services or provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), this will constitute a Default and the Agency will immediately notify the Client of the Default and the reasons for the Default.
- 5.7 If the Default described in Clause 5.6 above is, in the Client’s opinion capable of remedy, the Client may, up to 10 Working Days from being notified of the Default, instruct the Agency to comply with the Rectification Plan Process.

Rectification Plan Process

- 5.8 If instructed to comply with the Rectification Plan Process by the Client under Clause 5.7 above, the Agency will submit a draft Rectification Plan to the Client to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) from being instructed to do so. The Agency shall submit a draft Rectification Plan even if the Agency does not agree that the Default is capable of remedy.

- 5.9 the draft Rectification Plan shall set out:
- (a) full details of the Default that has occurred, including the underlying reasons for it;
 - (b) the actual or anticipated effect of the Default; and
 - (c) the steps which the Agency proposes to take to rectify or mitigate the Default and to prevent any recurrence of the Default, including timescales for such steps and for the rectification of the Default (where applicable).
- 5.10 The Agency shall promptly provide to the Client any further documentation that the Client requires to assess the Agency's reasoning behind the default. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined in accordance with paragraph 5 of Schedule 4 (Dispute Resolution Procedure).
- 5.11 The Client may reject the draft Rectification Plan by notice to the Agency if, acting reasonably, it considers that the draft Rectification Plan is inadequate. An example of an inadequate draft Rectification Plan is one which:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default;
 - (d) will rectify the Default but in a manner which is unacceptable to the Client; or
 - (e) will not rectify the Default.
- 5.12 The Client will tell the Agency as soon as reasonably practicable if it agrees to or rejects the draft Rectification Plan.
- 5.13 If the Client rejects the draft Rectification Plan, the Client will give reasons for its decision in its rejection notice. The Agency must take these reasons into account in the preparation of a revised Rectification Plan. The Agency shall submit a revised draft of the Rectification Plan to the Client for review within 5 Working Days (or such other period as agreed between the Parties) of the Client's rejection notice.
- 5.14 If the Client agrees the draft Rectification Plan, or any revised draft Rectification Plan, the Agency shall immediately start work on the actions set out in the Rectification Plan.

6 AGENCY: OTHER APPOINTMENTS

- 6.1 Adverse public perception could have a detrimental impact on the Client's desired outcomes for the Project. To minimise this risk, the Agency must not, without the Client's written consent, provide communication or campaign services to a third party during the Term of this Call-Off Contract where the provision of such services (in the reasonable opinion of the Client):
- has the potential to adversely affect the Client's desired outcome of the Project or diminish the trust that the public places in the Client; or
 - is likely to cause embarrassment to the Client or bring the Client into disrepute or may result in a conflict of interest for the Client.
- 6.2 The only exception to this is if the Agency provides communication services to an existing client, which the Client had been informed about before entering into this Call-Off Contract.

- 6.3 If the Agency becomes aware of a breach, or potential breach, of its obligations under Clause 6.1, the Agency must notify the Client immediately, providing full details of the nature of the breach and the likely impact on any Projects.
- 6.4 If the Agency breaches Clause 6.1, the Client may terminate this Call-Off Contract, a Project, or any part of a Project with immediate effect in accordance with Clause 23.3.

7 CLIENT: OTHER APPOINTMENTS

- 7.1 Subject to Clause 6 the relationship between the Parties is non-exclusive. The Client is entitled to appoint any other agency to perform services and produce deliverables which are the same or similar to the Services or Deliverables.

8 PERSONNEL

- 8.1 The Agency must ensure that Agency personnel who provide the Services:
- (a) are appropriately experienced, qualified and trained to provide the Services in accordance with this Call-Off Contract
 - (b) apply all reasonable skill, care and diligence in providing the Services
 - (c) obey all lawful instructions and reasonable directions of the Client and provide the Services to the reasonable satisfaction of the Client, and
 - (d) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements of the Client and the Standards
- 8.2 The Agency will be liable for all acts or omissions of the Agency personnel. Any act or omission of a member of any Agency personnel which results in a breach of this Call-Off Contract is a breach by the Agency.
- 8.3 The Client acknowledges and agrees that it may be necessary for the Agency to replace the personnel providing the Services with alternative personnel with similar levels of seniority and experience.
- 8.4 The Agency will seek to ensure that any Key Individual responsible for the provision of the Services will remain involved in the provision of the Services. If any Key Individual leaves the Agency, or ceases to be involved in the provision of the Services for any reason (for example, if they are promoted to a different role within the Agency), the Agency will consult with the Client and, subject to the Client's prior Approval not to be unreasonably withheld or delayed, appoint a suitable replacement.
- 8.5 If the Client reasonably believes that any of the Agency personnel undertaking work on this Call-Off Contract:
- (a) do not meet the requirements of Clause 8.1; or
 - (b) may cause embarrassment to the Client or bring the Client into disrepute or may result in a conflict of interest for the Client,
- it will notify the Agency who will then end the person's involvement in providing the Services.

9 VARIATIONS AND CANCELLATIONS

- 9.1 Either Party may request a change to this Call-Off Contract, a Project or a Statement of Work. Any requested change must not amount to a material change of this Call-Off Contract (within the meaning of the Regulations and the Law). A change, once implemented, is called a "**Variation**".

- 9.2 A Party may request a Variation by completing, signing and sending the Variation Form to the other Party. The requesting Party must give sufficient information for the receiving Party to assess the extent of the proposed Variation and any additional cost that may be incurred by it.
- 9.3 Subject to Clause 9.5, the receiving Party must respond to the request within the time limits specified in the Variation Form. The time limits shall be reasonable and ultimately at the discretion of the Client, having regard to the nature of the Services and the proposed Variation.
- 9.4 If either Party requests a Variation, the Client can ask the Agency to carry out an assessment of the effects of the proposed Variation (an **Impact Assessment**). The Impact Assessment must consider:
- the impact of the proposed Variation on the Services and Agency's ability to meet its other obligations under this Call-Off Contract (including in relation to other Statements of Work);
 - the initial cost of implementing the proposed Variation and any ongoing costs post-implementation;
 - any increase or decrease in the Contract Charges, any alteration in the resources or expenditure required by either Party and any alteration to the working practices of either Party;
 - a timetable for the implementation, together with any proposals for the testing of the Variation; and
 - any other information the Client reasonably asks for in response to the Variation request.
- 9.5 The Parties may agree to adjust the time limits specified in the Variation Form so the Impact Assessment can be carried out.
- 9.6 If the Parties agree the Variation, the Agency will implement it, and the Parties will be bound by it as if it was part of this Call-Off Contract.
- 9.7 Until a Variation is agreed, the Agency must continue to perform and be paid for the Services as originally agreed.
- 9.8 Subject to Clauses 9.9 and 23.1 the Client can ask the Agency to suspend or cancel any Project or Statement of Work, or any part of a Project, including any plans, schedules or work in progress at any time, regardless of whether a Variation has been requested. Any request shall be made by an Authorised Client Approver in writing. The Agency will take all reasonable steps to comply with any such request.
- 9.9 In the event of any cancellation under Clause 9.8, the Client will pay the Agency all Contract Charges reasonably and properly incurred by the Agency during the Project Notice Period, provided that the Agency uses all reasonable endeavours to mitigate any charges or expenses.

10 APPROVALS AND AUTHORITY

- 10.1 For the purposes of this Call-Off Contract, any reference to Client Approval means written approval in one of the following ways:

- the Client issuing a purchase order bearing the signature of an Authorised Client Approver, or
- e-mail from the individual business e-mail address of an Authorised Client Approver, or
- the signature of an Authorised Client Approver on the Agency's documentation

10.2 Any reference to Agency Approval means written approval in one of the following ways:

- e-mail from the individual business e-mail address of an Authorised Agency Approver, or
- the signature of an Authorised Agency Approver on the Client's documentation

10.3 The Agency will seek the Client's prior Approval of:

- any estimates or quotations for any costs to be paid by the Client that are not agreed in a Statement of Work; and
- any creative treatments, including but not limited to scripts, messaging, storyboards, copy, layouts, design, artwork, or proposed marketing activity

10.4 The Agency will seek the Client's prior Approval of any draft Deliverables. The Client's Approval will be the Agency's authority to proceed with the use of the relevant Deliverables.

10.5 If the Client does not approve of any matter requiring Approval, it must notify the Agency of its reasons for disapproval within 14 days of the Agency's request.

10.6 If the Client delays approving or notifying the Agency as to its disapproval, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

11 PROJECT MANAGEMENT

11.1 During the Term of this Call-Off Contract, the Agency will:

- keep the Client fully informed as to the progress and status of all Services and Deliverables, by preparing and submitting written reports at such intervals and in such format as is agreed by the Parties
- promptly inform the Client of any actual or anticipated problems relating to provision of the Deliverables

11.2 During the Term, the Parties' respective project managers will arrange and attend meetings to review the status and progress of the Services, Deliverables and the Project(s), and to seek to resolve any issues that have arisen. These meetings will be held at locations and intervals as agreed by the parties.

11.3 Unless otherwise agreed in the Statement of Work, the Agency will produce contact reports providing each Party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties within 3 Working Days of such discussions. If the Client does not question any of the subject matter of a contact report within 7 Working Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation.

12 FEES AND INVOICING

12.1 The Contract Charges for the Services will be the full and exclusive remuneration of the Agency for supplying the Services. Unless expressly agreed in writing by the Client in

the Statements of Work, the Contract Charges will include every cost and expense of the Agency directly or indirectly incurred in connection with the performance of the Services.

- 12.2 All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Client shall, following the receipt of a valid VAT invoice, pay to the Agency a sum equal to the VAT chargeable in respect of the Services.
- 12.3 The Agency will invoice the Client in accordance with the payment profile agreed in the Statements of Work. Each invoice will include all supporting information required by the Client to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 12.4 Unless otherwise agreed in a Statement of Work the Client will pay the Agency the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Client may, without prejudice to any other rights and remedies under this Call-Off Contract, withhold or reduce payments in the event of a Default by the Agency.
- 12.5 If the Client does not pay an undisputed amount properly invoiced by the due date, the Agency has the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.6 If at any time during the Term the Agency reduces its Framework Prices for Services provided in accordance with the terms of the Framework Agreement, the Agency shall immediately reduce the Contract Charges for the Services under this Call-Off Contract by the same amount. This obligation applies whether or not the Services are offered in a catalogue provided under the Framework Agreement.
- 12.7 The Client is entitled to deduct from any sum due any money that the Agency owes the Client. This includes any sum which the Agency is liable to pay to the Client in respect of breach of this Call-Off Contract. In these circumstances, the Agency may not assert any credit, set-off or counterclaim against the Client.
- 12.8 The Agency will indemnify the Client on a continuing basis against any liability (to include any interest, penalties or costs incurred, levied, demanded or assessed) on the Client at any time in respect of the Agency's failure to account for or to pay any VAT on payments made to the Agency under this Call-Off Contract. Any amounts due under Clause 12.2 will be paid by the Agency to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 12.9 If there is a dispute between the Parties about an amount invoiced, the Client will pay the undisputed amount by the due date. The Agency will not suspend the supply of the Services in any Project, unless the Agency is entitled to terminate that Project for a failure to pay undisputed sums in accordance with Clause 23.8.

13 THIRD PARTY AGENCIES: ASSIGNMENT AND SUB-CONTRACTING

Assignment and Sub-Contracting

- 13.1 Other than where a Sub-Contractor is agreed in the Letter of Appointment or a Statement of Work, the Agency will not, without the prior Approval of the Client, assign, sub-contract, novate or in any way dispose of the benefit or the burden of this Call-Off Contract or any part of it.
- 13.2 In requesting Approval to sub-contract, the Agency will:

- (a) use reasonable care and skill in the selection of proposed Sub-Contractors;
 - (b) if the Client requests, the Agency will obtain more than one quote for a particular sub-contracted service; and
 - (c) provide the Client with a business case for sub-contracting all or part of the Services, identifying why it is advantageous for the Agency to sub-contract to its proposed sub-contractor. The Client may reject the Agency's request to appoint a proposed sub-contractor if it considers the proposed sub-contractor does not provide value for money.
- 13.3 If the Client consents to the Agency's proposed sub-contractor, it shall be a Sub-Contractor as the term is defined in Schedule 1 (Definitions).
- 13.4 In granting consent to any assignment, novation sub-contracting or disposal, the Client may set additional terms and conditions it considers necessary.
- 13.5 The Agency shall ensure that its Sub-Contractor does not further sub-contract all or part of the Services or Deliverables.
- 13.6 Any contracts the Agency enters into with third party suppliers for Services and Deliverables ("**Sub-Contracts**") must be on terms that are in line with the Agency's standard contractual terms and conditions, must not permit further sub-contracting, and must not conflict with the terms of this Call-Off Contract.
- 13.7 Provided that the Agency has notified the Client of any significant restrictions or contract terms contained in any Sub-Contracts, the Client hereby acknowledges that:
- its right to use or otherwise benefit from any Services or Deliverables acquired under Sub-Contracts will be as set out in the Sub-Contracts; and
 - it will be responsible for any reasonable and proper charges or liabilities (including cancellation payments) that the Agency is directly liable for under Sub-Contracts only to the extent that that these are caused by an act or omission of the Client or its Affiliates
- 13.8 The Agency will promptly provide the Client with a copy of any Sub-Contract if requested to do so.
- 13.9 The Agency will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 13.10 The Agency will obtain the Client's Approval before commissioning services from any Agency Affiliate.

Supply Chain Protection

- 13.11 The Agency will ensure that all Sub-Contracts contain provisions:
- (a) requiring the Agency to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a Valid Invoice;
 - (b) requiring the Agency to verify any invoices submitted by a Sub-Contractor in a timely manner;
 - (c) giving the Client the right to publish the Agency's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - (d) giving the Agency a right to terminate the Sub-Contract if the Sub-Contractor fails to comply with legal obligations in the fields of environmental, social or labour law; and

- (e) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards provisions to the same effect as those required by this Clause 13.11.

14 DISCOUNTS AND REBATES

- 14.1 The Agency will disclose to the Client any commission, discount or rebate earned by the Agency arising in respect of third party costs directly related to the Projects. The Client will receive the full benefit of such commission, discount or rebate.

15 CONFIDENTIALITY, TRANSPARENCY AND FREEDOM OF INFORMATION

CONFIDENTIALITY

- 15.1 For the purposes of the Clauses below, a Party which receives or obtains, directly or indirectly, Confidential Information is a “**Recipient**”. A Party which discloses or makes available Confidential Information is a “**Disclosing Party**”.
- 15.2 Unless a Recipient has express permission to disclose Confidential Information, it must:
- treat the Disclosing Party's Confidential Information as confidential and store it securely
 - not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Call-Off Contract or with the owner's prior written consent
 - use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Call-Off Contract, and
 - immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information
- 15.3 The Recipient is entitled to disclose Confidential Information if:
- It is required to so by Law (though in such cases, Clause 15.15 (Freedom of Information) applies to disclosures required under the FOIA or the EIRs)
 - the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Client regarding this Call-Off Contract
 - (ii) the examination and certification of the Client's accounts (provided that the disclosure is made on a confidential basis) or for any examination under Section 6(1) of the National Audit Act 1983, or
 - (iii) a Central Government Body review in respect of this Call-Off Contract or
 - the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010. Such disclosure can only be made to the Serious Fraud Office.
- 15.4 If the Recipient is required by Law to disclose Confidential Information, it should notify the Disclosing Party as soon as reasonably practicable and to the extent permitted by Law. It may advise the Disclosing Party of what Law or regulatory body requires such disclosure and what Confidential Information it will be required to disclose.
- 15.5 Subject to Clauses 15.3 and 15.4, the Agency may disclose Confidential Information, on a confidential basis, to:

- Agency personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance under this Call-Off Contract, and
 - its professional advisers for the purposes of obtaining advice in relation to this Call-Off Contract.
- 15.6 Where the Agency discloses Confidential Information in such circumstances, it remains responsible for ensuring the persons to whom the information was disclosed comply with the confidentiality obligations set out in this Call-Off Contract.
- 15.7 The Client may disclose the Confidential Information of the Agency:
- to any Central Government Body, on the basis that the information may only be further disclosed to Central Government Bodies
 - to Parliament, including any Parliamentary committees, or if required by any British Parliamentary reporting requirement
 - if disclosure is necessary or appropriate in the course of carrying out its public functions
 - on a confidential basis to a professional adviser, consultant, supplier or other person engaged by a Central Government Body or Contracting Body (including any benchmarking organisation) for any purpose relating to or connected with this Call-Off Contract
 - on a confidential basis for the purpose of the exercise of its rights under this Call-Off Contract, or
 - to a proposed successor in title (transferee, assignee or novatee) to the Client.
- 15.8 Any references to disclosure on a confidential basis means disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this Clause 15.
- 15.9 Nothing in this Clause 15 will prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Call-Off Contract in the course of its normal business, as long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.10 If the Agency fails to comply with this Clause 15, the Client can terminate this Call-Off Contract.

TRANSPARENCY

- 15.11 Except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Call-Off Contract (and any Transparency Reports submitted by the Agency under it) is not Confidential Information. This will be made available in accordance with the procurement policy note 13/15 www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein.
- 15.12 The Client will determine whether any of the content of this Call-Off Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Client may consult with the Agency to inform its decision regarding any redactions but will have absolute discretion over the final decision.

15.13 Notwithstanding any other provision of this Call-Off Contract, the Agency consents to the Client publishing this Call-Off Contract in its entirety (including any agreed changes). Any information which is exempt from disclosure in accordance with the provisions of the FOIA will be redacted).

15.14 The Agency will cooperate with the Client to enable publication of this Call-Off Contract.

FREEDOM OF INFORMATION

15.15 The Client is subject to the requirements of the FOIA and the EIRs. The Agency will:

- provide all necessary assistance to the Client to enable it to comply with its Information disclosure obligations.
- send all Requests for Information it receives relating to this Call-Off Contract to the Client as soon as practicable and within a maximum of 2 Working Days from receipt.
- provide the Client with a copy of all Information belonging to the Client requested in the Request for Information which is in its possession or control in the form that the Client requires within 5 Working Days of the Client's request.

15.16 The Agency must not respond directly to a Request for Information without the Client's prior Approval.

15.17 The Client may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Agency. The Client will take reasonable steps to notify the Agency of a Request for Information where it is permissible and reasonably practical for it to do so. However, the Client will be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

16 AGENCY WARRANTIES

16.1 The Agency warrants that:

- (a) it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party;
- (b) the personnel who perform the Services are competent and suitable do so;

16.2 The Agency undertakes that:

- (a) the use of the Deliverables by the Client in accordance with this Call-Off Contract and for the purposes set out in the Statement of Work will not infringe the IPR of any third party; and
- (b) as at the date they are delivered, the Deliverables of this Call-Off Contract may be used for the purposes set out in the Statement of Work and comply with all Advertising Regulations.

16.3 Subject to Clause 16.4, the Agency hereby indemnifies the Client against any Losses incurred by the Client as a result of breach by the Agency of its warranty and undertaking in Clauses 16.1 and 16.2.

16.4 The Agency shall not be liable for any breach by the Agency of its warranty or undertaking in Clauses 16.1 and 16.2 where the Agency had previously notified the Client of the specific risk in writing, the Client has confirmed it understands the risk and Approved the use of such Deliverables

17 CLIENT WARRANTIES

17.1 The Client warrants that:

- (a) it has full capacity and authority to enter into this Call-Off Contract and that by doing so it will not be in breach of any obligation to a third party;
- (b) the Client Materials will not, when used in accordance with this Call-Off Contract and any written instructions given by the Client, infringe third party IPR; and
- (c) to the best of its knowledge and belief, the Client Materials are accurate and will comply with all applicable Laws

18 LIABILITY

18.1 Nothing in this Call-Off Contract will exclude or in any way limit either Party's liability for fraud, death or personal injury caused by its negligence.

18.2 The Agency does not limit its liability in respect of the indemnity in Clause 20.12 (IPR).

18.3 Subject always to Clauses 18.1, 18.2 and 18.4, the maximum amount the Agency can be liable for in respect of all Defaults shall in no event exceed:

- (a) in relation to any Defaults occurring from the Effective Date to the end of the first Contract Year, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges estimated by the Client for the first Contract Year;
- (b) in relation to any Defaults occurring in each subsequent Contract Year that commences during the remainder of the Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Agency under this Call-Off Contract in the previous Contract Year; and
- (c) in relation to any Defaults occurring in each Contract Year that commences after the end of the Initial Term, the higher of the figure specified in the Letter of Appointment or a sum equal to 125% of the Contract Charges payable to the Agency under this Call-Off Contract in the last Contract Year commencing during the Term;

18.4 Subject to Clause 18.1 and except for any claims arising under Clause 20.12, neither Party will be liable to the other in any situation for any:

- loss of profits
- loss of goodwill or reputation
- loss of revenue
- loss of savings whether anticipated or otherwise; or
- indirect or consequential loss or damage of any kind

18.5 Without prejudice to its obligation to pay the undisputed Contract Charges as and when they fall due for payment, the Client's total aggregate liability in respect of all defaults, claims, losses or damages howsoever caused will in no event exceed the figure specified in the Letter of Appointment.

19 INSURANCE

19.1 The Agency will hold insurance policies to the value sufficient to meet its liabilities in connection with this Call-Off Contract (including any specific insurance requirements as are set out in the Statements of Work). The Agency will provide the Client with evidence that such insurance is in place at the Client's request.

- 19.2 The Agency will effect and maintain the policy or policies of insurance as stipulated in the Letter of Appointment.
- 19.3 If, for whatever reason, the Agency fails to comply with the provisions of this Clause 19 the Client may make alternative arrangements to protect its interests. If the Client does so, it may recover the premium and other costs of such arrangements as a debt due from the Agency.
- 19.4 Any insurance effected by the Agency will not relieve it of any liability under this Call-Off Contract. It is the Agency's responsibility to determine the amount of insurance cover that will be adequate to enable the Agency to satisfy any liability in relation to the performance of its obligations under this Call-Off Contract.
- 19.5 The Agency must ensure that the policies of insurance it holds pursuant to this Clause 19 are not cancelled, suspended or vitiated. The Agency will use all reasonable endeavours to notify the Client (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any circumstance whereby the relevant insurer could give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 The Agency acknowledges that the Client retains ownership of Client Materials and all Intellectual Property Rights in them. This includes any modifications or adaptations of Client Materials produced by the Agency in the course of providing the Services and Deliverables. The Client hereby grants to the Agency a non-exclusive licence to use the Client Materials during the applicable Project Term solely for the purposes of providing the Services and Deliverables.
- 20.2
- The Agency hereby:
- assigns to the Client all of the Intellectual Property Rights other than copyright and database rights in the Agency Materials which are capable of being assigned, together with the right to sue for past infringement of such Intellectual Property Rights in the Agency Materials; and
- assigns to the Crown all of the copyright and database rights in the Agency Materials which are capable of being assigned, together with the right to sue for past infringement of such copyright and database rights in the Agency Materials.
- 20.3 All Intellectual Property Rights in the Agency Proprietary Materials remain the property of the Agency. The Agency grants to the Client a non-exclusive, royalty-free licence to use any Agency Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work.
- 20.4 Prior to delivery of the Deliverables to the Client, the Agency will obtain all licences or consents in respect of Third Party Materials that are required so the Client can use these Third Party Materials for the purposes set out in the Statement of Work. The Agency will notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials and the Client shall comply with such restrictions as are notified to it by the Agency.
- 20.5 The Agency agrees:

- at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Agency Materials and Deliverables; and
 - neither to do nor fail to do any act which would or might prejudice the Client's rights under this Clause 20.
- 20.6 To the extent permitted by law, the Agency shall ensure that all Moral Rights in the Agency Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the Agency Materials.
- 20.7 The Agency will use its reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived. Where it is not lawfully possible to waive Moral Rights, the Agency will work with the owner or creator of the Third Party Materials to procure that Moral Rights are not asserted in respect of Third Party Materials). If the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Agency will notify the Client and will obtain the Client's Approval prior to incorporating such Third Party Materials into the Deliverables
- 20.8 Subject to obtaining the Approval of the Client, the Agency will be able during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches and in its showreel.
- 20.9 During the Term, if the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this Clause 20, the Agency will retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process. If the Agency is successful in such pitch and the Parties agree that such Materials will be used in a Project the Agency will assign all such Intellectual Property Rights to the Client.
- 20.10 The Agency is not liable in connection with this Call-Off Contract for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf after the Agency has handed them over. The Agency is also not liable if any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client or its Associates.
- 20.11 The terms of and obligations imposed by this Clause 20 continue after the termination of this Call-Off Contract.
- 20.12 The Agency will indemnify the Client in full against all costs, expenses, damages and losses (whether direct or indirect in connection with any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights in connection with the supply or use of the Services, if the claim is attributable to the acts or omission of the Agency or any of its Associates. This indemnity extends to any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Client.

21 AUDIT

- 21.1 The Agency will keep and maintain full and accurate records and accounts of the operation of this Call-Off Contract, the Services provided under it, any Sub-Contracts and the amounts paid by the Client for at least 7 years after the Expiry Date or New Expiry Date, or such longer period as the Parties agree.
- 21.2 The Agency will:

- (a) keep the records and accounts referred to in Clause 21.1 in accordance with Good Industry Practice and Law, and
- (b) afford any Auditor access to the records and accounts referred to in Clause 21.1 at the Agency's premises and/or provide records and accounts (including copies of the Agency's published accounts) or copies of the same to Auditors throughout the Term and the period specified in Clause 21.1. This is so the Auditor(s) can assess compliance by the Agency and/or its Sub-Contractors with the Agency's obligations under this Call-Off Contract, and in particular to:
 - verify the accuracy of the Contract Charges and any other amounts payable by the Client under this Call-Off Contract (and proposed or actual variations to them in accordance with this Call-Off Contract);
 - verify the costs of the Agency (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;
 - verify the Agency's and each Sub-Contractor's compliance with the applicable Laws;
 - identify or investigate an actual or suspected act of fraud or bribery, impropriety or accounting mistakes or any breach or threatened breach of security. In these circumstances, the Client is not obliged to inform the Agency of the purpose or objective of its investigations;
 - identify or investigate any circumstances which may impact upon the financial stability of the Agency or any Sub-Contractors or their ability to perform the Services;
 - obtain such information as is necessary to fulfil the Client's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes, including the supply of information to the Comptroller and Auditor General;
 - review any books of account and the internal contract management accounts kept by the Agency in connection with this Call-Off Contract;
 - carry out the Client's internal and statutory audits and to prepare, examine and/or certify the Client's annual and interim reports and accounts
 - enable the National Audit Office to carry out an examination under Section 6(1) of the National Audit Act 1983;
 - review any records relating to the Agency's performance of the provision of the Services and to verify that these reflect the Agency's own internal reports and records;
 - verify the accuracy and completeness of any information delivered or required by this Call-Off Contract;
 - inspect the Client Materials, including the Client's IPRs, equipment and facilities, for the purposes of ensuring that the Client Materials are secure; and
 - review the integrity, confidentiality and security of any Client data.

21.3 The Client will use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Agency or delay the provision of the Services (although the Agency accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Client.)

- 21.4 Subject to the Agency's rights in respect of Confidential Information, the Agency will, on demand, provide the Auditor(s) with all reasonable co-operation and assistance in providing:
- all reasonable information requested by the Client within the scope of the audit;
 - reasonable access to sites controlled by the Agency and to any equipment used in the provision of the Services; and
 - access to the Agency personnel.
- 21.5 The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, unless the Audit reveals a default by the Agency, whereby the Agency will reimburse the Client for the Client's reasonable costs incurred in relation to the Audit.
- 21.6 If an Audit reveals that the Client has been overcharged, the Agency will reimburse to the Client the amount of the overcharge within 30 days. If an Audit reveals the Agency has been underpaid, the Client shall pay to the Agency the amount of the underpayment within 30 days.

22 ADVERTISING STANDARDS

- 22.1 Both parties acknowledge that they have a responsibility to comply with all relevant Advertising Regulations.
- 22.2 The parties will co-operate with each other to ensure satisfaction of the requirements of any applicable Advertising Regulation.

23 TERMINATION

Client Rights to Terminate

- 23.1 The Client may, by giving not less than 3 month's written notice to the Agency, terminate this Call-Off Contract without cause.
- 23.2 The Client may terminate or cancel a Project at any time subject to Clause 9 and payment of all Contract Charges specifically set out at Clause 9.9.
- 23.3 The Client may terminate this Call-Off Contract or a Project by written notice to the Agency with immediate effect if the Agency:
- commits a material Default which cannot be remedied;
 - repeatedly breaches any of the terms and conditions of this Call-Off Contract in such a manner as to indicate that it does not have the intention or ability to adhere to the terms and conditions;
 - commits a Default, including a material Default, which in the opinion of the Client is remediable but has not remedied such Default to the satisfaction of the Client within 30 days of receiving notice specifying the Default and requiring it to be remedied or in accordance with the Rectification Plan Process;
 - breaches any of the provisions of Clauses 6.1 (Agency: Other Appointments), 10 (Approvals and Authority), 15 (Confidentiality, Transparency and Freedom of Information), and 32 (Prevention of Fraud and Bribery);
 - is subject to an Insolvency Event; or
 - fails to comply with legal obligations.

- 23.4 The Agency must notify the Client as soon as practicable of any Change of Control or any potential Change of Control.
- 23.5 The Client may terminate this Call-Off Contract with immediate effect by written notice to the Agency within 6 Months of:
- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
 - (b) where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,
but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 23.6 The Client may terminate this Call-Off Contract or a Project by giving the Agency at least 14 days' notice if:
- (a) the Framework Agreement is terminated for any reason;
 - (b) the Parties fail to agree a Variation under Clause 9; or
 - (c) the Agency fails to implement an agreed Variation.
- 23.7 Where this Call-Off Contract is conditional upon the Agency procuring a Guarantee pursuant to Clause 3 (Call Off Guarantee), the Client may terminate this Call Off Contract by issuing a notice of termination Notice to the Agency where:
- (a) the Guarantor withdraws the Guarantee for any reason;
 - (b) the Guarantor is in breach or anticipatory breach of the Guarantee;
 - (c) an Insolvency Event occurs in respect of the Guarantor; or
 - (d) the Guarantee becomes invalid or unenforceable for any reason whatsoever,
and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Client; or
 - (e) the Agency fails to provide the documentation required by Clause 3.1 by the date so specified by the Client.

Agency Rights to Terminate

- 23.8 The Agency may terminate a Project and any Statement of Work in respect of that Project by written notice to the Client if:
- (a) the Client has not paid any undisputed amounts falling due under that Project, and
 - (b) the undisputed sum due remains outstanding for 40 Working Days after the Client has received a written notice of non-payment from the Agency specifying:
 - the Client's failure to pay;
 - the correct overdue and undisputed sum;
 - the reasons why the undisputed sum is due; and
 - the requirement on the Client to remedy the failure to pay

This right of termination does not apply where the failure to pay is due to the Client exercising its rights under this Call-Off Contract (including the right to set off under Clause 30).

24 CONSEQUENCES OF TERMINATION

- 24.1 Termination of a Project (and any Statement of Work in respect of that Project) in accordance with the terms of this Call-Off Contract by either Party shall not serve to terminate this Call-Off Contract, which will continue in full force and effect.
- 24.2 If this Call-Off Contract is terminated, all ongoing and outstanding Projects (and any Statements of Work in respect of those Projects) will also terminate on the same date as this Call-Off Contract.
- 24.3 Upon termination of this Call-Off Contract or a Project for any reason:
- the Expiry Date or New Expiry Date shall be the date this Call-Off Contract terminates;
 - the Client will pay the Agency all Contract Charges falling properly due and payable to the Agency prior to the date of termination (in accordance with Clause 9 where relevant);
 - each Party will, following a reasonable request by the other Party, promptly deliver or dispose of any and all materials and property belonging or relating to the other Party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects. On the request of the other Party, each will certify in writing that the same has been done; and
 - the agency and its staff will vacate any premises of the Client occupied for any purpose of providing the Services or Deliverables.
- 24.4 Any provisions of this Call-Off Contract which are to continue after termination will remain in full force and effect after this Call-Off Contract is terminated. Such provisions may include (but are not limited to):
- (a) Clause 15 (Confidentiality)
 - (b) Clause 16 (Agency warranties)
 - (c) Clause 17 (Client warranties)
 - (d) Clause 18 (Liability)
 - (e) Clause 19 (Insurance)
 - (f) Clause 20 (Intellectual Property Rights)
 - (g) Clause 21 (Audit)
 - (h) Clause 24 (Consequences of Termination)
 - (i) Clause 25 (Notices)
 - (j) Clause 27 (Staff Transfer)
 - (k) Clause 33 (General) and
 - (l) Clause 34 (Governing law and jurisdiction)

25 FORCE MAJEURE

- 25.1 Neither Party will have any liability under or be in breach of this Call-Off Contract for any delays or failures in performance which result from circumstances beyond the reasonable control of the Party seeking to claim relief (a **Force Majeure Event** and the **Affected Party**).
- 25.2 Following a Force Majeure Event, the Affected Party must promptly notify the other Party in writing, both when the event causes a delay or failure in performance, and when the event has ended. If a Force Majeure Event continues for 60 consecutive Working Days, the Party not affected by the Force Majeure Event can suspend or terminate this Framework Agreement. They must do so in writing, and state the date from which the suspension or termination will come into effect.
- 25.3 If a Force Majeure event occurs, the Parties will use all reasonable endeavours to prevent and mitigate the impact, and continue to perform their obligations under this Call-Off Contract as far as is possible. Where the Agency is the Affected Party, it will take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

26 NOTICES

- 26.1 Any notices sent under this Call-Off Contract must be in writing and sent by hand, by post or by email. The table below sets out deemed time of delivery and proof of service for each.

Notice delivered	Deemed time of delivery	Proof of service
In person	At the time of delivery	Proof that delivery was made (e.g. a signature is obtained)
By first class post, special delivery or other recorded delivery	2 Working Days from the date of posting	Proof that the envelope was addressed and delivered into the custody of the postal authorities
Email	09:00 hours on the first Working Day after sending	Dispatched in an emailed pdf to the correct email address without any error message

- 26.2 The address and email address of each Party will be:

- (a) Agency:
- (b) Client:

- 26.3 For the purpose of this Clause and calculating receipt all references to time are to local time in the place of receipt.

27 STAFF TRANSFER

- 27.1 The Parties agree that

- (a) if providing the Services means staff must be transferred from the Client to the Agency, where the commencement of the provision of the Services or any part of the Services

results in one or more Relevant Transfers, Schedule 3 (Staff Transfer) will apply as follows:

- (i) where the Relevant Transfer involves the transfer of Transferring Client Employees, Part A of Schedule 3 (Staff Transfer) will apply
- (ii) where the Relevant Transfer involves the transfer of Transferring Former Agency Employees, Part B of Schedule 3 (Staff Transfer) will apply
- (iii) where the Relevant Transfer involves the transfer of Transferring Client Employees and Transferring Former Agency Employees, Parts A and B of Schedule 3 (Staff Transfer) will apply, and
- (iv) Part C of Schedule 3 (Staff Transfer) will not apply

27.2 Where providing the Services does not result in a Relevant Transfer, Part C of Schedule 3 (Staff Transfer) will apply and Parts A and B of Schedule 3 (Staff Transfer) shall not apply; and

27.3 Part D of Schedule 3 (Staff Transfer) will apply on the expiry or termination of the Services or any part of the Services.

27.4 Both during and after the Term, the Agency will indemnify the Client against all Employee Liabilities that may arise as a result of any claims brought against the Client due to any act or omission of the Agency or any Agency personnel.

28 THIRD PARTY RIGHTS

28.1 Except for CCS and the persons that the provisions of Schedule 3 of this Call-Off Contract confer benefits on, a person who is not a Party to this Call-Off Contract has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

29 DATA PROTECTION, SECURITY AND PUBLICITY

29.1 In addition to its general security obligations under this Call-Off Contract, the Agency shall comply with any security requirements specifically set out in the Statement of Work.

Data Protection

29.2 The Parties confirm that they will comply with any applicable Data Protection Legislation. For the purposes of this Clause, "Data Subject", "Personal Data" and "Processes(ing)" shall have the meanings given under Data Protection Legislation.

29.3 Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract, the Parties acknowledge that the Client is the Data Controller and that the Agency is the Data Processor.

29.4 Where the Agency is required to process Personal Data to perform its obligations under this Call-Off Contract, the Agency will:

- process Personal Data only in accordance with the Client's instructions and its own duties under Data Protection Legislation;
- ensure that it has in place appropriate security, technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;

- not disclose or transfer the Personal Data to any third Party or Agency personnel unless necessary for the provision of the Services;
- obtain the prior written consent of the Client before disclosing or transferring Personal Data to any third party (save where such disclosure or transfer is specifically authorised under this Call-Off Contract);
- take reasonable steps to ensure the reliability and integrity of any Agency personnel who have access to the Personal Data, and ensure that the Agency personnel:
 - are aware of and comply with the Agency's responsibilities under this Clause 29 and Clause 15 (Confidentiality, Transparency and Freedom of Information), and
 - have undergone adequate training in the use, care, protection and handling of Personal Data;
- notify the Client promptly if the Agency receives any complaint, notice or communication that relates directly to its compliance with Data Protection Legislation and/or the processing of personal data under or in connection with this Call-Off Contract;
- provide the Client with full cooperation and assistance (within the timescales reasonably required by the Client) in relation to any such complaint, communication or request;
- if requested by the Client, provide a written description of the measures that the Agency has taken and technical and organisational security measures in place, for the purpose of compliance with its Data Protection obligations in this Call-Off Contract around Data Protection;
- use its reasonable endeavours to assist the Client to comply with any obligations under the Data Protection Legislation.

29.5 The Agency will not cause the Client to breach any of the Client's obligations under the Data Protection Legislation, to the extent the Agency is aware (or ought reasonably to have been aware), that the same would be a breach of such obligations. It will not Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area or any country which is not determined to be adequate by the European Commission under Article 25(6) of Directive 95/46/EC without prior Approval from the Client.

29.6 The Agency will use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software (or as otherwise agreed between the Parties).

29.7 Notwithstanding Clause 29.6, if Malicious Software is found, the Parties will co-operate to reduce its impact. If Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, the Parties will assist each other to mitigate any losses and to restore the provision of the Services.

Client Data

29.8 The Agency will not store, copy, disclose, or use the Client Data except as necessary to perform its obligations under this Call-Off Contract or as otherwise Approved by the Client.

- 29.9 If any Client Data is held and/or Processed by the Agency, the Agency must supply that Client Data to the Client, at the time and in the format the Client requests.
- 29.10 The Agency is responsible for preserving the integrity of any Client Data it holds or processes, and preventing its corruption or loss.
- 29.11 The Agency will perform secure back-ups of all Client Data and ensure that such back-ups are available to the Client (or to such other person as the Client may direct) on request.
- 29.12 The Agency will ensure that any system it uses to holds any Client Data, including back-up data, is secure. This system must comply with any security requirements and any government security requirement policy relating to this Client Data.
- 29.13 If any time the Agency suspects or has any reason to believe that the Client Data is corrupted, lost or sufficiently degraded in any way, then the Agency must notify the Client immediately. This notification must contain information detailing the remedial action the Agency proposes to take.

Publicity and Branding

- 29.14 The Agency may not make any press announcements or publicise this Call-Off Contract or use the Client's name or brand in any promotion or marketing or announcement of orders without Approval from the Client.
- 29.15 The Agency will seek the Client's prior Approval before marketing their involvement in any Deliverable or draft Deliverable or entering into any industry awards or competition which will involve the disclosure of all or any part of any Deliverable or draft Deliverable.

30 RETENTION AND SET OFF

- 30.1 If the Agency owes the Client any money, the Client may retain or set off this money against any amount owed to the Agency under this Call-Off Contract or any other agreement between the Agency and the Client. In order to exercise this right, the Client will, within 30 days of receipt of the relevant invoice, notify the Agency of its reasons for retaining or setting off the relevant Contract Charges.
- 30.2 The Agency will make any payments due to the Client without any deduction. Deductions, whether by way of set-off, counterclaim, discount, abatement or otherwise, are not permitted unless the Agency has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Client.

31 INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

- 31.1 Where the Agency or any Agency personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Call-Off Contract, the Agency will:
 - (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, and
 - (b) indemnify the Client against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Agency or any Agency Personnel.

31.2 If any of the Agency Personnel is a Worker as defined in Call-Off Schedule 1 (Definitions) who receives consideration relating to the Services, then, in addition to its obligations under Clause 31.1, the Agency must ensure that its contract with the Worker contains the following requirements:

- (a) that the Client may, at any time during the Term, request that the Worker provides information to demonstrate how the Worker complies with the requirements of Clause 31.1, or why those requirements do not apply to it. In such case, the Client may specify the information which the Worker must provide and the period within which that information must be provided
- (b) that the Worker's contract may be terminated at the Client's request if:
 - (i) the Worker fails to provide the information requested by the Client within the time specified by the Client under Clause 31.2(a). and/or
 - (ii) the Worker provides information which the Client considers is inadequate to demonstrate how the Worker complies with Clause 31.2(a), or confirms that the Worker is not complying with those requirements
- (c) that the Client may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

32 PREVENTION OF FRAUD AND BRIBERY

32.1 The Agency represents and warrants that neither it, nor to the best of its knowledge any of its staff or Sub-Contractors, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

32.2 The Agency must not:

- (a) commit a Prohibited Act; or
- (b) do or suffer anything to be done which would cause the Client or any of the Client's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

32.3 The Agency shall during the Term:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) keep appropriate records of its compliance with its obligations under 32.3 (a) and make such records available to the Client on request;
- (c) if so required by the Client, within 20 Working Days of the Effective Date, and annually thereafter, certify to the Client in writing that the Agency and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Call-Off Contract are compliant with the Relevant Requirements. The Agency shall provide such supporting evidence of compliance as the Client may reasonably request; and

- 32.4 have, maintain and (where appropriate) enforce an anti-bribery policy to prevent it and any Agency staff or Sub-Contractors or any person acting on the Agency's behalf from committing a Prohibited Act. This anti-bribery policy must be disclosed to the Client on request.
- 32.5 The Agency shall immediately notify the Client in writing if it becomes aware of any breach of Clause 32.1, or has reason to believe that it has or any of the Agency staff or Sub-Contractors have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act;
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call-Off Contract; or
 - (d) otherwise suspects that any person or Party directly or indirectly connected with this Call-Off Contract has committed or attempted to commit a Prohibited Act.
- 32.6 If the Agency makes a notification to the Client under to Clause 32.5, the Agency shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with Clause 21 (Audit).
- 32.7 If the Agency breaches Clause 32.5, the Client may by notice:
- (a) require the Agency to remove any Agency Personnel whose acts or omissions have caused the Agency's breach from any Project; or
 - (b) immediately terminate this Call-Off Contract for material Default.
- 32.8 Any notice served by the Client under Clause 32.5 shall set out:
- the nature of the Prohibited Act;
 - the identity of the Party who the Client believes has committed the Prohibited Act;
 - the action that the Client has elected to take; and
 - if relevant, the date on which this Call-Off Contract shall terminate.

33 GENERAL

- 33.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Call-Off Contract, and that this Call-Off Contract is executed by its duly authorised representative.
- 33.2 This Call-Off Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Call-Off Contract on the basis of any representation that is not expressly incorporated into this Call-Off Contract.
- 33.3 Nothing in this Clause excludes liability for fraud or fraudulent misrepresentation.
- 33.4 Any entire or partial waiver or relaxation of any of the terms and conditions of this Call-Off Contract will be valid only if it is communicated to the other Party in writing, and expressly stated to be a waiver. A waiver of any right or remedy arising from a particular

breach of this Call-Off Contract will not constitute a waiver of any right or remedy arising from any other breach of the same Call-Off Contract.

- 33.5 This Call-Off Contract does not constitute or imply any partnership, joint venture, agency, fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Call-Off Contract. Neither Party has, or has represented, any authority to make any commitments on the other Party's behalf.
- 33.6 Unless expressly stated in this Call-Off Contract, all remedies available to either Party for breach of this Call-Off Contract are cumulative and may be exercised concurrently or separately. The exercise of one remedy does not mean it has been selected to the exclusion of other remedies.
- 33.7 If any provision of this Call-Off Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Call-Off Contract. Any severance will not, so far as is possible, modify the remaining provisions. It will not in any way affect any other circumstances of or the validity or enforcement of this Call-Off Contract.

34 DISPUTE RESOLUTION

- 34.1 The Parties shall resolve Disputes in accordance with the Dispute Resolution Procedure.
- 34.2 The Agency shall continue to provide the Services in accordance with the terms of this Call-Off Contract until a Dispute has been resolved.

35 GOVERNING LAW AND JURISDICTION

- 35.1 This Agreement will be governed by the laws of England and Wales.
- 35.2 Each Party submits to the exclusive jurisdiction of the courts of England and Wales and agrees that all disputes shall be conducted within England and Wales.

SCHEDULE 1

Definitions and Interpretation

1 INTERPRETATION

1.1 In this Call-Off Contract, any references to numbered Clauses and schedules refer to those within this Call-Off Contract unless specifically stated otherwise. If there is any conflict between this Call-Off Contract, the Letter of Appointment, the provisions of the Framework Agreement and the Statements of Work(s), the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Framework Agreement, except Framework Schedule 9 (Tender)
- (b) the Letter of Appointment (except the Agency Proposal)
- (c) the Call-Off Contract Terms
- (d) the Statement of Work
- (e) the Agency Proposal, and
- (f) Framework Schedule 9 (Tender)

1.2 The definitions and interpretations used in this Call-Off Contract are set out in this Schedule 1.

1.3 Definitions which are relevant and used only within a particular Clause or Schedule are defined in that Clause or Schedule.

1.4 Unless the context otherwise requires:

- words importing the singular meaning include where the context so admits the plural meaning and vice versa
- words importing the masculine include the feminine and the neuter and vice versa
- the words 'include', 'includes' 'including' 'for example' and 'in particular' and words of similar effect will not limit the general effect of the words which precede them
- references to any person will include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind
- references to any statute, regulation or other similar instrument mean a reference to the statute, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted
- headings are included in this Call-Off Contract for ease of reference only and will not affect the interpretation or construction of this Call-Off Contract
- If a capitalised expression does not have an interpretation in Call-Off Schedule 1 (Definitions) or relevant Call-Off Schedule, it shall have the meaning given to it in the Framework Agreement. If no meaning is given to it in the Framework Agreement, it shall be interpreted in accordance with the relevant market sector/industry. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

1.5 In this Call-Off Contract, the following terms have the following meanings:

“Advertising Regulations”

Any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority (including any applicable modification, extension or replacement thereof), together with other UK laws, statutes and regulations which are directly applicable to the Services.

“Agency Affiliate”

Any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with the Agency, including as a subsidiary, parent or holding company.

“Agency Confidential Information”

Any information that the Agency gives to Clients that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however it is conveyed, that relates to the Agency’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers including all IPRs.

“Agency Materials”

Those Materials specifically created by any officers, employees, sub-contractors or freelancers of the Agency for the purposes of a Project, whether or not these materials are incorporated into Deliverables during the Term. (Includes any Materials adapted, modified or derived from the Client Materials).

“Agency Proprietary Materials”

Software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Agency and which:

- were in existence prior to the date on which it is intended to use them for a Project, or
- are created by or for the Agency outside of a Project and which are intended to be reused across its business

“Agency Proposal”

The Agency’s solution in response to the Client’s Brief, as set out in the Letter of Appointment.

“Approval”

Formal Approval from one Party to another, given in accordance with Clause 10.1 or 10.2.

“Associates”

A Party’s employees, officers, agents, sub-contractors or authorised representatives.

“Authorised Agency Approver”

Any personnel of the Agency who have the authority to contractually bind the Agency in all matters relating to this Call-Off Contract. They must be named in the applicable Statement of Work, and the Client must be notified if they change.

“Authorised Client Approver”

Any personnel of the Client who have the authority to contractually bind the Client in all matters relating to this Call-Off Contract. They must be named in the applicable Statement of Work, and the Agency must be notified if they change.

“Call-Off Contract”

This contract between the Client and the Agency (entered into under the provisions of the Framework Agreement), which consists of the terms set out in the Letter of Appointment, the Call Off Terms, the Schedules and any Statement of Work.

“Call Off Terms”

The terms and conditions set out in this Call-Off Contract including this Schedule 1 but not including any other Schedules or Statement of Work.

“Central Government Body”

A body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- Government Department;
- Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- Non-Ministerial Department; or
- Executive Agency

“Change of Control”

Change of Control has the same meaning as in section 416 of the Income and Corporation Taxes Act 1988.

“Client Affiliates”

Any organisation associated with the Client that will directly receive the benefit of the Services. Client Affiliates must be named in a Statement of Work, or subsequently notified to the Agency.

“Client Brief”

The document containing the Client’s requirements issued as part of the Call Off Process set out in Section 3 of the Framework Agreement.

“Client Cause”

A situation where the Client does not fulfil its obligations in connection with this Call-Off Contract (including its payment obligations), and as a consequence the Agency is prevented from performing any of the agreed Services and/or providing any of the agreed Deliverables.

“Client Confidential Information”

All Client Data and any information that the Client or CCS gives to Agencies that is designated as being confidential, or which ought reasonably be considered to be confidential (whether or not it is marked “confidential”). This may include information, however conveyed, that is politically or security sensitive and/or relates to the Client’s business, affairs, developments, trade secrets, Know-How, personnel and suppliers.

“Client Data”

Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these), including any Client’s Confidential Information, supplied to the Agency by or on behalf of the Client, or which the Agency is required to generate, process, store or transmit in connection this Call-Off Contract, and any Personal Data for which the Client is the Data Controller.

“Client Materials”

Any Client Data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to the Agency or its Associates by or on behalf of the Client.

“Confidential Information”

The Client’s Confidential Information and/or the Agency Confidential Information.

“Contract Charges”

All charges payable by the Client for the Services provided under this Call-Off Contract calculated in accordance with Framework Schedule 3 (Charges Structure) and the Letter of Appointment including all Approved costs properly incurred by the Client including but not limited to all Expenses, disbursement, taxes, sub-contractor or third party costs, and fees.

“Contracting Body”

CCS, the Client and any other bodies listed in the OJEU Notice.

“Contract Year”

A consecutive 12- month period during the Term commencing on the Effective Date or each anniversary thereof.

“Data Protection Legislation”

All relevant Data Protection laws which apply, including:

- in the UK, the Data Protection Act 1998 (as amended) and all applicable laws and regulations relating to processing of personal data and privacy, including any related guidance and codes of practice issued by the Information Commissioner or relevant government department
- in EU countries, the EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) and all local laws or regulations giving effect to this Directive, and
- in non-EU countries, any similar or equivalent laws to those above including regulations or rules relating to data about individuals.

"Default"

Any breach of the obligations of the Agency (including but not limited failing to provide any Deliverables by any date set out in the applicable Statement of Work (or any other deadline agreed by the Parties in writing), and abandonment of this Call-Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Agency, of its Sub-Contractors or any of its staff howsoever arising in connection with or in relation to the subject-matter of this Call-Off Contract and in respect of which the Agency is liable to the Client

“Deliverables”

The advertising, creative and other materials which are to be provided by the Agency as specified in a Statement of Work.

"Dispute"

Any dispute, difference or question of interpretation arising out of or in connection with this Call-Off Contract, including any dispute, difference or question of interpretation relating to the

Services, failure to agree in accordance with the Variation Procedure or any matter where this Call-Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure.

"Dispute Resolution Procedure"

The dispute resolution procedure set out in Call-Off Schedule 4 (Dispute Resolution Procedure).

"Effective Date"

The date this Call-Off Contract starts, as set out in the Letter of Appointment.

"EIRs"

The Environmental Information Regulations 2004 together with any guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

"Expenses"

Reasonable travelling, hotel, subsistence and other expenses incurred by the Agency in connection with the supply of Services and Deliverables, provided that such Expenses have either received the Client's prior Approval or are in accordance with any expenses policies which have been supplied to the Agency and set out in the agreed Statement of Work.

"Expiry Date"

The date this Call-Off Contract ends, as set out in the Letter of Appointment.

"Extension Expiry Date"

The latest date this Call-Off Contract can end, as set out in the Letter of Appointment.

"Framework Agreement"

The framework agreement between Crown Commercial Services and the Agency reference number: RM3796 referred to in the Letter of Appointment.

"Framework Prices"

The maximum charges the Agency may charge as set out in Schedule 3 to the Framework Agreement.

"Force Majeure"

means:

- acts, events, omissions, happenings or non-happenings beyond the reasonable control of the affected Party
- riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare
- fire, flood, any disaster and any failure or shortage of power or fuel
- an industrial dispute affecting a third party for which a substitute third party is not reasonably available

but does not mean

- any industrial dispute relating to the Agency, its staff, or any other failure in the Agency's (or a subcontractor's) supply chain

- any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned, and
- any failure of delay caused by a lack of funds

“FOIA”

The Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.

“Further Competition Procedure”

The process of a Client issuing a Brief and the Agency submitting a proposal in response to such Brief, as set out in Framework Clause 3.10.

“Good Industry Practice”

Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector.

“Guarantee”

A deed of guarantee that may be required under this Call Off Contract in favour of the Client in the form set out in Framework Schedule 9 (Guarantee) granted pursuant to Clause 3 (Call Off Guarantee).

“Guarantor”

The person, in the event that a Guarantee is required under this Call Off Contract, acceptable to the Client to give a Guarantee.

“Impact Assessment”

The assessment to be carried out by a Party requesting a Variation in accordance with Clause 9.4.

"Information"

The same meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time.

“Insolvency Event”

In respect of the Agency, where:

- a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986; or
- a winding-up resolution is considered or passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- where the Agency is an individual or partnership, any event analogous to these listed in this definition occurs in relation to that individual or partnership; or
- any event analogous to these listed in this definition occurs under the law of any other jurisdiction

“Intellectual Property Rights” or “IPRs”

The following rights, wherever in the world enforceable, or such similar rights, which have equivalent effect, including all reversions and renewals and all applications for registration:

- any patents or patent applications
- any trade marks (whether or not registered)
- inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration
- copyright or design rights (whether registered or unregistered)
- database rights
- performer's property rights as described in Part II of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world
- any goodwill in any trade or service name, trading style or get-up and
- any and all other intellectual or proprietary rights

“Key Individuals”

Individuals named by the Agency in the Letter or Appointment or Statement of Work as having a major responsibility for delivering the Services.

"Law"

Any law, subordinate legislation, bye-law, enforceable right, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Agency has to comply.

"Letter of Appointment"

The Letter of Appointment, substantially in the form set out in Framework Schedule 4, signed by both Parties and dated on the Effective Date.

“Losses”

Any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses) to either Party subject to Clause 18.1 and 18.3.

“Malicious Software”

Any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Materials”

Any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, software, or any other material protected by Intellectual Property Rights.

“Moral Rights”

All rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world.

“New Expiry Date”

Has the meaning given to it in Clause 2.3

“Personal Data”

Personal Data has the same meaning as set out in the Data Protection Act 1998

“Prohibited Act”

means any of the following:

- to directly or indirectly offer, promise or give any person working for or engaged by the Client and/or CCS or any other public body a financial or other advantage to:
- induce that person to perform improperly a relevant function or activity;
- reward that person for improper performance of a relevant function or activity;
- to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - under legislation or common law concerning fraudulent acts; or
 - defrauding, attempting to defraud or conspiring to defraud the Client; or
 - any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

“Project”

Any project(s) agreed between the Parties from time to time by which the Agency is to perform the Services which are the subject of this Call-Off Contract and supply Deliverables to the Client as more fully described in the applicable Statement of Work.

“Project Commencement Date”

The date a Project will start, as set out in the relevant Statement of Work.

“Project Completion Date”

The date by which a Project is to be completed, as set out in the relevant Statement of Work.

“Project Notice Period”

The period of notice for cancellation of a Project as set out in the Statement of Work.

“Project Term”

The period during which the Services for each Project will be provided as specified in the applicable Statement of Work.

“Purchase Order Number”

The order number set out in the Letter of Appointment.

“Rate Card”

The Agency’s rate card set out in Framework Schedule 3.

“Records”

The accounts and information maintained by the Agency related to the operation and delivery of this Call-Off Contract, including all expenditure which is reimbursable by the Client, as are necessary for the provision of management information and to enable the Client to conduct an audit as set out in Clause 21.

“Rectification Plan”

The rectification plan pursuant to the Rectification Plan Process.

“Rectification Plan Process”

The process set out in Clauses 5.8 to 5.14.

“Regulations”

Has the meaning given to it in Framework Schedule 1 (Definitions)

“Relevant Requirements”

All applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Request for Information”

A request for information or an apparent request relating to this Call-Off Contract or the provision of the Services or an apparent request for such information under the FOIA or the EIRs.

“Schedule”

Any Schedule attached to this Call-Off Contract.

“Services”

The Services to be supplied by the Agency under this Call-Off Contract and in accordance with Framework Section 2, and as may be more particularly set out in the relevant Statement of Work. This includes the provision of Deliverables.

“Special Terms”

Any terms specifically designated as varying these Call Off Terms or the terms of any schedule, as set out in the applicable Statement of Work.

“Standards”

Any:

- standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Agency would reasonably and ordinarily be expected to comply with;
- standards detailed in the specification in Framework Section 2 (Services and Key Performance Indicators);
- standards detailed by the Client in the Letter of Appointment and any Statement of Work or agreed between the Parties from time to time;
- relevant Government codes of practice and guidance applicable from time to time.

“Statement of Work”

One or more documents (including the schedules attached) describing the relevant Project(s) as agreed and signed by the parties either as part of the Letter of Appointment or as a separate document under Clause 1.

“Sub-Contract”

A contract entered into between the Agency and a Sub-Contractor.

“Sub-Contractor”

Any person or agency appointed by the Agency to provide elements of the Services on behalf of the Agency to the Client.

“Tender”

The tender submitted by the Agency in response to the Invitation to Tender and set out at Framework Schedule 10 (Call Off Tender);

“Term”

The period from the Effective Date to the earlier of:

- (a) the Expiry Date or New Expiry Date; and
- (b) any date of termination

“Territory”

The United Kingdom, unless specified otherwise in the applicable Statement of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide.

“Third Party Materials”

Any Materials used in the Deliverables which are either commissioned by the Agency from third parties or which have already been created by a third party and the Agency proposes to use. Excludes software which is owned or licensed by a third party.

“Transparency Principles”

The principles set out at <https://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public> (and as may be amended from time to time) detailing the requirement for the proactive release of information under the Government's transparency commitment to publish contract information

“Transparency Reports”

The information relating to the Services and performance of this Call-Off Contract which the Agency is required to provide to the CCS in accordance with its reporting requirements.

“Variation”

A change in this Call-Off Contract that is formally agreed by both Parties, as detailed in Clause 10.2.

“Variation Form”

The template form to process and record variations to this Call-Off Contract as set out at Schedule 5.

“Worker”

Any Agency personnel to whom the Client considers Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) applies

See <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>

“Working Day”

Any day other than a Saturday, Sunday or public holiday in the UK.

SCHEDULE 2

Statement of Work-

This Statement of Work is issued under and in accordance with the Call-Off Contract entered into between the parties dated **TBA**

Project:	<i>Set out a short description of the Project this may be the same as the Services under the Call-Off Contract where there is a single Statement of Work.</i>									
Project start Date	<i>Set out the start date for this Project and its duration and the likely end date if known– state whether for a fixed term or an initial term and then rolling subject to notice.</i>									
Notice period for cancellation	<i>Where the parties are agreeing a Project Notice Period for cancellation of Project, specify the notice period this will only apply where a Project may be cancelled independently to the Call-Off Contract.</i>									
[Project Notice Period]:										
Overarching Brand/Campaign	If this campaign is part of a wider overarching campaign, or uses specific Government owned brands (such as the GREAT Britain brand for example) please state them, and what relationship of this campaign will be to them.									
Services & Deliverables:	Set out a description of the Services and Deliverables to be supplied by the Agency for this Project. State any specific activities agreed in the pitch that are to be delivered as part of this campaign. Ensure you capture any work across distinct specialisms or channels. State if you require any specific requirements and ways of working such as third party consents, licences, clearances that Agency needs to obtain and products or purchases. State that Client's use of the Deliverables will be "subject to any third party usage rights which are notified to the Client in accordance with this Call-Off Contract".									
Inclusion of Additional Schedules	The following Schedules are incorporated into this Statement of Work <table border="1"> <thead> <tr> <th>Schedule Name</th> <th>Incorporated (Mark with 'X' if incorporated)</th> </tr> </thead> <tbody> <tr> <td>Creative Advertising Services (online and/or offline)</td> <td></td> </tr> <tr> <td>Social Media Services</td> <td></td> </tr> <tr> <td>Public Relations</td> <td></td> </tr> </tbody> </table>		Schedule Name	Incorporated (Mark with 'X' if incorporated)	Creative Advertising Services (online and/or offline)		Social Media Services		Public Relations	
Schedule Name	Incorporated (Mark with 'X' if incorporated)									
Creative Advertising Services (online and/or offline)										
Social Media Services										
Public Relations										

	Simple Software/website/app development		
	Below the line/experiential		
Project Plan:	Set out the timing of each phase of the project, any key dates and/ or delivery of the Services and/or the Deliverables (if known)		
Contract Charges:	Set out the calculation of the Contract Charges (including rules for the recovery of expenses) payable to Agency for this Project e.g. details of any fixed price, time and materials in which case Agency's Rate Card should be attached, together with invoice dates or milestones that trigger payment. All rates should be less than the maximum rates set out in the Agency rate card submitted as part of the original framework evaluation as set out in Framework Schedule 3. Set out any payment terms specific to the Project. Examples of different wording for Contract Charges: The Client shall pay the Agency the sum of £[...] for delivery of these Services, payable in monthly instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third party costs OR The Contract Charges shall be calculated using the hourly charge out rates shown in [the Agency's rate card, [provided that the total Contract Charges shall not exceed £ [...].] For the avoidance of doubt, the Contract Charges shall inclusive of all third party costs.		
Client Materials:	Set out details of the materials or information to be provided to the Agency.		
International locations	If Services are to be supplied outside the UK, specify additional territories here		
Client Affiliates:	If relevant, set out any Client Affiliates which will be using Deliverables		
Special Terms:	Set out any special terms that are intended to take precedence over the Call-Off Terms and/or the Schedules to the Call-Off Terms such as, security requirements, warranties, specific insurance requirements etc. .		
Key Individuals :	Set out details of the key personnel from the Agency for this Project if relevant.		

Authorised Agency Approver:

Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Agency for this project.

Authorised Client Approver:

Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Client for this Project.

Signed by:.....

by (print name):.....

As Agency Authorised Approver for and on behalf of

[Agency]

Date.....

Signed by:.....

by (print name):.....

As Client Authorised Approver for and on behalf of

[Client]

Date.....

**SCHEDULE 3:
STAFF TRANSFER**

1. DEFINITIONS

In this Call-Off Schedule 3, the following definitions shall apply:

“Admission Agreement”	The agreement to be entered into by which the Agency agrees to participate in the Schemes as amended from time to time;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
“Fair Deal Employees”	those Transferring Client Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal and any Transferring Former Agency Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become

	entitled to the protection of New Fair Deal;
“Former Agency”	an agency supplying services to the Client before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such agency (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Call-Off Schedule 3 to whom Transferring Client Employees and/or Transferring Former Agency Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a sub-contractor of the Replacement Agency to whom Transferring Agency Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to employees of the civil service and employees of bodies under the Superannuation Act 1972, as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the 2015 New Scheme (with effect from a date to be notified to the Agency by the Minister for the Cabinet Office);
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Agency or any Sub-Contractor to a Replacement Agency or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer;
“Staffing Information”	in relation to all persons identified on the Agency's Provisional Agency Personnel List or Agency's Final Agency Personnel List, as the case may be, such information as the Client may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting

party;

- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Agency's Final Agency Personnel List"

a list provided by the Agency of all Agency Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

"Agency's Provisional Agency Personnel List"

a list prepared and updated by the Agency of all Agency Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Agency;

"Transferring Client Employees"

those employees of the Client to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Former Agency Employees"

in relation to a Former Agency, those employees of the Former Agency to whom the Employment Regulations will apply on the Relevant Transfer Date; and

"Transferring Agency Employees"

those employees of the Agency and/or the Agency's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Call-Off Schedule 3 imposes an obligation on the Agency to provide an indemnity, undertaking or warranty, the Agency shall procure that each of its Sub-Contractors shall

comply with such obligation and provide such indemnity, undertaking or warranty to the Client, Former Agency, Replacement Agency or Replacement Sub-Contractor, as the case may be. 0.

PART A
TRANSFERRING CLIENT EMPLOYEES AT COMMENCEMENT OF SERVICES
NOT USED

PART B
TRANSFERRING FORMER AGENCY EMPLOYEES AT COMMENCEMENT OF SERVICES
NOT USED

PART C

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Client and the Agency agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Client and/or any Former Agency.
- 1.2 If any employee of the Client and/or a Former Agency claims, or it is determined in relation to any employee of the Client and/or a Former Agency, that his/her contract of employment has been transferred from the Client and/or the Former Agency to the Agency and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Agency shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Client and, where required by the Client, give notice to the Former Agency; and
 - 1.2.2 the Client and/or the Former Agency may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Agency or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Client or Former Agency (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Client and/or the Former Agency), the Agency shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Agency and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Agency and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Client shall:
 - 2.1.1 indemnify the Agency and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Client referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 subject to paragraph 3, procure that the Former Agency indemnifies the Agency and/or any Notified Sub-Contractor against all Employee Liabilities arising out of

termination of the employment of the employees of the Former Agency made pursuant to the provisions of Paragraph 1.4 provided that the Agency takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Client and/or the Former Agency as appropriate nor dismissed by the Agency and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Agency and/or the Sub-Contractor (as appropriate) and the Agency shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Agency and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Agency and/or the Sub-Contractor and the Agency shall indemnify the Client and any Former Agency, and shall procure that the Sub-Contractor shall indemnify the Client and any Former Agency, against any Employee Liabilities that either of them may incur in respect of any such employees of the Agency and/or employees of the Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
- 2.4.1 shall not apply to:
- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Agency and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Agency and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Agency and/or any Sub-Contractor to the Client and, if applicable, Former Agency within 6 months of the Call-Off Commencement Date.

3. PROCUREMENT OBLIGATIONS

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

PART D
EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Agency agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Client of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Call-Off Contract;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Client at any time (provided that the Client shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the DPA, the Agency's Provisional Agency Personnel List, together with the Staffing Information in relation to the Agency's Provisional Agency Personnel List and it shall provide an updated Agency's Provisional Agency Personnel List at such intervals as are reasonably requested by the Client.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Agency shall provide to the Client or at the direction of the Client to any Replacement Agency and/or any Replacement Sub-Contractor:
- 1.2.1 the Agency's Final Agency Personnel List, which shall identify which of the Agency Personnel are Transferring Agency Employees; and
 - 1.2.2 the Staffing Information in relation to the Agency's Final Agency Personnel List (insofar as such information has not previously been provided).
- 1.3 The Client shall be permitted to use and disclose information provided by the Agency under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Agency and/or Replacement Sub-Contractor.
- 1.4 The Agency warrants, for the benefit of the Client, any Replacement Agency, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Agency agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Agency's Provisional Agency Personnel List and shall not without the Approval of the Client (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Agency Personnel listed on the Agency Provisional Agency Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Agency Personnel (including any payments connected with the termination of employment);

- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Agency Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Agency's Provisional Agency Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Agency's Provisional Agency Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Client or, at the direction of the Client, any Replacement Agency and any Replacement Sub-Contractor of any notice to terminate employment given by the Agency or relevant Sub-Contractor or received from any persons listed on the Agency's Provisional Agency Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Agency shall provide, and shall procure that each Sub-Contractor shall provide, to the Client any information the Client may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services; and
 - 1.6.3 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Agency shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Client, any Replacement Agency and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Agency Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Agency Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Agency shall provide, and shall procure that each Sub-Contractor shall provide, to the Client or, at the direction of the Client, to any Replacement Agency and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Agency's Final Agency Personnel List who is a Transferring Agency Employee:
 - 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Client and the Agency acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Call-Off Contract or otherwise) resulting in the Services being undertaken by a Replacement Agency and/or a Replacement Sub-Contractor. Such change in the identity of the Agency of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Client and the Agency further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Agency and the Transferring Agency Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Agency and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Agency Employee.
- 2.2 The Agency shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Agency Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Agency Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Agency and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Agency and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Agency shall indemnify the Client and/or the Replacement Agency and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Agency Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 2.3.1 any act or omission of the Agency or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Agency or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Agency Employees; and/or
- (b) any other custom or practice with a trade union or staff association in respect of any Transferring Agency Employees which the Agency or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Agency Employees arising from or connected with any failure by the Agency or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Agency Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency to the Client and/or Replacement Agency and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Agency or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Agency or any Sub-Contractor other than a Transferring Agency Employee for whom it is alleged the Client and/or the Replacement Agency and/or any Replacement Sub-Contractor may be liable by virtue of this Call-Off Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee relating to any act or omission of the Agency or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Client and/or Replacement Agency to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Agency and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Agency Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Agency and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - 2.4.2 arising from the Replacement Agency's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Agency Employee claims, or it is determined in relation to any person who is not a Transferring Agency Employee, that his/her contract of

employment has been transferred from the Agency or any Sub-Contractor to the Replacement Agency and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- 2.5.1 the Client shall procure that the Replacement Agency shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Agency; and
 - 2.5.2 the Agency may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Agency and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Agency or a Sub-Contractor, the Client shall procure that the Replacement Agency shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Client shall advise the Replacement Agency and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Agency and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Agency shall indemnify the Replacement Agency and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 2.7 provided that the Replacement Agency takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Agency and/or Replacement Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Replacement Agency and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Agency and/or Replacement Sub-Contractor to the Agency within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Agency or any Sub-Contractor nor dismissed by the Replacement Agency and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Agency Employee and the Replacement Agency and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 2.11 The Agency shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Agency Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
 - 2.11.1 the Agency and/or any Sub-Contractor; and
 - 2.11.2 the Replacement Agency and/or the Replacement Sub-Contractor.
- 2.12 The Agency shall, and shall procure that each Sub-Contractor shall, promptly provide to the Client and any Replacement Agency and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Client, the Replacement Agency and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Client shall procure that the Replacement Agency and/or Replacement Sub-Contractor shall promptly provide to the Agency and each Sub-Contractor in writing such information as is necessary to enable the Agency and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs the Client shall procure that the Replacement Agency indemnifies the Agency on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Agency Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee) arising from or as a result of:
 - 2.13.1 any act or omission of the Replacement Agency and/or Replacement Sub-Contractor;
 - 2.13.2 the breach or non-observance by the Replacement Agency and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Agency Employees; and/or

- (b) any custom or practice in respect of any Transferring Agency Employees which the Replacement Agency and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Agency Employees arising from or connected with any failure by the Replacement Agency and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 2.13.4 any proposal by the Replacement Agency and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Agency Employees on or after their transfer to the Replacement Agency or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Agency Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Agency or Replacement Sub-Contractor to, or in respect of, any Transferring Agency Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Agency in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Agency Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Agency Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Agency or Sub-Contractor, to the Replacement Agency or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Agency or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Agency Employees in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Agency Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Agency Employee relating to any act or omission of the Replacement Agency or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Agency and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Agency and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

SCHEDULE 4:

DISPUTE RESOLUTION PROCEDURE

1. Nothing in this dispute resolution procedure will prevent the Parties from seeking an interim court order restraining the other Party from doing any act or compelling the other Party to do any act.
2. The obligations of the Parties under this Call-Off Contract will not be suspended, cease or be delayed during a dispute.
3. If any dispute arises between the Parties in connection with this Call-Off Contract, they must try to settle it within 20 Working Days of either Party notifying the other of the dispute.
4. If the Parties have not settled the Dispute in accordance with paragraph 3 above, they must notify CCS of the details of the Dispute and escalate the dispute to the Client Representative, the Agency Representative and CCS who will have a further 10 Working Days from the date of escalation to settle the dispute.
5. If the dispute cannot be resolved by the Parties within 30 Working Days of the notice given under paragraph 3 above, they must refer it to mediation, unless the Client considers that the dispute is not suitable for resolution by mediation.
6. If a dispute is referred to mediation, the Parties must:
 - appoint a neutral adviser or mediator (the “**Mediator**”). Ideally, Parties will agree on this appointment. If they are unable to agree upon a Mediator within 10 Working Days of the proposal to appoint a mediator, or the chosen Mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution to appoint a Mediator
 - meet with the Mediator within 10 Working Days of the appointment, to agree how negotiations will take place and relevant information will be exchanged
7. 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.
8. If the Parties reach a resolution, a written agreement may be produced for both Parties to sign. Once signed, this agreement will be binding on both Parties.
9. If the Parties fail to reach a resolution, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. This opinion will be provided without prejudice and cannot be used in evidence in any proceedings relating to this Call-Off Contract without the prior written consent of both Parties.
10. If the Parties fail to reach a resolution within 90 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then the dispute may be referred to arbitration, unless the Client considers that it is not suitable for resolution by arbitration.
11. If a dispute is referred to arbitration, the Parties must comply with the following provisions:
 - the arbitration will be governed by the provisions of the Arbitration Act 1996
 - the London Court of International Arbitration (LCIA) procedural rules will apply, and are deemed to be incorporated into this Call-Off Contract. It however there is any conflict

between the LCIA procedural rules and this Call-Off Contract, this Call-Off Contract will prevail

- the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules)
- the tribunal shall consist of a sole arbitrator to be agreed by the Parties
- if the Parties fail to agree on the appointment of the arbitrator within 10 Working Days or, if the person appointed is unable or unwilling to act, LCIA will appoint an arbitrator, and
- the arbitration proceedings shall take place in a location to be agreed between the Parties.

SCHEDULE 5: VARIATION FORM

No of Call Off Letter of Appointment being varied:

.....

Variation Form No:

.....

BETWEEN:

[insert name of Client] ("**the Client**")

and

[insert name of Agency] ("**the Agency**")

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

[Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in this Call-Off Contract.
3. This Call-Off Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Client

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Agency

Signature

Date

Name (in Capitals)

Address

0.

SCHEDULE 6: ADDITIONAL CLAUSES

NOT USED